

Alliance for Consumer Credit

Background

- Pending legislation would (1) eliminate the thrift charter and (2) apply the Bank Holding Company Act (BHCA) to companies that control thrifts, credit card banks, industrial banks, trust-only banks and non-bank banks (Limited Purpose Depository Institutions).
- The BHCA prohibits a company from both controlling a bank and engaging in a commercial, industrial or retail business.
- The practical effect of the legislation is that many of the affected companies would be forced to sell their Limited Purpose Depository Institution.

How are Limited Purpose Depository Institutions the same as other depository institutions?

- Limited Purpose Depository Institutions are depository institutions.
- All depository institutions in the U.S. – including Limited Purpose Depository Institutions and full-service banks – are:
 - Subject to the same federal banking laws
 - Supervised and examined by a federal banking regulator
 - Subject to the same enforcement powers of the federal banking regulators
 - Insured by the FDIC and subject to all provisions of the FDIA
 - Subject to the same FDIC receivership process in the event of insolvency

How are Limited Purpose Depository Institutions different from other depository institutions?

- Under federal banking law, Limited Purpose Depository Institutions can engage in a narrower range of activities than full-service banks.
 - Thrifts must have a majority of their assets in mortgage, credit card and/or education related loans and must significantly limit the amount of commercial loans they own.
 - Credit card banks can only engage in consumer credit card lending and have limited deposit taking powers (as a practical matter, many do not take deposits from the public).
 - Industrial banks over a certain size cannot accept demand deposits (e.g., business checking accounts).
 - Trust-only banks can only engage in trust (or fiduciary) powers. They cannot make loans and generally cannot accept non-trust deposits.
 - Non-bank banks cannot both accept demand deposits and make commercial loans. We are aware of only one remaining active non-bank bank.
- Companies that control Limited Purpose Depository Institutions are not subject to the BHCA.
 - The BHCA authorizes the Federal Reserve to supervise companies that control full-service banks and limits the activities that can be engaged in by companies that control a full-service bank.
 - Companies that control thrifts are subject to supervision by the OTS under a similar law, the Home Owners' Loan Act. This law also includes activities limits. However, the

activities limits do not apply to companies that controlled, or applied to control, a thrift as of a cut-off date in 1999.

- Companies that control Limited Purpose Depository Institutions are not subject to activities limits.
 - They are subject to examination by the FDIC or Federal Reserve as necessary to disclose fully the relationship between the company and the institution and the effect of such relationship on the institution.
 - The activities of such companies in relation to their subsidiary Limited Purpose Depository Institution are restricted by laws regarding affiliate transactions, insider loans, anti-tying.
 - Such companies are subject to laws that require them to guarantee capital restoration plans of their Limited Purpose Depository Institution
 - Such companies are subject to golden parachute restrictions and the Limited Purpose Depository Institutions they control are required to cross-guarantee losses incurred by the FDIC with regard to one another.
- Also, individuals who own depository institutions are not subject to the BHCA or any of the foregoing requirements and limits.

Why should Congress continue to allow Limited Purpose Depository Institutions?

- Commercial ownership of Limited Purpose Depository Institutions did not cause the recent banking crisis.
 - The recent banking crisis resulted from excessive risk taking in the financial services sector, including commercial banks, investment banks and insurance companies.
 - No depository institution failed because of risks from a commercial affiliate. In fact, the diversification of risk that results from a parent company that is not engaged in financial services may provide Limited Purpose Depository Institutions with better protection against risk than pure financial entities.
 - Limited Purpose Depository Institutions are subject to all of the same federal banking regulation, supervision, examination and enforcement as other depository institutions.
- Present and past banking laws have acknowledged the value of commercially owned depository institutions in the U.S.
 - As long as there have been depository institutions in the U.S., there have been commercially owned depository institutions.
 - The BHCA did not limit commercial ownership of banks until 1970.
 - Over time, Congress has reaffirmed the value of such institutions several times, most recently in 1987 when Congress enacted CEBA.
 - CEBA subjected all companies that controlled all FDIC-insured depository institutions to the BHCA, except that CEBA preserved the ability of commercial companies to control Limited Purpose Depository Institutions.
 - In the 22 years since CEBA, banking regulation and supervision has only gotten more stringent.
 - Commercially owned Limited Purpose Depository Institutions were not a threat to the banking system then or now.
- Limited Purpose Depository Institutions provide credit to consumers and small businesses.
 - Credit card banks lend exclusively to consumers.

- Thrifts are required to have at least 65% of their assets in certain categories, primarily residential mortgage loans and related assets, credit card loans, educational loans and small business loans.
 - While industrial banks have broader lending authority, many focus on niches such as health care, small business, home improvement, automotive, RV/marine and student lending.
- Limited Purpose Depository Institutions have provided credit when others have not.