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July 31, 2018

James D. LaPierre
Regional Director
Federal Deposit Insurance Corporation
1100 Walnut Street, Suite 2100
Kansas City, Missouri 64106

Dear Mr. LaPierre:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the federal deposit insurance application of Nelnet Bank, a subsidiary of Nelnet, Inc.

According to the application, Nelnet Bank will be an industrial loan corporation (ILC) chartered by the state of Utah. Nelnet Bank will originate and service private student loans, unsecured consumer loans and small business loans and will have only one physical presence--its main office in Salt Lake City, Utah. The Bank will be capitalized with an initial commitment of \$100 million from Nelnet, Inc. On an ongoing basis, the Bank plans to raise core deposits "via leveraging relationships within certain of Nelnet's other lines of business," but may also access the securitization market or other funding sources. Lending and deposit products will primarily be offered online and the ILC's intended geographical market will be all fifty states.

ICBA's Comments

As we indicated with both the SoFi Bank deposit insurance application and the Square application, ICBA's main objection with Nelnet's deposit insurance application is its use of the ILC charter to avoid the legal prohibitions and restrictions under the Bank Holding Company Act (BHCA). Regulation under the BHCA entails consolidated supervision of the holding company by the Federal Reserve and restricts the activities of the holding company and its affiliates to those that are closely related to banking. Because of a loophole in the law, companies that own

¹ *The Independent Community Bankers of America®*, the nation's voice for more than 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With 52,000 locations nationwide, community banks employ 765,000 Americans, hold \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.3 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.

ILCs are not subject to BHCA supervision even though the ILC charter is a full service banking charter. As a result, a company that owns an FDIC-insured ILC is not subject to consolidated supervision, and can engage in non-banking commercial activities.

Nelnet Bank is applying as an ILC and not as a commercial bank because its parent company wishes to retain its current commercial activities and further engage in new activities unrelated to banking. We note in Nelnet's latest Annual Report to Shareholders that it already engages in a diversified group of commercial activities. In addition to holding and servicing a large portfolio of about \$23 billion in private student loans, it also engages in a large tuition payment processing business that provides education services to schools in the United States and internationally, a telecommunications business that provides fiber optic networks for certain communities in the United States, an investment advisory business, and a sports software business. In addition, Nelnet invests in other companies as an angel investor and says that it currently has 40 active investments primarily consisting of start-ups based in the Midwest. Nelnet indicates that it is quite interested in increasing its investments outside of student lending and therefore broadening its commercial activities.

As we stated in our comment letters regarding the SoFi Bank and Square applications, for safety and soundness reasons and to maintain the separation of banking and commerce, the FDIC should deny any ILC application and impose a two-year moratorium on future ILC deposit insurance applications. Nelnet, Inc. should be subject to the same restrictions and supervision that any other bank holding company of a community bank is subject to. **Furthermore, Congress should close the ILC loophole because it not only threatens the financial system but creates an uneven playing field for community banks.**

The FDIC has imposed moratoriums before on ILC deposit insurance applications. In response to ICBA's advocacy and requests from Congress about the ILC applications filed by Walmart and Home Depot, the FDIC-imposed a six-month moratorium on deposit insurance applications and change-in-control notices with respect to ILCs beginning July 28, 2006.² The FDIC further extended the moratorium for one year on January 31, 2007, with respect to ILCs that would become subsidiaries of companies engaged in nonfinancial activities.

Both moratoriums were imposed to evaluate (1) industry developments, (2) emerging safety and soundness issues or policy issues involving ILCs or other risks to the insurance fund, and (3) whether statutory, regulatory, or policy changes should be made in the FDIC's oversight of ILCs in order to protect the deposit insurance fund or important Congressional objectives. The FDIC recognized that while "the moratorium may appear inconsistent with specific timetables for agency action on certain applications or notices, adherence to a strict statutory timeline without an opportunity to re-evaluate the FDIC's standards for determining the public interest may frustrate the substantive policies the agency is charged with promoting."³

² See the FDIC Notice dated July 28, 2006 as well as the Federal Register Notice, 71 FR 43482, dated August 1, 2006.

³ See also Federal Register Notice, 71 FR 43482, dated August 1, 2006.

A third moratorium on ILC deposit insurance applications was imposed when the Dodd-Frank Act was passed in 2010. Section 603 of the Dodd Frank Act imposed a three-year moratorium on ILCs controlled by commercial firms and prohibited the FDIC from acting favorably on applications for deposit insurance filed by such institutions after November 23, 2009.

ICBA believes that if the FDIC fails to impose a moratorium on new ILC applications, the consequences to our financial system could be quite significant. There are thousands of fintech firms already engaged in financial activities and many of them would like to take advantage of the benefits of a banking charter and be able to retain the commercial activities they already engage in. The integration of these technology and banking firms would not only result in an enormous concentration of financial and technological assets but also would pose conflicts of interest and privacy concerns to our banking system. Once Square and Nelnet Bank become ILCs, we believe it is a matter of time before large technology firms like Google, Amazon or PayPal apply for an ILC charter.

As we pointed out in our letter opposing Square's FDIC deposit insurance application, if one of these large technology firms were to own an ILC, they could accumulate large amounts of financial data on people which, combined with the shopping data they already have, would be invaluable and pose a significant privacy risk to individuals. Furthermore, a parent company such as Nelnet, Inc. that is engaged in numerous commercial activities would be tempted to direct its ILC to engage in transactions that benefitted Nelnet's affiliates but were detrimental to the ILC's safety and soundness. For instance, Nelnet, Inc. could encourage Nelnet Bank to deny credit to customers of Nelnet's competitors or alternatively, could encourage Nelnet Bank to offer loans to Nelnet's customers based on terms not offered to its competitor's customers.

In 1999, the Congress debated the issue of mixing banking and commerce as it considered the Gramm Leach Bliley Act and Congress decided not to extend the safety net to commercial firms. It recognized the lessons of the 1980s and the banking collapse of the early 1930s--that our deposit insurance system was created for the protection of depositors of regulated banks and not for the protection of commercial firms.

The FDIC should deny Nelnet Bank's application and impose an immediate two-year moratorium on ILC deposit insurance applications. Congress should immediately address this issue and permanently close the ILC legal loophole before it is too late and we have huge technology firms like Amazon, Google or PayPal owning FDIC-insured ILCs and operating them without adequate holding company supervision and without any restrictions on the types of activities in which the holding company or the ILC's affiliates can engage.

ICBA appreciates the opportunity to comment on Nelnet Bank's deposit insurance application. If you have any questions or would like additional information, please do not hesitate to contact me by email at Chris.Cole@icba.org.

Sincerely,
/s/Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel

cc: Jelena McWilliams, Chairman of the FDIC Board
Martin J. Gruenberg, Director
Joseph M. Otting, Director (Comptroller of the Currency)
J. Michael Mulvaney, Director (Acting Director, BCFP)