Testimony of

G. EDWARD LEARY

COMMISSIONER OF FINANCIAL INSTITUTIONS

STATE OF UTAH

Before the

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

April 25, 2007

Good morning, Chairman Frank , Ranking Member Bachus and members of the committee, thank you for the opportunity to share Utah's view on H.R. 698, The Industrial Bank Holding Company Act of 2007 and its adverse effects on the industry.

I am Edward Leary, Commissioner of Financial Institutions for the State of Utah. I have been involved with banking for thirty-three years, first as a community banker, then fifteen years in bank examiner positions with the Utah Department and for the last fifteen years as its Commissioner. I am pleased to be here today to share my views on H. R. 698, The Industrial Bank Holding Company Act of 2007, and its adverse effects on the industry.

UTAH OPPOSES PASSAGE OF H.R. 698 FOR THE FOLLOWING REASONS

The Utah Department of Financial Institutions views H.R. 698 as unnecessary. Utah views passage of H.R. 698 as an effort to restrict and restrain state-chartered industrial banking without valid safety or soundness concerns or a crisis. In fact in Utah's view, there is no question of the competency of the regulators or of the regulatory regime. There has been no industrial bank failure warranting this change in public policy.

It is truly ironic that I am here today because of the success of the regulatory model not because of the failure of that model. Utah in partnership with the FDIC has built a regulatory model to which the financial services markets have reacted favorably. This regulatory model is not a system of lax supervision and inadequate enforcement. Utah industrial banks are safe, sound and appropriately regulated by both the state which charters them and the FDIC which is the relevant federal regulator and deposit insurance provider. I am told the articulated threat of the industry which warrants passage of this bill is a *"potential"* threat of misuse of the charter by holding companies which are *"non-financially"* oriented. This bill removes a *"potential"* threat even before the threat has materialized or has manifested itself. We should all be clear on the relative size of the industry. The industrial bank industry constitutes 1.8% of total banking assets. This is not a systemic crisis that threatens banking.

An analysis of the numbers as of December 31, 2006, developed by Utah indicates that Utah holds 88% of all industrial bank assets. Based upon our knowledge of the industrial bank holding companies, we estimate that 86% of Utah industrial bank assets would be considered held by *"financial"* entities and that 14% of Utah industrial bank assets would be considered held by *"non-financial"* entities.

Utah's analysis is that **seven** of Utah's industrial banks representing **80%** of Utah's assets are subject to consolidated federal agency supervision at the holding company level. The federal agencies we considered in the consolidated supervised entities are: (1) the Federal Reserve with jurisdiction over our 2nd largest bank, (2) the OTS with jurisdiction over our largest, 3rd and 4th banks among their five charters, and (3) the SEC with jurisdiction over our 6th largest bank.

The record of the last eighteen months is that no *de novo* industrial bank charter was approved by the FDIC from November 4, 2005 until March 20, 2007.

The primary punitive provisions of H. R. 698 target a large retailer that had applied for an industrial bank charter. As a result of that application, which was withdrawn, this bill will dismantle a Utah banking industry of thirty-one charters and a regulatory structure that has matured over twenty years with a record of safe, sound operations to forestall one entity from being granted an industrial bank charter. This bill with its provisions that are designed to block any and all conceivable ways in which a retailer may employ an industrial bank charter today or in the future are disappointingly, anti-competitive and anti-consumer.

The provisions contained within H.R. 698 are being justified under the pretext of preserving the prohibition against the merging of banking and commerce. The broad brush strokes of this bill include as collateral damage, large financial arms of entities which have been in the financial arena for decades such as DaimlerChrysler, Ford. The former submitted an application for an industrial bank charter in May of 2005 and receiving approval by my state a year ago. Now under the provisions of this bill will not be allowed to proceed. Another example is the GMAC Bank which under the bill's provisions will not be allowed to amend its business plan without risk of losing the charter. This is a tragic and inappropriate outcome when other auto lenders have the advantages of a bank charter.

The supporters of H.R. 698 present the bill as a compromise piece of legislation. I am challenged to determine how this bill is a compromise bill when industrial banks do not receive anything or have any of the current restrictions on its charter lifted, let alone given the right to issue commercial NOW accounts as has previously passed this Committee.

Again, the provisions of this bill further limit and restrict the ability of industrial banks to compete in the marketplace and reduce the charter's appeal.

For the record, the application for an industrial bank charter from the large retailer which caused all this damage was NOT accepted as complete by the Utah Department.

As a state regulator, what is most disappointing to observe is that while this Committee is aggressively moving H.R. 698, a bill which restricts and limits the one segment of state-chartered, federally insured banking that could be identified today as innovative and creative in the delivery of financial services to consumers and businesses, a historical tenet of state-chartered banking; Congress has not taken seriously the threat to state banking of the broad federal preemption of state laws by the Comptroller's Office. The states have been pleading for Congressional help in preserving dual banking. Many state commissioners believe that without Congressional intervention, the diminishing assets under state-charter will eventually render the state banking system irrelevant.

Utah notes that all should keep in perspective that industrial banking is approximately 1.8% of banking assets even with its growth during the last twenty years. This is not an industry which threatens the safety and soundness of banking. The regulatory model is not a "parallel" bank regulatory system in that 80% of Utah assets are subject to federal agency oversight at the holding company level.

UTAH INDUSTRIAL BANKS

As of December 31, 2006, all of the nation's 58 operating industrial banks represented a very small .7% component of the 8,681 total insured banks and savings banks. Nationally, industrial banks also represented a very small $213 billion of the $11.9 trillion of the insured bank and savings bank total assets or 1.8%.

Looking specifically at Utah industrial banks for the year ending December 31, 2006, Utah had 32 operating charters holding $186.2 billion in total assets. Thus, Utah holds 88% of all industrial bank assets. Utah industrial banks represent only 1.6 % of the insured bank and savings bank total assets and **1.7%** of total deposits with $132 billion of the $7.8 trillion in total insured bank and savings bank deposits. Currently there are 31 operating industrial bank charters as Volvo Commercial Credit was converted to a commercial bank charter and sold to NHB Holdings which commenced operations on January 16, 2007. (See Appendix -1) The foregoing percentages were determined by the Utah Department of Financial Institutions based upon numbers derived from the FDIC database as of December 31, 2006.

The statement has been made that there has been a *"stampede"* to the industrial bank charter. An analysis of the number of charters over the last twenty years will show that there has been on average an increase of one charter per year. (See Appendix - 2)

OWNERSHIP OF UTAH INDUSTRIAL BANKS

As of December 31, 2006, the Utah Department's, non-determinative and non-binding analysis using the provisions of H. R. 698 is listed in Appendix -3. The Utah Department's analysis based upon knowledge of the industrial bank holding companies is that 86% of Utah's industrial bank assets would be considered held by *"financial"* entities.

As of December 31, 2006, the Utah Department's, non-determinative and non-binding analysis using the provisions of H. R. 698 is listed in Appendix - 4. The Utah Department's analysis based upon knowledge of the industrial bank holding company is that 14% of Utah's industrial bank assets would be considered held by *"non-financial"* entities.

The increase in Utah industrial bank "*non-financial*" assets since the July 12, 2006 hearing before the Financial Institutions Subcommittee when Utah indicated that approximately 7% of industry assets were held in "*non-financially*"" owned industrial banks is largely attributable to Utah and FDIC's approval of the General Motors application to sell a 49% interest in GMAC. GMAC held a Utah industrial bank, the GMAC Automotive Bank. The FDIC granted an exception to its six-month moratorium on industrial bank applications and approved the sale and subsequent merger, which resulted in $16.3 billion in additional mortgage assets coming to the Utah industrial bank. The renamed GMAC Bank is considered a *"non-financial"* Utah industrial bank.

The Utah Department's analysis of those Utah industrial banks with a Consolidated Federal Agency supervising the holding company is listed in Appendix - 5. The Utah Department's analysis is that seven entities holding 80% of all Utah industrial bank assets are currently subject to a Consolidated Federal Agency Supervisor at the holding company level.

UTAH INDUSTRIAL BANK APPLICATIONS' STATUS

The Utah Department has received and/or approved the following industrial bank applications on the dates indicated.

Applications tentatively Considered *"Financial"*

Name of Institution	Date Received	Date Accepted	Date Utah Approved
Comdata Bank	8/18/2003	9/25/2003	12/19/2003
CapitalSource Bank	6/13/2005	8/16/2005	12/20/2005
Marlin Business Bank	10/6/2006	1/10/2006	Pending
ARCUS Financial Bank	2/2/2007	Pending	

Comdata Bank - plans to offer a *"Fleet Card"* and a *"Business Link Card."* The Utah Department has reviewed and extended its approval upon application to do so every six months after the lapse of the original one year conditional approval. The Utah Department has done this for the last three years awaiting FDIC's approval.

CapitalSource Bank - asset-based loans to commercial borrowers. The Utah Department has reviewed and extended its approval upon application to do so awaiting FDIC's approval.

Marlin Business Bank - small ticket commercial leases/loans. The Utah Department has not approved this application and will not continue the process until indication is received that the FDIC will approve.

ARCUS Financial Bank - an application filed after the FDIC announced it would consider applications from *"financial"* entities. The parent company is WellPoint, a health care provider.

Applications Considered *"Non-Financial"*

Name of Institution	Date Received	Date Accepted	Date Utah Approved
DaimlerChrysler	5/23/2005	7/6/2005	4/6/2006
Wal-Mart Bank	7/18/2005	(Withdrawn)	
American Pioneer	12/2/2005	2/13/2006	
Home Depot	5/8/2006	Pending	
Ford Motor Credit	9/22/2006	Pending	

DaimlerChrysler Bank - auto financing. The Utah Department has placed the application into an "*inactive status*." The Utah Department will consider an extension request from the applicant. FDIC has announced it will not process the application due to a one year moratorium on applications from "*non-financial*" parent companies of industrial banks.

Wal-Mart Bank - card processing. The Utah Department did not accept the application as complete. The Utah Department placed the application into an *"inactive status."* The applicant announced on March 16, 2007 that the application would be withdrawn.

American Pioneer Bank - asset-based loans to commercial borrowers, which represent a joint venture between Cargill and Firstcity Financial. The Utah Department has accepted the application as complete but placed the application into an "*inactive status"* with the FDIC announcement that it will not process due to a one year moratorium on *"non-financial"* applications.

Home Depot - consumer loans. The Utah Department has not accepted the application for a change of control of EnerBank as complete. The Utah Department has placed the application into an "*inactive status.*"

Ford Motor Credit - auto financing. The Utah Department has not accepted the application as complete. The Utah Department has placed the application into an *"inactive status."*

Four points should be emphasized.

1. Until March 20, 2007, the last *de novo* Utah industrial bank application approved by the FDIC was LCA Bank on November 4, 2005, eighteen months ago.

2. While the Wal-Mart Bank application had been accepted as complete by the FDIC, it was never accepted as complete by the Utah Department. The applicant announced on March 16, 2007 that the application would be withdrawn.

3. A number of applications are received by the Utah Department which do not survive the approval process. Applications received by the Utah Department do not equate to applications approved. There is a robust application review and scrutiny of the character of the applicant, the expertise and experience of proposed management and directors, the assumptions and soundness of its proposed business plans, and the adequacy of its capital in relation to the business plans among many other items, which results in many applications being culled during the process.

4. Finally, the FDIC must independently approve deposit insurance for the applicants. A review of the foregoing will demonstrate that there is a robust review process where Utah has conditionally granted charter approvals on three applications but have not been approved by the FDIC.

STATE CHARTER OPTION

As we all know, banking is integral to the fabric of economic life for all of us. Since the founding of this nation, states have chartered, regulated and supervised banking. The choice of charter remains a vital component of the check and balances of the dual banking system. State-chartered institutions in attempting to survive and meet the needs of their communities have fostered creativity and experimentation. The state-chartered institutions can innovate in a controlled environment that limits systemic risks. If a product, service, delivery mechanism or charter is fundamentally unsafe or unsound then those weaknesses may be exposed.

Today largely as a result of federal preemption the states are losing assets and state-chartered depository institutions are becoming a less viable and appealing charter.

The following numbers illustrate the dramatic shift in percentage of assets by chartering agency.

Date	State	OCC	OTS
12/31/1995	41%	45%	14%
12/31/2000	42%	46%	12%
12/31/2001	41%	46%	12%
12/31/2002	42%	46%	12%
12/31/2003	41%	47%	12%
12/31/2004	31%	55%	13%
12/312005	31%	55%	14%
12/31/2006	30%	57%	12%

Another foundation of the dual banking system is the ability to freely choose the supervisory structure under which the insured entity operates. This foundation contributes to a competition in excellence among financial institution regulators. It is therefore vital that there is more than one approach to the regulation and supervision of financial institutions.

In today's environment of decreasing assets in state-chartered institutions, industrial banks are experiencing asset growth. Why? Because of the innovations in customer service and delivery of financial products to targeted segments that consumers have responded to very well. Based upon Utah's history and experience in chartering and regulating industrial banks, my view and statement is that industrial banks are the embodiment of what is right and proper in the dual banking system.

The irony is that while many profess belief in the Dual Banking System and are staunch supporters of its merits in providing safe, sound banks with competitively priced financial services and products to consumers and businesses; we are here today to discuss H.R. 698, a bill that restricts and limits a state-chartered, federally insured banking industry that I believe embodies real innovation and creativity in the delivery of banking services. At a time when Congress has not taken seriously the threat of federal preemption of state laws by the Comptroller of the Currency to the state banking component of the dual banking system and states are clamoring for help in preserving dual banking. The action of this Committee is to further restrict a state-chartered entity, namely, the industrial banks.

A statement from the former Federal Reserve Chairman, Alan Greenspan, is an appropriate ending to this section.

> *"A system in which banks have choices, and in regulations that result from the give and take involving more than one agency, stands a better chance of avoiding the extremes of Supervision." (No Single Regulator for Banks, Wall Street Journal, December 15, 1993.)*

WHAT THE PUBLIC POLICY DEBATE *SHOULD* BE

For the subcommittee hearing last July 12, 2006 on the industrial bank issue I entitled this section, "What The Public Policy Debate *Should* Be." It still seems like the appropriate title.

As previously stated, the fact that the committee is having this hearing today reflects the reality that Utah's chartering and regulating of the industrial banks has been commensurate to the risk. Utah, in partnership with the FDIC, has jointly created a supervisory model for industrial banks that has evolved and will likely continue to evolve, but through twenty years of everyday application, it has worked, in that no Utah industrial bank has failed.

My belief is that this committee should not consider rewriting banking laws to address the desires of particular industry groups or trade associations whose desire is to suppress competition.

Nor should Congress change, much less outlaw a proven, successful regulatory structure because some groups have concerns about a particular applicant.

The supporters of H.R. 698 present the bill as a compromise piece of legislation. I am challenged to determine how this bill is a compromise bill when industrial banks do not receive any powers

or have any of the current restrictions on their charter lifted, let alone given the right to issue commercial NOW accounts as has previously passed this Committee.

I want to be clear. This action is being taken today without a safety and soundness crisis in the industrial banks. There is no crisis of confidence in the industrial banks' regulators, both state and federal. Utah chartered industrial banks are as safe and as sound now as any institution existing today. There has not been an insurance loss in twenty plus years of FDIC insurance of Utah industrial banks. The only error of these institutions is that they: (1) are safe and sound, (2) have been largely successful business operations (3) and thereby may represent a competitive threat to some institutions and (4) an articulated potential future issue with the holding companies of some of the industrial banks, because they are "*non-financial*" in their businesses.

Testifying before Congress on financial services reform in 1987, the FDIC's then-chairman L. William Seidman argued that the public interest would be best served by,

> *"A ... financial services industry that met four objectives: the financial system should be viable and competitive, the banking system should be operated in a safe and sound manner, customers should realize benefits from enhanced competition, and the system should be flexible enough to respond to technological change. Consistent with these objectives, the regulatory and supervisory structure of banking should be the simplest and least costly one available."*

The question facing policy makers then was - and continues to be - whether these objectives can be met without restricting the ability of banks to choose the corporate structure that best suits their business needs. As Seidman noted:

> *The pivotal question . . . is: Can a bank be insulated from those who might misuse or abuse it? Is it possible to create a supervisory wall around banks that insulates them and makes them safe and sound, even from their owners, affiliates and subsidiaries? If so, then the banking and commerce debate should focus on how affiliations should be regulated so that the public interest is met." (FDIC Banking Review, January 2005, The Future of Banking in America, The Mixing of Banking and Commerce: Current Policy Issues, Volume 16, No. 3.)*

I urge this committee and Congress to focus on the adequacy of the current regulatory processes conducted by the State of Utah and the FDIC. In the absence of a demonstrated example of regulatory failure, there is no fundamental, underlying reason for a public policy change.

If, in the future, shortcomings are identified, an amendment may be considered without outlawing a class of banks that have operated for over a century without harming competitors, consumers or the deposit insurance system. Believe me, if I am still the Commissioner when a shortcoming in our regulatory process is identified, it will be corrected, long before any legislative body could take action. The states and the FDIC have developed prudential standards that are in place today.

UTAH'S REGULATORY STRUCTURE & EXPERIENCE IN PARTNERSHIP WITH THE FDIC

Utah has been chartering industrial banks since the 1920s. In 1986, Utah law was changed to require Federal Deposit Insurance for all industrial banks.

Like most state banking departments, Utah regulates all types of state-chartered depository institutions, including banks, industrial banks and credit unions. The Utah department also has jurisdiction over many non-depository activities. The Utah department is entirely funded from assessments to the financial institutions we regulate through a restricted account that can only be appropriated to the department.

As state-chartered, FDIC insured institutions, industrial banks are currently operating in the states of Utah, California, Colorado, Hawaii, Indiana, Nevada and Minnesota. No state permits industrial banks to engage in activities that are not permissible for other state-chartered banks.

Industrial banks are subject to the same banking laws and are regulated in the same manner as other depository institutions. They are supervised and examined both by the states that charter them and by the FDIC. They are subject to the same safety and soundness, consumer protection, deposit insurance, Community Reinvestment Act, and other requirements as other FDIC-insured banks. However, special emphasis is placed on Federal Reserve Regulation W and Sections 23 A & B of the Federal Reserve Act, which closely regulates all parent and affiliate company transactions to ensure that there is a limit to the amount of *"covered transactions"* and an *"arms length"* basis for all transactions.

A Utah industrial bank is required to maintain the minimum amount of capital required by its federal deposit insurer, but the Commissioner may require a greater amount of capital.

The department has and will continue to defend (in partnership with the FDIC) our regulation and supervision of the industrial bank industry. The department takes its supervisory role seriously. It is an active participant with the FDIC in all industrial bank examinations and targeted reviews wherever they are conducted in the country. Our examiners are participating in large loan exams (reviewing loans and lines-of credit in the $100's of millions), capital market examinations, trust exams, information system exams, consumer compliance and community reinvestment exams and bank secrecy act and anti-money laundering exams.

Utah believes it is a full partner with the FDIC in regulating, supervising and examining this industry. As proof of that fact, Utah is one of the very few states in the country performing CRA/Compliance examinations. Utah conducts most of these examinations jointly with the FDIC or Federal Reserve. To solidify this relationship with the FDIC, Utah signed a written agreement in January of 2004. Since that time Utah has participated on almost all CRA/Compliance examinations conducted by both federal agencies.

Utah is participating with the FDIC in the Large Bank Supervision Program for four industrial banks: Merrill Lynch Bank USA, UBS Bank USA, American Express Centurion Bank and

Morgan Stanley Bank. The supervision of these large banks is coordinated by a full-time relationship manager from the State as well as the FDIC.

A team of examiners and specialists from Utah and the FDIC conduct targeted reviews in areas such as: commercial and retail credit, capital markets, bank technology, asset management, and compliance and they track the quality and quantity of risk management procedures. This type of activity is no longer extraordinary.

The large bank program allows the State and FDIC to develop a more thorough knowledge of the bank than is possible through the traditional regime of periodic, discrete examinations. Over the three plus years Utah has been involved in this program, a supervisory approach has been developed, tested, and refined expressly to address the special financial and compliance challenges posed by bigger, more complex and to some degree globally positioned banks.

The supervisory approach employed by Utah and the FDIC has been described as *"Bank-Centric."* Please review the John Douglas quote within the next section dealing with Banking & Commerce for a more detailed discussion of the *"Bank-Centric*" approach. This is not a new concept when examining a bank that is part of a holding company structure. Industrial banks based in Utah have been a "laboratory" for those insured institutions owned by commercial entities. The evolving supervisory approaches of Utah and the FDIC have helped fine-tune processes and procedures that insulate an insured depository institution from potential abuses and conflicts of interest by a non-federally supervised parent. Critical controls have been developed as the result of cooperation between Utah regulators and the FDIC.

BANKING & COMMERCE

In reading the Committee's website and Dear Colleague letters, one sees repeated reference to statements such as, "H.R. 698, . . . ; a bill that will restore the traditional separation of banking and commerce." That H. R. 698 will resolve a, "*loophole*" in the Bank Holding Company Act.

The proponents of this argument state that this is a fundamental principle incorporated by the passage of the Glass-Steagall Act in 1933 while some observers believe this issue had been resolved with the passage of the Gramm-Leach-Bliley Act of 1999.

The proponents of the former argument subscribe to the conclusion that great *"evils"* result when banking and commerce are mixed. That somehow these great *"evils"* are compounded by the fact that Congress left this gaping hole through an oversight and this *"loophole"* may be exploited by commercial companies that will endanger the safety and soundness of our financial services sector and the deposit insurance funds.

Utah believes that the written testimony submitted by John L. Douglas, a former General Counsel of the FDIC, before the Subcommittee on Financial Institutions and Consumer Credit last July 12, 2006, states well our views on the primary issue of mixing banking and commerce and we incorporate a part of his testimony as ours.

"These first two assertions are simply historically inaccurate, and ignore the fact that throughout our history there have long been affiliations between banks and commercial firms. Indeed many of these have been expressly blessed by Congress. We should be clear on this point. Such affiliations have always existed. Congress has chosen to limit certain of them from time to time, by the Bank Holding Company Act, the Competitive Equality Banking Act, the Federal Deposit Insurance Corporation Improvement Act and the Gramm-Leach-Bliley Act each address and bless, and regulate commercial affiliations with banks."

He states in his footnote number 1 on the Glass-Steagall Act that,

"The Glass-Steagall Act separated to a limited degree investment and commercial banking. The separation was never absolute; indeed, it was substantially eroded by regulatory interpretations by the Federal Reserve in the 1980's and 1990's. Whatever separation remained was essentially eviscerated by the adoption of the Gramm-Leach-Bliley Act in 1999."

Mr. Douglas also stated in footnote number 3 that,

"I will not repeat the arguments that have been presented before Congress many times in the past on the first two assertions. As to the "historic" separation of banking and commerce, I will merely note that it wasn't until 1956 that activity restrictions were place on multi-bank holding companies and that those restrictions weren't extended to single bank holding companies until 1970. Further, it wasn't until 1999 that activity restrictions were imposed on unitary savings and loan holding companies. As for the "unintended loophole," Congress has extensively considered industrial loan banks on numerous occasions, most extensively as part of the Competitive Equality Banking Act in 1987, and again as part of the Gramm-Leach-Bliley Act in 1999."

He then goes on to address his key points which are germane for our discussion.

"Another assertion that has recently been made is that the unregulated owners of industrial banks would wreck havoc on our financial system given the lack of "comprehensive supervision" of the corporate owners of such institutions. This last proposition ignores the existing legal framework governing all financial institutions, including industrial loan banks, and ignores the substantial power and authority (and indeed belittles the capacity) of the FDIC to supervise, examine and enforce laws, rules and regulations that are intended to assure safety and soundness, as well as prevent abuses that might possibly arise from affiliations between banks and commercial affiliates."

"It is this last assertion that I particularly wish to address, that somehow the lack of comprehensive supervision poses a threat to our financial system. I make four major points in response:"

"First, industrial loan banks are subject to the same comprehensive framework of supervision and examination as "normal" commercial banks. They have no special powers or authorities; they are exempt from no statute or regulation. They must abide by the requirements of: Sections 23A and B, limiting and controlling transactions with affiliates; Regulation O, governing loans to officers, directors or their related interests; capital requirements; the Prompt Corrective Action safeguards instituted by Congress in the early 1990's that assure maintenance of adequate capital and impose an ever-increasing level of supervisory control if institutions fail to do so; and all of the other laws, rules and regulations that promote safe and sound banking in this country."

"Second, the FDIC has been given full and ample authority to supervise and regulate these institutions, and can exercise the full range of enforcement authorities granted by Congress. I was a participant in the political process that led to Congress' rewrite of those provisions in 1989, as part of FIRREA, and I personally can attest to the scope of the cease and desist, removal and prohibition, civil money penalty and withdrawal of deposit insurance powers. Given the magnitude of the 1980's financial debacle and the great concerns in Congress that it never happen again, we at the FDIC at that time worked closely with members of this Committee and others in Congress with the clear intention to give the FDIC and the other bank regulators all of the supervisory and enforcement powers they would ever need to protect the banking system. We wanted to be sure that no future banking failures would be the result of a lack of FDIC authority and tools to address threats to a bank's safety-and-soundness, including threats that might arise from its nonbanking affiliates."

"Importantly, all of these enforcement powers apply with full force to an industrial loan bank, as well as to any officer, director, controlling shareholder or "any other person . . . who participates in the conduct of the affairs of an insured depository institution." There is no question that to the extent that either the corporate owner of an industrial loan bank or any affiliate of that owner engages in any violation of law, rule or regulation applicable to the industrial loan bank, or has engaged, is engaging or is about to engage in an unsafe or unsound practice relating to the industrial loan bank, the FDIC can bring the full range of enforcement authorities to bear. These remedies can include not only requiring that impermissible or inappropriate activities cease immediately, but also requiring that the condition be remedied and restitution made. Civil money penalties up to one million dollars per day can be imposed, and individuals can be removed from their positions and precluded from having any involvement not only with the industrial loan bank but with any insured depository institution. The FDIC can also restrict the activities of the industrial loan bank or any affiliate participating in its affairs, can withdraw the deposit insurance of the industrial loan bank and take any other action it "deems appropriate" in the event of a violation of law, rule or regulation, including in my opinion even forcing the divestiture of the industrial loan bank by its owner.

"Third, I can attest from experience that the FDIC regularly and vigorously exercises these powers. The FDIC routinely requires an independent, fully functioning board of directors designed to assure that the industrial loan bank stands on its own and is not

merely an arm of its corporate owner. The industrial loan bank must have adequate capital, operate in a safe and sound fashion, avoid unsafe and unsound practices, have comprehensive policies, controls and procedures, and an effective internal audit program. The FDIC rigorously examines the institution and closely scrutinizes transactions and relationships between the industrial loan bank and its affiliates. It conditions approvals to assure compliance with carefully crafted commitments designed to assure the safe and sound operations of the industrial loan bank. It forcefully uses its enforcement powers, and is not shy about inquiring about any action, transaction or relationship that might potentially affect the insured institution."

"Fourth, the experience of the FDIC with respect to industrial loan banks, similar to the experience of the OTS with respect to diversified owners of savings associations, belies any fundamental concerns over threats to the banking system or our economy that might arise from commercial ownership. There have only been <u>two</u> failures of FDIC-insured industrial loan banks owned by holding companies. These holding companies were not commercial (i.e., a non-financial) enterprises. These two failures cost the FDIC roughly $100 million. Both failed not as a result of any self dealing, conflicts of interest or impropriety by their corporate owners; rather, they failed the "old fashioned way"by poor risk diversification, imprudent lending and poor controls. These two failures stand in sharp contrast to the hundreds of bank failures that operated in holding company structures, many of which cost the FDIC billions of dollars. The list is long and sobering - Continental Illinois, First Republic, First City, MCorp, Bank of New England, and so on - all of which were subject to the much-vaunted "consolidated supervision" by the Federal Reserve as the holding company regulator that offered as cure for something that hasn't proven to be a problem."

"And we should be very clear about a fundamental point. ***Throughout our history to now, there have always been, and federal law has always allowed, affiliations between "banking" and "commerce."*** *In our modern era, these relationships have been carefully considered, and accompanied by a statutory and regulatory framework assuring that our regulatory authorities have ample power to protect against abuses and problems.*

"Moreover, both consumers and our economy have unquestionably benefited from the hundreds of banking-commerce affiliations that have long existed, and continue to exist. Congress should consider very carefully the full implications of any change in law that could choke off these affiliations and deny our financial system the flexibility and innovation that it always has had in the past. It would indeed be unwise to roll back the clock by taking steps to limit healthy and beneficial competition under the guise of advancing an idea that may have an attractive rhetorical resonance, but in fact is simply irrelevant to the issue at hand."

The industrial bank experience, like the experience of credit card banks, non-bank banks and other institutions with commercial parents, shows that fears about banking and commerce are unfounded. The history of industrial banks is a testament that the regulatory model has maintained the safety and soundness of these institutions. The track record demonstrates that

banks can be safely operated as parts of diversified holding companies.

EXAMINE THE FACTS IN A WORST CASE SCENARIO

In this discussion and others the worst case scenario that detractors have postulated is that of a holding company filing bankruptcy or getting into financial difficulty. The reality is that Utah and the FDIC have experienced both. While no regulator relishes stressful circumstances, we can state that we weathered the storm. Utah has had large corporate parents of industrial banks encountering financial difficulties, and in one instance the ultimate parent company filed for bankruptcy protection.

The background and outcome were well described by the FDIC in the January 2005, *FDIC Banking Review, The Mixing of Banking and Commerce: Current Policy Issues,*

> "*The bankruptcy of the corporate owner of an ILC - Conseco Inc - but not of the ILC itself illustrates how the bank-up approach can effectively protect the insured entity without there being a BHC-like regulation of the parent organization. Conseco Inc. was originally incorporated in 1979 as Security National of Indiana Corp. After several years of raising capital, it began selling insurance in 1982. Security National of Indiana changed its name to Conseco Inc. in 1984, after its 1983 merger with Consolidated National Life Insurance Company. Conseco Inc. expanded its operations throughout the 1980s and 1990s by acquiring other insurance operations in the life, health, and property and casualty areas. Conseco Inc. was primarily an insurance company until its 1998 acquisition of Green Tree Financial Services. A diversified financial company, Green Tree Financial Services was one of the largest manufactured-housing lenders in the United States. Upon acquisition, it was renamed Conseco Finance Corporation. Included in the acquisition were two insured depository charters held by Green Tree Financial Services - a small credit-card bank chartered in South Dakota and an ILC chartered in Utah. Both of these institutions were primarily involved in issuing and servicing private-label credit cards, although the ILC also made some home improvement loans. The ILC - Green Tree Capital Bank - was chartered in 1997 and changed its name to Conseco Bank in 1998 after the acquisition. Conseco Bank was operated profitably in every year except the year of its inception, and grew its equity capital from its initial $10 million in 1997 to just over $300 million in 2003. Over the same period, its assets ballooned from $10 million to $3 billion".*
>
> *"Conseco Bank was supervised by both the Utah Department of Financial Institutions and the FDIC. Despite the financial troubles of its parent and the parent's subsequent bankruptcy (filed on December 18, 2002), Conseco Bank's corporate firewalls and the regulatory supervision provided by Utah and the FDIC proved adequate in ensuring the bank's safety and soundness. In fact, $323 million of the $1.04 billion dollars received in the bankruptcy sale of Conseco Finance was in payment for the insured ILC - Conseco Bank, renamed Mill Creek Bank -which was purchased by GE Capital. As a testament to the Conseco Bank's financial health at the time of sale, the $323 million was equal to the book value of the bank at year-end 2002. Thus, the case of Conseco serves as an example*

of the ability of the bank-up approach to ensure that the safety and soundness of the bank is preserved."

In another case, TYCO, a large parent company of a Utah industrial bank called CIT Online Bank encountered financial difficulties and decided to spin the industrial bank group off in an initial public offering which was approved and completed. In spite of TYCO's financial difficulties, the Utah industrial bank continues operations today as CIT Bank.

HOLDING COMPANY SUPERVISION

The bank holding company model works well for companies whose principal business is limited to banking - it was devised at a time when bank holding companies were permitted to do nothing else. The existing industrial bank supervisory process works well. Utah believes it is the *"superior"* model for holding companies whose principal business may not be banking.

What has received no coverage in the current debate is the fact that industrial bank oversight by the states and the FDIC is supplemented by holding company oversight by federal financial regulators other than the Federal Reserve. The Office of Thrift Supervision (OTS) and Securities and Exchange Commission (SEC) have regulatory oversight over many holding companies with Utah industrial bank subsidiaries.

As previously stated, the OTS has supervisory responsibilities in five Utah industrial bank holding companies whose industrial banks collectively constitute 63% of all Utah industrial bank assets. The OTS has holding company jurisdiction because of affiliated federal savings banks to the Utah industrial banks.

The SEC has Consolidated Federal Supervisory responsibility over Goldman Sachs Bank's holding company whose industrial bank holds approximately 7% of total Utah industrial bank assets. The SEC has dual consolidated supervision authority with the OTS over three additional Utah industrial banks in total representing 56% of Utah assets.

The Federal Reserve has holding company supervision of UBS Bank's parent company which holds approximately 12% of total Utah industrial bank assets because UBS's parent filed as a Financial Holding Company with the Federal Reserve.

The federal agency oversight listed above constitutes approximately 80% of all Utah industrial bank assets as of December 31, 2006. This is not a parallel regulatory structure when federal agencies have holding company authority over 80% of all Utah industrial bank assets.

Not included in the federal agency oversight totals above but consideration should be given to three additional Utah industrial banks: Advanta Bank with $2.0 billion in total assets, Target Bank with $14 million, and World Financial Capital Bank with $193 million in total assets, all of which have sister national banks chartered by the Office of the Comptroller of the Currency (OCC).

Again, trying to keep this discussion in perspective, the entire industrial bank industry, even with its growth during the last twenty years, represents only approximately 1.8% of U. S. banking assets.

The parent companies of the vast majority of Utah industrial bank assets are engaged exclusively or predominantly in financial services activities. These include: Advanta, American Express, Citigroup, Merrill Lynch, Morgan Stanley and UBS. Other industrial banks are owned by diversified companies, such as General Electric and GMAC which engage in both financial and non-financial activities. Some are controlled by companies primarily engaged in commercial or industrial activities, such as BMW and Volkswagen. However, both BMW and Volkswagen have extensive banking operations in Europe.

While not subject to regulation as bank holding companies, industrial bank owners are subject to many of the same requirements as bank holding companies. As a result, safeguards already exist to protect these depository institutions against abuses by the companies that control them or activities of affiliates that might jeopardize the safety and soundness of the institutions or endanger the deposit insurance system.

For example, restrictions on transactions with affiliates in Sections 23A and 23B of the Federal Reserve Act apply to industrial banks and their owners. These provisions limit the amount of affiliate loans and certain other transactions (including asset purchases) to 20 percent of a bank's capital, and require that such loans be made on an arm's length basis. Thus, an industrial bank may not lawfully extend significant amounts of credit to its holding company or affiliates or offer credit to them on preferential or non-market terms. All loans by industrial banks to their affiliates must be fully collateralized, in accordance with Section 23A requirements.

Utah law establishes, besides all other jurisdiction and enforcement authorities over industrial banks, that pursuant to Section 7-8-16 each industrial bank holding company must register with the department and is subject to the department's jurisdiction. Also, according to Section 7-1-501 of the Utah Code each industrial bank holding company is subject to examination and enforcement authority of the Department.

Utah struggles to understand why Congress would want to keep out well-capitalized innovative entrants to the market? While the banking system is becoming concentrated in the hands of a few large institutions with huge market power and system risk, I understand that the five largest banks are trillion dollar entities. These entities control a third of industry assets and deposits, and a fourth of all bank branches.

SUMMARY

Utah has been successfully regulating FDIC insured industrial banks for twenty years. Utah has established a record of safe and sound institutions with prudential safeguards in place that have prevented parent companies from exercising undue influence over the insured entity.

Utah's industrial banks are well capitalized, safe and sound institutions.

Utah's industrial banks are subject to the same regulations and are examined in the same manner as other banks.

Utah and FDIC examiners have adapted as the industrial banks have evolved. For us, keeping up with new products, new financial instruments and new delivery mechanisms has been a regulatory challenge, but a challenge we have met with the shared resources of our regulatory partner, the FDIC.

H.R. 698 is unnecessary and restrictive of the industrial bank charter.

In this discussion, the reality check is that the entire industrial loan industry, even with its growth of the last twenty years, is only approximately 1.8% of banking assets.

UTAH INDUSTRIAL BANKS

31 IBs as of 12-31-06 (W/O Volvo)	12/31/2006 (000s omitted) Total Assets	Consolidated Bank Supervised Financial or SEC Regulated	Financial or Non-financial
ADVANTA BANK CORP	1,958,239		Financial
ALLEGIANCE DIRECT BANK	38,291		Financial
AMERICAN EXPRESS CENTURION B	21,096,810	OTS	Financial
BMW BANK OF NORTH AMERICA	2,219,777		Non-financial
CAPMARK BANK (GMACCM)	3,773,857		Financial
CELTIC BANK	95,490		Financial
CIT BANK	2,829,528		Financial
ENERBANK	147,265		Non-financial
ESCROW BANK USA	34,889		Financial
EXANTE BANK, INC.	391,308		Financial
FIRST ELECTRONIC BANK	14,179		Non-financial
GE CAPITAL FINANCIAL INC	1,991,805	OTS	Non-financial
GMAC BANK (auto)	19,937,022		Non-financial
GOLDMAN SACHS BANK – USA	12,648,880	SEC	Financial
LCA BANK CORPORATION (1-26-06)	18,483		Financial
LEHMAN BROTHERS COMMERCIAL BANK	3,224,704	OTS	Financial
MAGNET BANK, INC.	458,699		Financial
MEDALLION BANK	309,489		Financial
MERRICK BANK	1,032,405		Financial
MERRILL LYNCH BANK USA	67,234,664	OTS	Financial
MORGAN STANLEY BANK	21,019,823	OTS	Financial
REPUBLIC BANK INC	437,486		Financial
SALLIE MAE BANK	438,860		Financial
TARGET BANK	14,213		Non-financial
THE PITNEY BOWES BANK INC	644,038		Non-financial
TRANSPORTATION ALLIANCE BANK	483,150		Non-financial
UBS BANK USA	22,009,139	Federal Reserve	Financial
VOLKSWAGEN BANK USA	665,342		Non-financial
WEBBANK	15,942		Financial
WORLD FINANCIAL CAPITAL BANK	193,427		Financial
WRIGHT EXPRESS FINANCIAL SERVICES	815,617		Financial
TOTAL UTAH INDUSTRIAL BANK ASSETS	**186,192,821**		
% of total ILC assets nationwide (58)	87.5%		
% of total insured banks/S&Ls (8,681)	1.6%		

Appendix - 1

UTAH INDUSTRIAL BANKS
NUMBER OF OPERATING CHARTERS BY YEAR

Year Ending	Number of Utah Industrial Banks Operating
1987	10
1988	13
1989	15
1990	15
1991	15
1992	15
1993	13
1994	12
1995	13
1996	13
1997	16
1998	18
1999	20
2000	23
2001	23
2002	24
2003	27
2004	29
2005	32
2006	32
3/22/2007	31

Appendix - 2

UTAH INDUSTRIAL BANKS
TENTATIVELY CONSIDERED *"FINANCIAL"*

22 "FINANCIAL" **31 IBs as of 12-31-06 (W/O Volvo)**	12/31/2006 (000s omitted) Total Assets	Consolidated Bank Supervised Financial or SEC Regulated	Financial or Non-financial
ADVANTA BANK CORP	1,958,239		Financial
ALLEGIANCE DIRECT BANK	38,300		Financial
AMERICAN EXPRESS CENTURION B	21,096,810	OTS	Financial
CAPMARK BANK (gmaccm)	3,773,857		Financial
CELTIC BANK	95,490		Financial
CIT BANK	2,829,528		Financial
ESCROW BANK USA	34,889		Financial
EXANTE BANK, INC.	391,308		Financial
GOLDMAN SACHS BANK – USA	12,648,880	SEC	Financial
LCA BANK CORPORATION(1-26-06)	18,483		Financial
LEHMAN BROTHERS COMMERCIAL BANK	3,224,704	OTS	Financial
MAGNET BANK, INC.	458,699		Financial
MEDALLION BANK	309,489		Financial
MERRICK BANK	1,032,405		Financial
MERRILL LYNCH BANK USA	67,234,664	OTS	Financial
MORGAN STANLEY BANK	21,019,823	OTS	Financial
REPUBLIC BANK INC	437,486		Financial
SALLIE MAE BANK	438,860		Financial
UBS BANK USA	22,009,139	Federal Reserve	Financial
WEBBANK	15,942		Financial
WORLD FINANCIAL CAPITAL BANK	193,427		Financial
WRIGHT EXPRESS FINL SERVICES	815,617		Financial
TOTAL "FINANCIAL" INDUSTRIAL BANKS	**160,076,039**		
percentage of total Utah Industrial Banks (31)	86.0%		
percentage of total ILC assets nationwide (58)	75.2%		
percentage of total insured banks/S&Ls (8,681)	1.3%		

Appendix - 3

UTAH INDUSTRIAL BANKS
TENTATIVELY CONSIDERED *"NON-FINANCIAL"*

9 "NON-FINANCIAL" **31 IBs as of 12-31-06 (W/O Volvo)**	12/31/2006 (000s omitted) Total Assets	Consolidated Bank Supervised Financial or SEC Regulated	Financial or Non-financial
BMW BANK OF NORTH AMERICA	2,219,777		Non-financial
ENERBANK	147,265		Non-financial
FIRST ELECTRONIC BANK	14,179		Non-financial
GE CAPITAL FINANCIAL INC	1,991,805	OTS	Non-financial
GMAC BANK (auto)	19,937,022		Non-financial
TARGET BANK	14,213		Non-financial
THE PITNEY BOWES BANK INC	644,038		Non-financial
TRANSPORTATION ALLIANCE BANK	483,150		Non-financial
VOLKSWAGEN BANK USA	665,342		Non-financial
TOTAL "*NON-FINANCIAL*" INDUSTRIAL BANKS	**26,116,791**		
percentage of total Utah Industrial Banks (31)	14.0%		
percentage of total ILC assets nationwide (58)	12.3%		
percentage of total insured banks/S&Ls (8,681)	0.2%		

Appendix - 4

UTAH INDUSTRIAL BANKS
with
FRB, OTS, OR SEC HOLDING COMPANY SUPERVISION

SEVEN UTAH INDUSTRIAL BANKS WITH OTS, FRB OR SEC HOLDING CO. SUPERVISION 31 IBs as of 12-31-06 (W/O Volvo)	12/31/2006 (000s omitted) Total Assets	Consolidated Bank Supervised Financial or SEC Regulated	Financial Or Non-financial
UBS BANK USA	22,009,139	Federal Reserve	Financial
AMERICAN EXPRESS CENTURION B	21,096,810	OTS	Financial
GE CAPITAL FINANCIAL INC	1,991,805	OTS	Non-financial
GOLDMAN SACHS BANK – USA	12,648,880	SEC	Financial
LEHMAN BROTHERS COMMERCIAL BANK	3,224,704	OTS	Financial
MERRILL LYNCH BANK USA	67,234,664	OTS	Financial
MORGAN STANLEY BANK	21,019,823	OTS	Financial
TOTAL "FRB, OTS, SEC" INDUSTRIAL BANKS	**149,225,825**		
percentage of total Utah Industrial Banks (31)	80.1%		
percentage of total ILC assets nationwide (58)	70.1%		
percentage of total insured banks/S&Ls (8,681)	1.3%		

Appendix - 5