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SPECIAL POLICY REPORT 13

Industrial Loan Banks: Regulatory Loopholes As Big As A Wal-Mart

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Industrial loan banks, also known as industrial loan companies, are bank-like financial institutions that operate without the same prudential regulation and supervision that applies to other US banks and thrifts. This year's application by Wal-Mart to establish an industrial loan bank in Utah – and have its deposits insured by the Federal Deposit Insurance Corporation – brings into sharp relief the public interest concerns about how to best regulate these financial institutions. Chief among these concerns is the question of why the US government is continuing a policy of carving out a loophole for major corporations to own and operate banks that are not subject to normal prudential regulations such as oversight under the Bank Holding Company Act. There are other important policy concerns, such as the impact on fair market competitiveness within the US banking and thrift sectors. These issues and more will be addressed in this Special Policy Report.

Background

Although the issue of the regulatory loophole for ILBs is broader than Wal-Mart's application, the importance of Wal-Mart for the US economy and its potential to increase in importance with a bank charter acts to motivate and serves as an organizing theme to this report.

In 2005, Wal-Mart applied to the Utah Department of Financial Institutions to establish an ILB with headquarters in Salt Lake City, Utah. In July of 2005, Wal-Mart applied to the FDIC for federal deposit insurance for the ILB. This effort by the giant retailer follows three attempts in five years to unsuccessfully get into banking. Its previous plans to buy financial institutions in California and Oklahoma, and to partner with a bank in Canada, were thwarted by legislation or disapproval by a federal financial regulator.

Wal-Mart's first attempt was in 1999. It sought to acquire a thrift, located in Broken Arrow, Oklahoma, which was already owned by the Walton family. The thrift, the Federal Bank Centre, had been converted from a bank to a thrift in 1998 in order to qualify under a provision in federal law allowing for "unitary thrifts" to be owned by non-financial institutions.[1] Time was not on their side, however, as a change in federal law (The Financial Services Modernization Act P.L 106-102, commonly known as "Gramm-Leach-Bliley") closed this loophole in 1999.

It next tried to form a partnership with Toronto-Dominion Bank to open branches in its stores. However in 2001 the Office of Thrift Supervision failed to approve the arrangement. In a third attempt, Wal-Mart tried to purchase Franklin Industrial Bank, an ILB located in Orange, California in 2002. In testimony before the California legislature, Wal-Mart argued that the Gramm-Leach-Bliley Act allows commercial entities like Wal-Mart to own ILBs.[2] The California legislature responded by passing AB 551 to amend California law so as to prohibit commercial companies from acquiring California ILBs based on provisions in Gramm-Leach-Bliley.

This time Wal-Mart has applied in Utah to establish a new state-chartered ILB and also has applied to the FDIC for federal deposit insurance coverage. In the process, Wal-Mart has requested that the ILB be exempt from the Community Reinvestment Act (CRA). The FDIC is expected to decide on the issue in 2006.

What Are Industrial Loan Banks?

This Special Policy Report will use the term industrial loan bank (ILB) although these financial institutions are also known as industrial loan companies. The term bank is most fitting because of the similarity of these financial institutions to banks as well as the fact that the state of Utah allows their state chartered ILBs to use "bank" in their name.

ILBs are chartered by state governments under state law and are subsequently supervised by state bank authorities. Some of them issue deposits that are federally insured by the Federal

[1] Unitary thrift holding companies are corporations, financial or non-financial, that own a single savings bank or savings association.
[2] California Senate Banking, Commerce and International Trade committee memo on AB 551, Aug. 27, 2002.

Deposit Insurance Corporation (FDIC).[3] Those that receive federal deposit insurance are also regulated at the federal level by the FDIC.

Nearly all ILBs are owned by a holding company and thus are not stand-alone banks. Stand-alone banks are independent, unaffiliated with other financial institutions, and owned outright by a company that owns just the bank. In contrast, nearly all are owned through a holding company structure. These holding companies are often a major commercial or industrial company such as Toyota or BMW, or a major financial institution such as American Express or Citigroup.

An ILB can serve any client, individual or business entity, and can offer most of the array of financial products available from normal commercial banks. These similar services include:

- Credit cards
- Consumer loans including those for vehicles, RVs, and home improvements
- Loans secured by brokerage accounts
- Commercial lending
- Real estate construction
- Equipment financing and leasing
- Subprime lending
- ILBs with less than $100 million in assets can issue demand deposits, while other can offer checkable "NOW" accounts[4]
- Access to the Fed wire, automated clearing house (ACH) and check clearing services of the Federal Reserve

A Brief History of Industrial Loan Banks

The origin of ILBs dates to 1910 when Arthur J. Morris established the Fidelity Savings and Trust Company of Norfolk, Virginia. Morris designed this new type of specially chartered bank to help provide credit to working people who were otherwise underserved by the mainstream banking market. The name "industrial" comes from Morris' plan to raise funds through savings deposits from "industrial" workers.[5] Originally, these banks were prohibited from offering checkable deposits, and were funded instead by issuing "thrift certificates" or "certificates of investment." When the FDIC was created in 1933, the agency decided not to insure those deposits.

Morris' institutions presaged today's microfinance institutions in developing countries. His banks made credit available to working people without the usual requirements for collateral. Instead, the "Morris plan" banks relied upon the promises of loan cosigners.

> *"The cosigners need have no financial resources but must be as good as the borrower (Herzog 1928, p.19). Despite co-signers being formally obligated to repay the loan, banks did no expect to recover defaulted amounts from co-signers with any frequency (Herzog 1928, p.20). Thus, co-signers were not viewed as a source of collateral or funds in the event of default. Finally, there was no*

[3] Jackson, William. 2005. Congressional Research Service Report for Congress, February 11, 2005.
[4] Sutton, George. 2002. "Industrial Banks." Consumer Finance Law Quarterly Report, Spring 2002.
[5] Phillips, J. Ronnie and David Mushinski. 2001. "The Role of Morris Plan Lending Institutions in Expanding Consumer Micro-Credit in the United States David, Department of Economics," monograph Colorado State University. The paper provides an excellent history, and Professor Phillips also provided a helpful interview in the preparation for this report.

collateral required on a loan and the length of maturity was never more than one year."[6]

This model for consumer credit, known as "Morris plan" banks, proved highly successful. By 1915 there were Morris plan banks in 56 cities; by1931 there were 109 operating in 142 cities; and by 1935 they had become the leading provider of consumer credit to workers in the United Sates.

Today, these ILBs play a very different role in financial markets and the US economy than that envisioned by either Morris or the legislation that created them decades ago. Instead of small financial enterprises catering to otherwise neglected working people, they are owned by huge multinational commercial and financial corporations in order to reduce their regulatory requirements. They also have grown significantly in size and their activities and role in the economy have grown far beyond the original purpose intended by Congress. As a recent GAO report put it, "Some ILCs have evolved into large, complex financial institutions with extensive access to capital markets."[7]

The change has not been gradual. Whereas the total sum of all ILB assets was less than $4 billion in 1987, the amount mushroomed to more than $140 billions by 2004.[8] At the same time, the number of ILBs declined from 106 to 57. This pushed the average size of a ILB from less than $36 million in 1987 to over $2.5 billion in 2004 – indicating that there is much greater concentration in this sector than ever before. One ILB has over $66 billion in assets, and there are six ILBs listed amongst the largest 180 financial institutions in the United States. Of the largest 16 depository institutions supervised by the FDIC, three are ILBs.[9] Most ILBs are owned by a holding company, and these ILBs own 99% of all ILB assets.[10]

IBLs operate in seven states, but 99% of ILB assets are in just three states: Utah, California and Nevada.[11] The FDIC insures 56 of these 57 financial enterprises. There are 29 Utah registered ILBs, which hold 82% of all ILB assets. These are owned by major corporations such as American Express, BMW, Citigroup, General Electric, General Motors, Merrill Lynch, Morgan Stanley, Pitney Bowes, Sears, UBS, Volkswagen and Volvo.[12] The GAO reports that three of the six ILB charters issued since June 2004 are owned by non-financial commercial firms.[13]

From 1985 through early 2004, there were 21 failures of ILBs. These collapsed ILBs were mainly small finance companies taking on risky customers. The two largest failures were Pacific Thrift and Loan and Southern Pacific Bank – whose assets totaled $1.1 billion. These failures represented a small percentage of total ILB assets, and together resulted in about $105 million in losses for the bank insurance fund. However, according to the Federal Reserve Board,

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[6] Herzog, Peter W. 1928. The Morris Plan of Industrial Banking. A. W. Shaw Company: Chicago. Quoted in Phillips and Mushinski (2001), page 6.
[7] Government Accountability Office. 2005. "Recent Asset Growth and Commercial Interest Highlight Differences in Regulatory Authority." GAO-05-621, September 2005. Subsequently referred to as GAO. 2005.
[8] GAO. 2005.
[9] GAO. 2005.
[10] GAO. 2005.
[11] In addition to the big three, the other states include: Colorado, Hawaii, Minnesota.
[12] Jackson, William. 2005. Congressional Research Service Report for Congress, February 11, 2005.
[13] GAO. 2005, page 73.

the failure of the former was due to trouble with the parent company and how it interacted with its ILB.[14]

How Are ILBs Regulated?

STATE LAW

ILBs are state chartered financial institutions that are subject to state laws and supervised by the banking authority of their home state. State charters for ILBs are not very limiting as to the type of activities undertaken by ILBs.[15] A recent GAO report put it clearly and succinctly, "Banking laws in California, Nevada, and Utah have undergone changes that generally place ILCs on par with traditional banks. Thus, like other FDIC-insured depository institutions, ILCs may offer a full range of loans… [and] may "export" their home-state's interest rates to customers residing elsewhere."[16]

Although ILBS can engage in a similar range of financial activities, these state chartered financial institutions face some differences from state to state. For example, California and Colorado prohibit non-financial firms, such as General Motors or Wal-Mart, from owning ILBs. Also, California law prohibits ILBs from accepting checking or demand deposits. Some states require IBLs to obtain deposit insurance from the FDIC as a condition for issuing deposits.

Despite being state-chartered, ILBs are allowed to "export" their home state's interest rates for transactions in other states. This allows an ILB to charge the up to the maximum interest rate allowed by the state in which it is chartered irrespective of which state the customer is located. This means that any interest rate ceiling in the chartered-state applies for transactions nationwide. Neither Utah nor Nevada – which together make up 89% of all ILB assets – place a cap on interest rates, and so the ILBs located in those states face no anti-usury limits on the interest rates they charge borrowers.

The variation in law from state to state can lead to a lowering of prudential regulatory standards. According to David Poulsen, President of the American Express Centurion Bank, ILBs grew in popularity in specific states partially because of the states' "low cost of operation, simple and clear consumer credit code, and generally business friendly state legislature."[17] A story in *Credit Card Management Magazine* expressed this more precisely, "In the days immediately preceding the enactment of CEBA [Competitive Equality Banking Act of 1987], when it became apparent that ILBs were to be preserved as a vehicle for non-bank owners, several well-known financial-services companies feverishly sought out the available ILC charters in Utah. The California and Colorado ILC do not appear as attractive as those in Utah. That is because Utah has fewer restrictions to impede the growth and potential usefulness of ILBs as vehicles with which to conduct nationwide lending and deposit taking."[18]

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[14] See more on this below. Taken from accounts in GAO report, p. 61.
[15] Jackson, William. 2005. Congressional Research Service Report for Congress, February 11, 2005.
[16] GAO. 2005, page 21.
[17] FDIC. 2003. "The Future of Banking: The Structure and Role of Commercial Affiliations," FDIC Symposium July16, 2003. FDIC website. http://www.fdic.gov/news/conferences/future_transcript.html
[18] Boomstein, Anita L. 1993. "A non-bank tool regulators can't kill." Credit Card Management Magazine, August, 1993. Vol.6, Issue 5, p. 49. Note that the article refers to ILBs as ILC or industrial loan companies.

Hence the uneven distribution of ILBs across the country. Today, 82% of FDIC insured ILB assets are in Utah, 10% in California, 7% in Nevada and the remaining 1% in Colorado, Hawaii and Minnesota.[19]

FEDERAL LAW

Federal banking laws address ILB regulation in three major ways. First, federal law treats ILBs in much the same way as banks and thrifts. If ILBs issue deposits guaranteed by the Federal Deposit Insurance Corporation, they are then subject to supervision by the FDIC and are generally covered by the federal banking laws governing depository institutions. Federal law allows ILBs to engage in nearly all types of financial transactions as state and federally chartered banks and thrifts. One exception is their ability to offer normal checking or demand accounts. Federal restricts their ability to do so if they want to remain exempt from the Bank Holding Company Act (see discussion below). Nonetheless, ILBS can and do offer similar "NOW" checking accounts – these Negotiable Order Withdrawal accounts give the financial institution the right to delay the payment of funds for seven days, but in practice, they are usually made on demand.

The FDIC began insuring the deposits of a few ILBs as early as 1958, although it did not become general policy until passage of the Garn-St.Germain Act, P.L. 97-320 (Depository Institutions Act) in 1982. This act authorized federal deposit insurance for thrift certificates, a funding source used by industrial loan banks.

Under federal banking law, ILBs are subject to the same safety and soundness regulations and consumer protection laws. These include restrictions on transactions between the ILB and its affiliates – in general requiring them to be conducted at "arms-length." Specifically, the law limits loans or "covered transactions" to any one affiliate to 10% of the bank's capital and to 20% of its capital for the combined amount of loans to all affiliates. The term "covered transaction" means loans plus securities, letters of credit, credit guarantees and other such obligations from the affiliate. Federal law also requires that those transactions be conducted on 'normal or usual' terms, that advertising not imply that the depository institution is responsible for obligations of its affiliates, and imposes limitations on securities transactions between affiliates.

Federal banking law addresses ILBs in a second way by providing a unique exemption from the prohibition of non-financial holding companies owning a depository institution and in the subsequent exemption of those holding companies from consolidated holding company supervision and regulation.

ILBs charters allow commercial and industrial firms, such as Sears, GM or Wal-Mart, to own an ILB even though federal bank law would otherwise prohibit such firms from owning and operating a normal state or federally chartered bank or thrift.[20] It is important to note that Gramm-Leach-Bliley eliminated a similar loophole for "unitary thrifts" in 1999. Today the only two loopholes by which a non-financial commercial company can own a financial institution is to obtain an ILC or a limited 'credit card only' bank. In this way Gramm-Leach-Bliley –

[19] GAO. 2005, page 20.
[20] FDIC. "The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective." FDIC website: www.fdic.gov/regulations/examinations/supervisory/insights/sisum04

contrary to some perceptions – actually strengthened the Glass-Steagall principal of separating the ownership of banking institutions from commercial and industrial enterprises.

Combining banking and commercial firms creates several types of dangers. It creates conflicts of interest that reduce the safety and soundness of the financial system, and potentially increases the market power of large conglomerate corporate goliaths. The implications for these conflicts of interest is for transfers of risk and returns between an ILB and their parent (or with its other affiliates) to result in imprudent risk-taking, distortion of public financial reporting, inefficient allocation of resources or unfair competitive advantages for firms benefiting from this regulatory loophole.

One particular concern that is raised by the Wal-Mart application is the potential for the Wal-Mart bank to drive many independent banks and thrifts out of business and thus leave many small towns and cities with only a Wal-Mart branch bank. Whereas the independent banks and thrifts made their business by lending to all sorts of businesses, their displacement by a Wal-Mart bank might result in a loss of credit and other financial services to local businesses that compete with Wal-Mart. This non-competitive behavior would lead to greater economic inefficiencies.

Although ILBs are regulated by the FDIC, their parent companies are not subject to consolidated federal oversight as bank holding companies under the Bank Holding Company Act (BHCA). The BHCA includes activity restrictions and supervisory provisions that apply to bank holding companies, i.e. any company that controls a "bank". As a general matter, the Act defines "bank" as a financial institution that issues checkable (demand) deposits insured by the FDIC and makes commercial loans. Consolidated bank or financial holding company regulation and supervision is carried out by the Federal Reserve Board and the Securities and Exchange Commission, respectively.

The Competitive Equality Banking Act of 1987[21] (CEBA) amended the BHCA so as to provide exemptions, under certain conditions, for ILB holding companies to avoid consolidated holding company regulation and supervision. The conditions for obtaining exemption from the BHCA are the following:

- the ILB does not accept demand deposits (withdrawals by checks payable to a third party, i.e. normal checking accounts)
- total assets of the ILB are less than $100 million
- the ILB was not acquired after August 10, 1987

As a result of this exemption, ILBs, as well as their parent holding company, are not subject to the same capital requirements as other banks and thrifts. According to the Congressional Research Service, "ILCs and, especially their parent owners, need not always carry as much capital as banks and their holding companies."[22]

The FDIC does have authority to examine any affiliate, including a parent company, of a regulated financial institution for the purpose of fully disclosing the relationship with the ILB. In contrast, a consolidated bank holding company regulator, i.e. the Fed or SEC, has the power to examine the holding company and any subsidiary even though they may not have any relationship to the insured ILB. However the FDIC does not have the enforcement authority to

[21] P.L 100-86
[22] Jackson, William. 2005. Congressional Research Service Report for Congress, February 11, 2005.

exercise these responsibilities in all circumstances. A recent GAO report states that, "questions remain about whether FDIC's supervisory approach and authority over BHC Act-exempt holding companies and their non-bank subsidiaries address all risks to the ILC from these entities."[23]

The BHCA, as amended by the Gramm-Leach-Bliley Act, requires a bank holding company that seeks to become a financial holding company, or a financial holding company seeking to expand its activities, to maintain all its depository institutions as "well capitalized" and well managed. In contrast, FDIC enforcement action begins only after a bank fails to be "adequately capitalized."

The FDIC claims that it can enhance its authority by threatening to withdraw deposit insurance. However this is a dangerously destabilizing ploy for dealing with a troubled financial institution. It is akin to enforcing fire safety standards on a landlord by cutting off water to the building.

As to why the CEBA carved out this exemption for ILBs while closing the loophole for near-bank banks, former Federal Reserve Board Chair Alan Greenspan wrote in a letter to Congressman Jim Leach on January 20, 2006 that when CEBA was passed in 1987 the number of ILBs was small, their total assets were small (the largest had assets of less then $400 million) and that many states – including Utah – were either not chartering or had a moratorium on the chartering of ILBs. Greenspan went on to point out that actual market conditions have changed considerably since that time.

The third issue for ILBs and federal banking law concerns ongoing Congressional efforts to expand ILB powers. One of these would allow ILBs to offer interest bearing demand deposits, and another would allow the offering of interest bearing business NOW accounts to corporate clients. If allowed to do so, ILBs could greatly expand their deposit base. Another of these provisions would expand powers of ILBs to branch interstate – even if this would involve the creation of new branches – called *de novo* branching – and even if the branching extended into states that otherwise passed laws prohibiting such *de novo* branching.[24] Allowing unrestricted interstate expansion through *de novo* branching would greatly increase the size of ILBs and the demand for ILB charters.

The Public Interest in ILBs

There is an important public interest in the safety, soundness and efficiency of the financial system. As a major share of the financial system, banks and other depository institutions such as ILBs serve as the vital infrastructure for payments and settlements for economic transactions throughout the economy. They are also a crucial source of credit and capital for consumption and investment activities, and they are an important vehicle for individual and business savings. When they get into trouble it chokes the overall economy and harms the standard of living for everyone.

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[23] GAO. 2005, page 7.

[24] The Interstate Banking and Branching Efficiency Act of 1994 granted states the authority to opt out of such branching. There are 17 states that have adopted such legislation.

Market incentives cannot by themselves ensure the stability of the banking sector. Banks can – and do – take risks in excess of the capital they put at risk. This creates an externality[25] since their bad investment decisions impact more than those who put their capital at risk. ILBs pose much the same risks as other banks. As a recent GAO report stated, "[IBLs] pose similar risks to the bank insurance fund as other types of insured depository institutions."[26]

Markets cannot adequately police banks' behavior because banks also cannot operate under perfect transparency, and thus investors and depositors cannot operate with full knowledge of banks. Instead, government regulatory agencies are authorized to conduct examinations, supervision and reporting requirements to help fill the gap. In the case of ILBs, the regulations contain a gap or loophole that fails to provide for the consolidated supervision of the holding company – an gap that is especially important considering the conflicts of interest created by the ownership of a bank by a commercial or industrial firm.

The following identifies and discusses four major points of public interest relating to the Wal-Mart effort to slip through the ILB loophole from prudential regulation.

SEPARATION OF BANKING AND COMMERCE

One of the pillars of financial stability in the United States has been the separation of the ownership of banks from that of commercial and industrial companies. During the late 1920s and early 1930s, the failure of many non-financial businesses and the collapse of stock prices lead to a crisis in the US banking system, which in turn created a credit shortage that deepened the economic downturn and ultimately lead to the Great Depression. New banking rules were established in 1933[27] to separate these activities. Since then, the US banking system has demonstrated remarkable resiliency as the economy has been largely spared the pro-cyclical feedback effects of economic downturns causing credit contractions that inhibit growth in output and employment.[28]

The ILB loophole remains the only loophole by which commercial corporations can obtain a depository institution or banking-like charter. This loophole exposes the safety, soundness and efficiency of the financial system to the problems associated with such cross-ownership. There are several ways in which an owner or parent can adversely affect its ILB.

- exposing it to a variety of risks
- trouble at parent or affiliate can severely impair the ability of an ILB to raise capital, acquire credit or otherwise gain access to other services in the financial sector
- lead to inappropriate inter-company transactions, such as drain bank of capital or profits, through
    - paying excess dividends
    - charging above market prices or interest rates
    - paying below market prices or interest rates
    - increasing lending

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[25] Dodd, Randall. 2005. "The Virtues of Prudential Regulation." Financial Policy Forum Special Policy Report 11 (January 2005). Available at http://www.financialpolicy.org/dscreports.htm

[26] GAO. 2005. Highlights.

[27] The Glass-Steagall Act of 1933 which separated banking from industry, and banking from securities in the financial sector.

[28] One exception is the banking and thrift crisis of the late 1980s, which was not caused by the separation of ownership rules, can be attributed to ill-conceived deregulation of funding costs (Regulation Q) and investment restrictions that occurred prior to downturns in the oil and agricultural sectors and a boom-bust cycle in real estate.

- harming reputational risks
- exposing it to operations risk from information technology services shared with parent or affiliate

CONSOLIDATED HOLDING COMPANY SUPERVISION

Today's financial institutions are larger and more complex than ever. This means that the regulation and supervision of the overall enterprise – and not just isolated components of it – is critical for prudential regulation and the ability to monitor the institution so as to detect building problems and manage any resulting troubles. This is one reason why the regulator of bank holding companies, the Federal Reserve Board, has promulgated *Regulation Y* which specifies that a bank holding company parent should be a source of strength to the bank subsidiary and be ready to provide additional capital when needed. Failure to provide assistance would be a violation of safe and sound banking practices and would enable the regulator to take enforcement action to help protect the bank.

The SEC and the Fed act as supervisors for financial and bank holding companies. This supervision provides the financial authorities with the means to detect and help prevent bank failures and financial crises. It provides them with authority to require reporting, conduct examinations, and take enforcement actions against failures to maintain adequate capitalization. In addition, consolidated supervision also helps manage the resolution of bank failures when they occur.[29] These provision are all the more important now that ILBs are being integrated into large and complex business enterprises.

In a recent report to Congress, the GAO concluded that, "Therefore, from a regulatory standpoint, these ILCs may pose more risk of loss to the bank insurance fund than other insured depository institutions operating in a holding company. For example, FDIC's authority to examine ILC affiliates and take certain enforcement actions against them is more limited than a consolidated supervisor. While FDIC asserted that its authority may achieve many of the same results as consolidated supervision, and that its supervisory model has mitigated losses to the bank insurance fund in some instances, FDIC's authority is limited to a particular set of circumstances and may not be used at all times. Further, FDIC's authority has not been tested by a large ILC parent during times of economic stress."[30]

According to the Federal Reserve Board, as stated in the recent GAO report[31], the second largest ILB failure on record – Pacific Thrift and Loan – was due to the lack of enforceable consolidated holding company supervision to prevent a troubled parent holding company from exercising destructive management of the ILB.

For these reasons, the public interest is best protected by closing the loophole – or at least not expanding it by granting new ILB charters to major commercial concerns – so that the financial system is more thoroughly and consistently covered by prudential supervision of consolidated enterprises.

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[29] Point made by Greenspan in letter to Congressman Leach dated January 20, 2006.
[30] GAO. 2005. Highlights.
[31] GAO. 2005, page 61.

UNFAIR COMPETITION

Regulatory loopholes not only undermine the safety and soundness of the financial system, they also undermine the efficiency that arises from the fairness of market competition by giving an uneven advantage to a few firms that escape prudential safety and soundness standards.

One of the Federal Reserve Board's long-time staffers and now newest board member, expressed this concern in a hearing on the expansion of ILB activities.

> *"Industrial loan companies are a loophole that would be greatly expanded by this legislation," Federal Reserve Board governor Donald L. Kohn said in a recent interview. "If they want parity with banks, they should have parity in every respect, and that means their parent companies would be subject to the same rules and regulations the parents of other federally insured banks are subject to. If they were granted the powers they are trying to obtain, they would be treated differently and preferentially relative to other federally insured banks."*[32]

COMMUNITY REINVESTMENT ACT

One way that US banking laws address discrimination is through the Community Reinvestment Act (CRA), and one way that this law is enforced is through the requirement that all of the affiliates of bank and financial holding companies remain well capitalized and all insured depository institutions maintain a "satisfactory" record of compliance under the CRA. This sets a higher standard than would otherwise be the case for insured depository institutions because successful CRA compliance is not a necessary condition for the approval of mergers or acquisitions. Thus ILBs that are exempt from the BHCA would not be subject to this higher standard of compliance with the CRA. It would enable a firm to acquire a federally insured depository institution without being required to maintain the ILB's CRA performance as "satisfactory."

Moreover, ILBs are not subject to penalties under the BHCA for receiving less than a satisfactory score under the CRA rating. If an ILB had to face any kind of CRA problems, it would not result in any legal restrictions on operations of the holding company or affiliates.[33]

Conclusion

The issue is not about Wal-Mart *per se* but about the safety, soundness and efficiency of the US financial system. Wal-Mart's controversial public image just brings these issues to the fore. This report argues that ILBs are an unproductive and unnecessary loophole in the country's regulatory framework of financial institutions. As such, the loophole should not be expanded but rather eliminated. Granting ILBs new abilities to offer additional types of checking accounts or to branch *de novo* interstate would expand the scope of the loophole. Extending another charter, especially to such a major commercial behemoth as Wal-Mart, would expand the scale of the loophole and amount to a major step in the wrong direction.

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[32] Interview with Kathleen Day of the Washington Post, May 23, 2003.

[33] Sutton, George. 2002. "Industrial Banks." Consumer Finance Law Quarterly Report, Spring 2002.