

## **The Unlawful FDIC Moratorium on Chartering New Industrial Banks Must End**

Nearly two years after the expiration of a Congressional moratorium on chartering new industrial banks expired, and more than three years after a Congressionally-mandated Government Accountability Office (GAO) study of the issue did not recommend any new legislation concerning industrial banks, the Federal Deposit Insurance Corporation (FDIC) continues to refuse to grant deposit insurance to new industrial banks. This de facto moratorium violates federal bank law that requires it to act on applications within one year.

### **Background**

Industrial banks are state-chartered banks with limited powers that may be owned by commercial firms. Under Federal law, only states that chartered industrial banks prior to 1987 may charter new ones.

In July 2006, the FDIC imposed a six-month moratorium on granting insurance to new industrial banks. It subsequently extended the moratorium thru January 2008. The Dodd-Frank Act, enacted in July 2010 imposed a three year moratorium on new industrial banks and ordered a GAO study of the issue. The GAO report, issued in January 2012 did not make any recommendations for legislative action. The moratorium expired in July 2013 without any additional Congressional action. No new industrial banks have been chartered since 2006.

### **Current Situation**

Despite the end of the Congressional moratorium the FDIC has continued to refuse to act on applications for deposit insurance from new industrial bank applicants, even though those applications have been fully vetted by the states that issue the charters for the industrial banks. But without FDIC approval, the institutions cannot open for business.

In 1994, concerned over banking agencies' killing applications via inaction, Congress enacted section 343 of the Riegle Community Development and Regulatory Improvement Act, (12 USC 4807) that required banking agencies to take final action on "completed applications" within a year of receipt.

The FDIC has consciously and deliberately evaded this provision by repeatedly claiming that industrial bank applications are incomplete, even when the applicant has provided all the information that the FDIC requested up to that point. Once the information is provided, the FDIC, to further stall the application asks for more information, claiming in Kafkaesque fashion that the application is newly "incomplete." Somehow, the FDIC continues to find that it is incomplete even while the applicant provides the information requested by the FDIC up to that point. And recall that these are applications that have already been vetted by the State that will actually charter the industrial bank.

## **Extra legal Factors**

The FDIC often imposes requirements clearly outside normal or statutory guidelines to strangle industrial bank applications. FDIC representatives have told potential applicants that no charters will be approved unless capital ratios are higher than normally required and that funding mechanisms meet strict mandates that are not in statute or regulation. Further, the FDIC continues to create barriers that do not exist in law or regulation to impede the relationships between industrial banks and their parent companies.

Congress allow the Dodd-Frank moratorium to expire in 2013, signaling that it expected industrial bank chartering to resume. But the FDIC, without taking any formal action or confronting Congress, continues it de facto nine year old moratorium on approving new state chartered industrial banks or changes to existing industrial bank charters.

Nevada and Utah charter industrial banks, and under federal law, those industrial banks are eligible for FDIC insurance. But the FDIC has decided, since 2006, to nullify both federal law and the laws of those states by not acting on applications presented to it.

## **Conclusion**

It is time for Congress to look closely at the FDIC's action – or more accurately inaction – in refusing to approve applications for state-chartered industrial banks designed to serve the credit needs of customers.

For more information go to [IndustrialBankers.org](http://IndustrialBankers.org)

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