NATIONAL CENTER FOR POLICY ANALYSIS

Banks That Are "Too Big to Fail" Need Competition[1]

Policy Report No. 378 by John Berlau December 2015

The federal government's response to the 2008 Financial Crisis resulted in an unofficial "too big to fail" doctrine. Large financial institutions received generous bailouts in the wake of the crisis, whereas other industries in the past were forced into bankruptcy.

Dallas Headquarters:
14180 Dallas Parkway, Suite 350
Dallas, TX 75254
972.386.6272

www.ncpa.org

Washington Office:
202.830.0177
governmentrelations@ncpa.org

Executive Summary

The government has not provided adequate answers as to why. The policy hampers competition, which hurts consumers and small businesses alike. Proponents argue that special treatment of the financial sector had to do with its "interconnectedness." But they fail to acknowledge that most sectors of the economy are also interconnected. Favoring finance over nonfinancial firms led to bailouts and the subsequent Dodd-Frank legislation, which together entrenched "too big to fail" policy.

By saving financial institutions, the government artificially propped up failing banks and prevented new, perhaps better managed institutions, from entering the market. Whereas Netflix replaced Blockbuster as the more efficient and cost-friendly business model, those financial institutions that should have failed remain because of government intervention. The Dodd-Frank Act only entrenched their power. For example, a component of Dodd-Frank, the Volcker Rule, puts limits on proprietary trading which small banks rely on to hedge against risk. As a result, some simply had to close. The burdensome and expensive regulations then prevent new community banks from even opening. In fact, only three new banks have opened in the United States since 2010.

Decreased competition leaves American communities with fewer banking options, hurting both consumers and small businesses. Meanwhile, big banks can absorb the cost of new, expensive regulations and policies that essentially protect them from collapse.

Theoretically, major corporations like Walmart could offer other banking options as competition against the big financial firms. However, the Bank Holding Company Acts of 1956 and 1970 prohibit the mixing of banking and commerce. Since 2010, there has been some innovation in the financial

services industry — such as technologies to pay and collect payments by credit card over smartphones, new options in prepaid debit and credit cards, and online peer-to-peer platforms for lending and borrowing. But these innovations have come largely outside of the banking sector, and are limited by their providers' nonbank status.

Other countries have taken a different path by actively encouraging nonfinancial firms to enter the financial sector. The Milken Institute notes that the United States is the only country among the G20, the largest developed economies in the world, that opposes mixing of banking and commerce. In the United Kingdom one out of eight pounds withdrawn from an ATM are taken from the cash machines of Tesco Bank, a division of retail giant Tesco. Similarly, in Canada and Mexico, one of the most powerful new entrants in the banking industry is Walmart, which operates a bank that issues credit cards in Canada and until recently ran a full-service bank in Mexico.

Some U.S. specialty banks called industrial loan companies (ILCs) are owned by nonfinancial firms. The Milken Institute found that the safety and soundness of these banks exceeds that of the U.S. banking sector as a whole. ILCs, in total, have a much higher ratio of capital to assets (16.7 percent) than U.S. banks as a whole (11.3 percent). ILCs owned by nonfinancial firms also have the lowest share of troubled assets of the banking sector (2.35 percent).

Ending the "too big to fail" doctrine and promoting competition will require the U.S. government to reform current legislation. Among the needed legislative changes:

- Congress should require new procedures for regulatory agencies that mandate a specific time limit on approval or denial of new bank applications.
- Congress should exempt small banks from the regulatory burden of Dodd-Frank.
- Congress should eliminate the Financial Stability Oversight Council, which implicitly guarantees "too big to fail" banks.
- Congress should repeal the Bank Holding Company Acts of 1956 and 1970, so that nonfinancial companies can enter the banking industry.
- Congress should repeal the Volcker Rule in Dodd-Frank that restricts proprietary trading.

These changes are the first step toward what economist Joseph Schumpeter called "creative destruction" in the banking industry by bringing in the competition from new entrants that exists in every other industry.

John Berlau is a senior fellow at the Competitive Enterprise Institute. Mr. Berlau has written about the impact of public policy on entrepreneurship and the investing public for many publications and is a frequent guest on many radio and television. Berlau has testified on the impact of financial regulation before the House Committee on Financial Services and the House Committee on Energy and Commerce. Before joining CEI, Berlau was an award-winning financial and political journalist. He served as Washington correspondent for Investor's Business Daily and as a staff writer for the Washington Times' Insight magazine. In 2002, he received Sandy Hume Memorial Award for Excellence in Political Journalism from Washington's National Press Club. He was a media fellow at the Hoover Institution in 2003. He graduated from the University of Missouri-Columbia in 1994 with degrees in journalism and economics.

Introduction

The "too big to fail" doctrine — that some firms must be bailed out to save the broader economy — has proved to be a poor response to the 2008 financial crisis. These unofficial government policies have effectively stunted growth in the community banking sector, and now businesses and consumers are paying the price.

The Financial Industry Cannot Fail

Thankfully, "too big to fail" remains the exception rather than the rule in the broader American economy. Therefore, in looking to end these policies, we have to understand what makes the financial industry, as structured today, so exceptional.

So Why Was the Financial Industry Considered To Be "Different"? Radio Shack. Borders. Blockbuster Video. Eastman Kodak. These companies once dominated their respective industries. They also all went bankrupt, causing thousands of employees to lose their jobs and wiping out tens of thousands of shareholders. Yet, no public or policy makers demanded bailouts for any of these corporations. As big as they once were, these firms were not deemed too big to fail by the powers-that-be in Washington.

It is not the size of banks and other financial firms that is a problem:

- Only four American banks — JPMorgan Chase, Bank of America, Citibank and Wells Fargo — are large enough to make the Bankers Almanac list of the top 50 global banks, ranked by assets.
- The largest American bank, JPMorgan Chase, is smaller than the nine largest international banks on that list.[2]
- JPMorgan Chase is also smaller than 17 other American corporations in the Fortune 500.

The only American financial institution that outranks it is the government-created and government-backed mortgage insurer Fannie Mae.[3] [See Figure I.] Yet, Fannie and its fellow government-sponsored enterprise Freddie Mac have not been reined in despite their well-documented role of leading banks into the bad mortgages that helped spur the financial crisis.[4]

Some defenders of bailouts and post-crisis financial regulation like Dodd-Frank admit the problem should not be characterized as "too big to fail." Instead, officials, like Former Treasury Secretary Timothy Geithner, call it "too interconnected to fail."[5]

Mark to Market Accounting. Whether "interconnectedness" caused the 2008 financial implosion remains fiercely debated. Peter Wallison of the American Enterprise Institute and a member of the congressionally authorized Financial Crisis Inquiry Commission, says that even the failure of Lehman Brothers "had no knock-on consequences" for other financial firms. He blames the implosion on the "common shock" of losses in mortgage-backed securities that was exacerbated by pro-cyclical "mark-to-market" accounting, which forced banks to take paper losses even on loans that were still performing.[6]

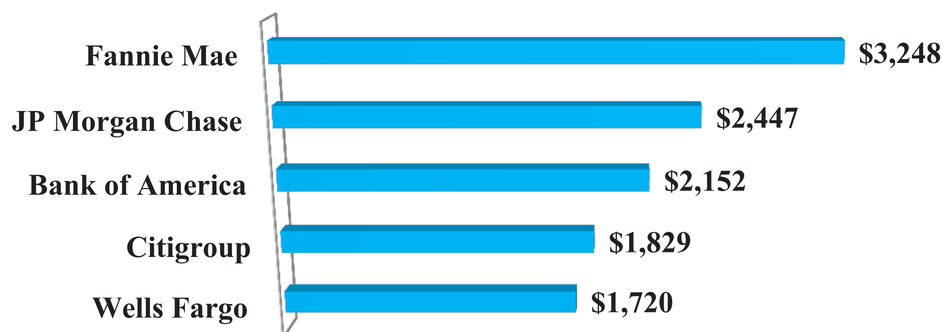
In fact, new mark-to-market accounting rules from the Financial Accounting Standards Board (FASB) went into effect in 2007. They required financial institutions to value mortgages and other financial instruments at the price similar instruments were selling, even if banks had no intention of selling the mortgages for years. When some mortgages went bad, virtually all banks were forced to take losses on mortgages as an asset class. This led to a cascading effect, which in turn led to greater incentives to sell off mortgages at fire-sale prices.

As Wallison notes, the mortgage market did not really stabilize until the spring of 2009, when FASB relaxed mark-to-market rules after a bipartisan outcry. That is also when the Dow Jones Industrial Average began its long climb back to its current level.[7] On April 2, 2009, the day FASB announced it was easing the rules, the Dow jumped 3 percent, climbing above 8,000 for the first time in almost two months.[8]

Not So Interconnected. Yet even if one accepts the "interconnectedness" thesis, the question remains: why is this not the case in other industries? For instance, Blockbuster's bankruptcy did not harm the movie studios' video rental royalties, and the closing of Borders bookstores did not throw publishers into crisis. Why? Because new competitors had already replaced Borders and Blockbuster as the dominant firms in their respective industries, such as Netflix and Amazon.com.

But what if Netflix and Amazon had never been allowed to enter the market? What if new entrants had to go through a cumbersome process to get federal approval to enter the video rental or bookselling businesses? Then a stumble by established firms might have indeed caused more dislocation and shortages in supply. For large firms to fail in any industry without significant disruption elsewhere, there must be new competing firms ready to provide the product or service. Yet when it comes to the banking industry, the federal government acts as if nothing good can come from new entrants. As of November 1, 2015, only three new banks have opened in the United States.[9]

Figure I
Largest U.S. Financial Institutions by Assets
(millions of dollars)



Sources: National Information Center and Fannie Mae.

Effect on Community Banks. In December 2013, the sizeable Amish population in the farming community of Bird-in-Hand, Pennsylvania, celebrated the opening of its own bank. The town folks rejoiced after federal regulators at the Federal Deposit Insurance Corporation (FDIC) approved Bank of Bird-in-Hand. However, this story is the exception to the rule.[10] The local bank was one of only three opened in the United States since 2010.[11]

Before 2010, the FDIC approved an average of 170 new banks per year. But new regulations imposed after the financial crisis have created a *de facto* moratorium on the approval of new banks. In a letter to the FDIC shortly after the opening of Bank of Bird-in-Hand, the Independent Community Bankers of America and the American Association of Bank Directors expressed this concern, pointing out that even in the "depths of the S&L crisis in the 1980s when 1,800 banks and savings institutions failed, an average of 196 *de novo* banks and savings institutions were formed from 1984 through 1992."[12]

In addition to the new regulatory burdens from the Dodd-Frank Wall Street Reform and Consumer Protection Act, the letter cites a specific FDIC policy that requires new banks to put up 8 percent of the assets they project to have in seven years. For instance, if a new bank thinks it might have $500 million in assets in seven years, it would have to come up with $40 million in cash before it even opens for business. This requirement, notes the letter, "effectively prevents the formation of de novo banks at all, or only in severely limited circumstances." Such a large amount of upfront capital "is beyond the reach" for communities who rely on local capital and "is highly unattractive to investors given the low return on equity that would be available to the bank for many years."[13] These counterproductive financial regulations have only become more detrimental to the financial sector.

Financial Innovation outside Banking. Since 2010, there has been some innovation in the financial services industry. In the past few years, consumers have seen technologies to pay and collect payments by credit card over their smartphones, new options in prepaid debit and credit cards, and online peer-to-peer platforms for lending and borrowing. But these innovations have come largely outside of the banking sector, and are limited by their providers' nonbank status. Credit to responsible businesses and consumers has tightened, and fees for basic banking services have risen, in significant part due to the costs of new regulations arising from Dodd-Frank and lack of competitive checks and balances present in other industries.

The lack of new entrants is one important reason why a large bank failure could severely curtail the supply of credit and availability of financial services. That in turn sets the stage for a continuing cycle of bailouts.

Since the financial crisis, the debate about bailouts and "too big to fail" has been dominated by proposals to limit what traditional banks can do and increasing capital requirements to supposedly lessen taxpayers' exposure to risk. Dodd-Frank put limits on banks' use of certain types of derivatives and proprietary trading. And there is a bipartisan chorus in Congress calling for restoring the Glass-Steagall Act, which separated commercial and investment banking until it was partially repealed by the Gramm-Leach-Bliley Act, signed by President Bill Clinton in 1999 with strong bipartisan support.

Proprietary Trading and the Volcker Rule. Yet recent evidence shows that such restrictions are largely counter-productive, both in creating more stability for the financial system and in reducing the concentration of the biggest banks. For instance, take the proprietary trading limits in Dodd-Frank's Volcker

Rule. Proprietary trading is trading using banks' own money, rather than that of customers. Even with a dearth of evidence that this type of trading had much to do with the financial crisis, supporters of the Volcker Rule claim that proprietary trading turns banks into "casinos."[14]

The limits have wreaked havoc among regional and community banks and raised liquidity concerns that companies will not be able to raise money as easily through corporate bonds. It turned out that even small banks do some proprietary trading to hedge the risks of lending and other financial activities.[15] One of the first victims of the rule was Zions Bank in Salt Lake City, which had to divest from a long-held debt security and take a loss of $387 million — an amount greater than what Zions had earned in any calendar year since 2007.[16] Zions felt it had to divest immediately, because selling after the Volcker Rule was implemented could trigger its proprietary trading restrictions.[17]

The Volcker Rule, which supporters had sworn would only affect the largest megabanks, ended negatively impacting community banks. Representative Michael Fitzpatrick (R-Penn.) responding by introducing the Promoting Job Creation and Reducing Small Business Burdens Act (H.R. 37) in January 2015 to specifically exempt smaller banks from the rule. Previously endorsed by regulators at the Federal Reserve and Office of the Comptroller of the Currency, the law passed the House with support from 29 Democrats.[18]

Today, the banking industry is more concentrated than ever. Part of the blame lies with Dodd-Frank's imposition of regulatory costs on small banks, combined with its creation of the Financial Stability Oversight Council to designate big financial firms as "systemically important," which signaled to investors that these firms will not be allowed to fail. As an exhaustive study by Harvard University Kennedy School's Mossavar-Rahmani Center for Business and Government found, Dodd-Frank did not rectify the problem of banking concentration: The top five bank holding companies control nearly the same share of U.S. banking assets as they did in the fiscal quarter before Dodd-Frank's passage. Meanwhile, community banks with $1 billion or less in assets have seen a significant decline.[19]

The Strange Doctrine of "Separation of Banking and Commerce"

Small startups are not the only ones kept out of the financial market; established innovative firms in sectors ranging from retail to manufacturing are as well. Unlike virtually every other industrialized country, the United States effectively bans nonfinancial corporations from owning bank affiliates. As a result, even those who could conceivably put up this kind of capital to form new banks have been dissuaded because of the regulatory burdens involved. As financial analysts James R. Barth and Tong Li note in a report for the Milken Institute, the United States is the "only G20 country opposed to the 'mixing of banking and commerce.'"[20]

This means many premiere American corporations are locked out of the banking industry. In the past decade, both Walmart and Berkshire Hathaway have tried and failed to get regulatory approval to create banking units.

The Separation of Banking and Commerce. During the 1950s, the Federal Reserve desperately wanted to fend off legislation from populists in Congress like Representative Wright Patman (D-Texas) to subject its monetary decisions to an audit by Congress' General Accounting Office (now the Government Accountability Office). To appease populist critics and get smaller banks on its side, the Fed made a political target of the Transamerica Corp., which then owned more than 20 banks as well as a real estate brokerage, oil companies, a fish packer, a metal fabricator and other nonfinancial firms.[21]

The Fed had tried to nail Transamerica on antitrust charges, but the company fought and won in federal court. So with the help of small and large traditional banks, the Fed flexed its muscle in Congress.[22] The primary interest groups lobbying for such legislation included the American Bankers Association, Association of Reserve City Bankers, Independent Bankers Association of America, National Association of Supervisors of State Banks, National Federation of Independent Business and several state banking associations.[23]

The result of this intense lobbying was the Bank Holding Company Act of 1956, which required registration of all bank holding companies and prohibited nonfinancial firms from owning more than one bank. Transamerica was forced to divest most of its bank holdings, but other nonfinancial firms still found that one bank was a useful addition to its holdings. So the Fed and many of the same bank trade associations that had pushed for the Bank Holding Company of 1956 lobbied Congress to pass the Bank Holding Company Act of 1970, which banned nonfinancial companies from owning even one bank.

In the 1990s, Congress lifted restrictions on interstate branching by banks, as well as the Glass-Steagall rule that forbade financial firms from mixing banking with

insurance and securities. But restrictions on nonfinancial firms entering banking remained in place and in some cases were even strengthened.

Feds Target Industrial Loan Companies. In some cases, limited-purpose banks called industrial loan companies (ILCs) were allowed. But in the mid-2000s, the Bush administration slammed the door shut on even these types of banks, just as prominent nonfinancial firms were beginning to utilize them.

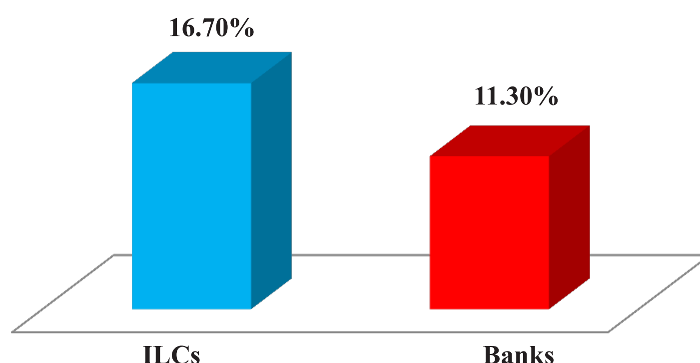
In 2005, Berkshire Hathaway applied for approval of an industrial loan company to make consumer loans for customers of its R.C. Willey Home Furnishing stores. Other nonbank entities, such as Target, Harley-Davidson, BMW and Toyota, had already been approved for similar purposes. Yet, when Walmart applied to create an ILC at that same moment, it met fierce opposition from the American Bankers Association, Independent Community Bankers of America and other trade groups representing established banks — and an apoplectic reaction from banking regulators. Indeed, Alan Greenspan warned in a letter to then-Rep. Jim Leach (R-Iowa) that ILCs "are undermining the prudential framework that Congress has carefully crafted and developed" and "threaten to remove Congress' ability to determine the direction of our nation's financial system with regard to the mixing of banking and commerce."[24] In 2006, Fed Chairman Ben Bernanke also expressed concern about the risks posed by nonfinancial institutions' ownership of ILCs.

Although FDIC Chair Sheila Bair did not take as hard a rhetorical line against ILCs, the FDIC bowed to political pressure and implemented a six-month moratorium that was later extended for one year. Officials then inserted a three-year ban on approval of ILCs into Dodd-Frank. Although this ban officially expired in 2013, observers say a *de facto* ban still exists since FDIC officials have indicated an unwillingness to approve any ILC for a nonfinancial firm.[25] Other major companies that have applied for ILCs since 2005 are out of luck. According to the trade journal *American Banker*, three ILC applications predating the Dodd-Frank moratorium — Ford Motor, John Deere and Caterpillar — are still pending with no resolution in sight.[26]

According to the Milken Institute study cited previously, only three other developed nations have shut the door on ILCs: the tiny jurisdictions of Fiji, Guernsey and the Isle of Man.[27] The study also found that the safety and soundness of banks owned by commercial firms exceeds that of the U.S. banking sector as a whole. The report concludes that U.S. industrial loan companies, in total, have a much higher ratio of capital to assets (16.7 percent) than U.S. banks as a whole (11.3 percent). Industrial loan companies owned by nonfinancial firms also have the lowest share of troubled assets of the banking sector (2.35 percent).[28]

In the past few years in the United States, some of the biggest financial innovations — including Walmart's prepaid cards and Apple's smartphone payment system — have come from nonbank firms. But ironically, because Apple and Walmart have no choice but to partner with established banks, rather than create their own when they find it prudent to do so, the financial system is losing both Apple and Walmart's management expertise and the resources the companies could put into a well-qualified bank.[29]

Figure II
Capital to Assets Ratio



Source: James R. Barth and Tong Li, "Industrial Loan Companies: Supporting America's Financial System," Milken Institute, April 2011. Available at http://assets1b.milkeninstitute.org/assets/Publication/ResearchReport/PDF/ILC.pdf.

Banking Is Commerce in Other Countries. Other countries have taken a different path by actively encouraging nonfinancial firms to enter into the financial sector, and their economies appear to be better for it:

- In the United Kingdom one out of eight pounds withdrawn from an ATM are taken from the cash machines of Tesco Bank, a division of retail giant Tesco.[30]
- In 1997, Tesco entered into a joint venture with Royal Bank of Scotland (RBS) to form Tesco Personal Finance.
- In 2008, when RBS was hit hard

by the financial crisis, Tesco bought out its partner's stake and became sole owner of the renamed Tesco Bank.

- As of 2013, Tesco Bank had more than $8.6 billion in outstanding mortgages, personal loans and credit-card debt to British residents.
- In addition, 12.5 percent of credit card transactions in the UK are charged on Tesco cards. The company also offers insurance to more than 1.5 million home and auto policy holders.[31]

In 2009, Alistair Darling, then-chancellor for the exchequer in Gordon Brown's Labour Government, praised Tesco's works and made the competitive case for new types of banks.

The story is similar with new entrants in the banking sector in Canada and Mexico. And ironically, one of the most powerful new entrants in those countries is Walmart, which operates a bank that issues credit cards in Canada and until recently ran a full-service bank in Mexico. By 2014, the bank of Walmart de Mexico had $355.8 million in deposits and $117.3 million in loans on its books. The bank had 650,000 credit card holders by the first half of that year. Walmart agreed to sell the bank to the conglomerate of Mexican billionaire Carlos Slim in 2014.

Conclusion

In the financial industry, as in any other industry, greater competition can help bring stability, innovation, and choice. Congress should put in place procedures for new bank approval, in which regulatory agencies would have a specified time limit to approve or deny new bank applications. If regulatory agencies exceed these time limits, they should be required to give the bank, Congress, and the public detailed explanations as to why.

Congress should also repeal the Bank Holding Company Acts of 1956 and 1970, thereby ending the outdated and absurd regulatory doctrine of separation of banking and commerce. It also should repeal provisions of Dodd-Frank such as the Volcker Rule that hurt banks of all sizes and undermine financial stability by forcing Main Street banks to sell off financial instruments such as swaps and securitized loans, which they use to hedge the risks of everyday activities like lending.

It is time to bring what the great economist Joseph Schumpeter called "creative destruction" to the banking industry, by bringing in the competition from new entrants that exists in every other industry. There are no banks like new banks.

Notes

1. Adapted with permission from John Berlau, "A Bird in the Hand and No Banks in the Bush: Why Competition Offers a Solution to Too Big To Fail," Competitive Enterprise Institute, July 2015. Available at https://cei.org/sites/default/files/John%20Berlau%20-%20Why%20Competition%20Offers%20a%20Solution%20to%20Too%20Big%20to%20Fail_0.pdf.

2. "Bank Rankings — Top Banks in the World," Accuity. Available at http://www.accuity.com/useful-links/bank-rankings/.

3. "Fortune 500 2014," *Fortune*. Available at http://fortune.com/fortune500/berkshire-hathaway-inc-4/.

4. Peter J. Wallison, *Hidden in Plain Sight: What Really Caused the World's Worst Financial Crisis and Why It Could Happen Again* (New York: Encounter Books, 2015). Gretchen Morgenson and Joshua Rosner, *Reckless Endangerment: How Outsized Ambition, Greed, and Corruption Created the Worst Financial Crisis of Our Time* (New York: St. Martin's, 2012).

5. Timothy F. Geithner, *Stress Test: Reflections on Financial Crisis* (New York: Crown Publishers, 2014), page 151.

6. Peter J. Wallison, *Hidden in Plain Sight*, pages 313-316.

7. Ibid., pages 295-300; and John Berlau, "Maybe the Banks Are Just Counting Wrong," *Wall Street Journal*, September 20, 2008. Available at http://www.wsj.com/articles/SB122186515562158671.

8. Madlen Read and Sara Lepro, "Dow Jones industrial average jumps above 8,000 points for first time in 2 months," Associated Press, April 2, 2009. Available at http://www.masslive.com/news/index.ssf/2009/04/dow_jones_industrial_average_j.html.

9. Ryan Tracy, "A Local Bank in Amish Country Flourishes amid Dearth of Small Lenders," *Wall Street Journal*, March 29, 2015, available at http://www.wsj.com/articles/a-local-bank-in-amish-country-flourishes-amid-dearth-of-small-lenders-1427677879; and "Weird: Only 3 New Banks Opened Since 2010," *Cable News Network Money*.

10. Kevin Dobbs, "Is De Novo Drought a Good Thing?" SNL Financial, December 6, 2013. Available at http://www.clarkstcapital.com/wp-content/uploads/2014/01/SNLDec2013.pdf. In March 2015. The FDIC gave conditional approval to Primary Bank of Bedford, New Hampshire, but said the bank needed to raise another $25 million before it could open. As this paper went to press, the bank had yet to open its doors. See Cassidy Swanson, "Primary Bank Set to Open Next Month," *Bedford Bulletin*, May 20, 2015. Available at http://www.newhampshire.com/article/20150521/NEWS02/150529856/-1/NEWHAMPSHIRE14&template

=newhampshire1408.

11. "Weird: Only 3 New Banks Opened Since 2010," *Cable News Network Money*, July 29, 2015. Available at http://money.cnn.com/2015/07/29/investing/dodd-frank-new-banks/.

12. American Association of Bank Directors, "ICBA, AABD Express Concern with Lack of New Bank Charters," News Release, December 12, 2013. Available at http://aabd.org/icba-aabd-express-concern-with-lack-of-new-bank-charters/.

13. Ibid.

14. Mike Konczal, "Explainer: Why Do We Need a Volcker Rule?" *Nation*, February 28, 2012. Available at http://www.thenation.com/article/166500/explainer-why-do-we-need-volcker-rule#.

15. The law contains some small exemptions for hedging, but these exemptions have proven to be so vague that many small banks have found them almost worthless.

16. Elizabeth Dexheimer, "Zions Cites Volcker Rule on $387 Million Charge Tied to CDOs," Bloomberg, December 12, 2013, available at http://www.bloomberg.com/news/print/2013-12-16/zions-says-volcker-rule-leads-to-387-million-charge-for-cd0s.html. See also John Berlau, "The Volcker Rule Is Obamacare for Main Street Banks and their Customers," *Daily Caller*, December 20, 2013. Available at http://dailycaller.com/2013/12/20/the-volcker-rule-is-obamacare-for-main-street-banks-and-their-customers/.

17. Victoria McGrane and Ryan Tracy, "Smaller Banks Score Gains in Lifting Regulation," *Wall Street Journal*, February 2, 2015. Available at http://www.wsj.com/articles/small-banks-score-gains-in-lifting-regulation-1422904294.

18. H.R.37—Promoting Job Creation and Reducing Small Business Burdens Act, 114th Congress (2015-2016). Available at https://www.congress.gov/bill/114th-congress/house-bill/37?q=%7B%22search%22%3A%5B%22Promoting+Job+Creation+ and+Reducing+Small+Business+Burdens+Act%22%5D%7D.

19. Marshall Lux and Robert Greene, "The State and Fate of Community Banking," *M-RCBG Associate Working Paper* No. 37, Harvard Kennedy School Mossavar-Rahmani Center for Business and Government, February 2015. Available at http://www.hks.harvard.edu/content/download/74695/1687293/version/1/file/Final_State_and_Fate_Lux_Greene.pdf.

20. James R. Barth and Tong Li, "Industrial Loan Companies: Supporting America's Financial System," Milken Institute, April 2011. Available at http://assets1b.milkeninstitute.org/assets/Publication/ResearchReport/PDF/ILC.pdf.

21. Saule T. Omarova and Margaret E. Thahyar, "That Which We Call a Bank: Revisiting the History of Bank Holding Company Regulation in the United States," *Review of Banking & Financial Law*, Vol. 31, 2011-2012, page 135. Available at http://128.197.26.3/law/central/jd/organizations/journals/banking/archives/documents/volume31/BankHoldingCoRegulation.pdf.

22. Ibid., page 134.

23. Ibid., page 132.

24. Alan Greenspan, Letter to the Honorable James A. Leach, January 20, 2006. Available at http://economistsview.typepad.com/economistsview/files/greenspanlet.1.26.06.pdf.

25. Michel Krimminger, former FDIC general counsel, said: "The moratorium has been lifted, but I don't think there has been openness to new charters." Interview with Ian McKendry, "If De Novos Rebound, What About ILCs?," *American Banker*, April 1, 2015. Available at http://www.finpro.us/uploads/1/2/8/4/12842898/150401_if_de_novos_rebound,_what_about_ilcs american_banker_article.pdf. Other officials in the banking industry and financial policy have confirmed this but do not wish to go on the record.

26. Ibid.

27. James R. Barth and Tong Li, "Industrial Loan Companies: Supporting America's Financial System," page 42.

28. Ibid, page 169.

29. James Barth, Lowder Eminent Scholar in Finance at Auburn University and Senior Fellow at the Milken Institute, notes: "If Walmart and Apple are overseeing the banks, they're going to govern them right, because they don't want the parent company's reputation to be damaged by the subsidiary bank." Telephone Interview with author, March 9, 2015.

30. John Berlau and Kyle Tassinari, "In Praise of Banking at Big-Box Stores," *Wall Street Journal*, July 23, 2013. Available at http://www.wsj.com/articles/SB10001424127887323309404578617483599112670.

31. Ibid.