

# United States Senate

August 12, 2020

The Honorable Jelena McWilliams  
Chairman  
Federal Deposit Insurance Corporation  
550 17th Street, N.W.  
Washington, D.C. 20429

Dear Chairman McWilliams:

I write to you today regarding the Federal Deposit Insurance Corporation's (FDIC) recent actions with respect to industrial loan companies (ILCs), including application approvals for Square and Nelnet, and the FDIC's notice of proposed rulemaking related to ILC parent companies. As you are aware, ILCs benefit from a loophole in the Bank Holding Company Act (BHCA) that allows ILCs and ILC parent companies the ability to circumvent supervision by the Federal Reserve. Importantly, the loophole also allows companies that own ILCs to engage in commercial activities that are not permissible for bank holding companies under the BHCA.

Considering these recent developments, in conjunction with Rakuten's pending application with the FDIC, I have concerns that we are approaching an inflection point that compromises this nation's longstanding policy of not mixing commerce and banking. In particular, I am deeply concerned about companies the size of Rakuten, Google, or Facebook offering banking services without proper supervision. The ILC loophole was never meant to address these types of firms: when Wal-Mart sought its ILC in 2005, Senator Jake Garn, the sponsor of the 1987 exemption that created the ILC loophole, stated publicly that he never intended for ILCs to be involved in commercial operations. This is particularly concerning because the ILC loophole would permit a foreign bank to acquire a full-service FDIC insured bank even if it is not subject to comprehensive supervision on a consolidated basis in its home country.

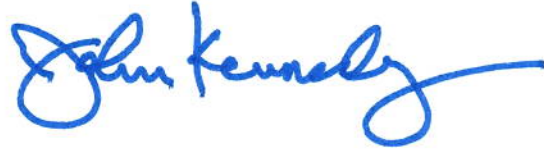
We need to tread lightly and ensure that complicated policy trade-offs are considered, while still encouraging innovation that reduces barriers to banking for customers and challenges market participants to improve their business models. Although Congress may be in the best position to address these complicated policy trade-offs, we would like to do so alongside the FDIC. Additionally, given the ongoing uncertainty in the economy owing to the economic consequences of the COVID-19 pandemic response, we do not believe that now is the time to address as consequential and controversial an issue as ILC charters. Congress needs time to work with you and other stakeholders on the implications of such a potentially momentous change to our nation's economy.

For those reasons, I respectfully request that the FDIC work with Congress and my office to arrive at an appropriate solution in light of the foregoing concerns. I ask that the FDIC pause its efforts to finalize its rulemaking on ILC parent companies and refrain from approving any

ILC-related applications, pending or otherwise. This will preserve the status quo and avoid potentially devastating changes to our banking system.

I thank you for your consideration, and I hope that you will agree with the path that I have proposed. I eagerly await your response.

Sincerely,

A handwritten signature in blue ink that reads "John Kennedy". The signature is fluid and cursive, with a long horizontal stroke extending to the right from the end of the name.

John Kennedy  
U.S. Senator