

March 28, 2006
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Mr. Robert E. Feldman
Executive Secretary
Attention Comments/Legal ESS
Room 3060
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington DC 20429

Subject: Written statement of testimony regarding the Federal Deposit Insurance Application of the Proposed Wal-Mart Bank

Dear Mr. Feldman:

On behalf of the 1.4 million members of the United Food and Commercial Workers International Union (UFCW), I wish to comment on the application of Wal-Mart Stores, Inc. ("Wal-Mart") for a Utah industrial loan corporation (ILC) charter called Wal-Mart Bank. Please consider this to be UFCW's preliminary comments; we reserve the right to make further comments after the application is formally accepted.

Wal-Mart has explained publicly that Wal-Mart Bank would serve a narrow purpose this time-- to process credit card, debit card and electronic check transactions from its retail locations. Wal-Mart's past attempts and expressed desires to enter banking point to the company having a broader interest in expanding its financial offerings. A Wal-Mart bank would, in our opinion, serve as the vehicle for the entry of the world's largest retailer into not just banking in Utah, but potentially into 21 other states that allow interstate branch banking.

Therefore, acceptance of a charter for a Wal-Mart bank raises serious issues. Federal regulators have twice turned down Wal-Mart's entry into banking because it was an unwanted mix of commerce and banking. Divergence from these precedents requires careful deliberation because the largest retailer and corporation in the U.S. could become one of the leading bankers as well. Moreover, a Wal-Mart bank, by being an ILC, would not be subject to the stricter regulations of bank holding companies. Finally, Wal-Mart's record of non-compliance with standards and regulations raises significant questions about the company's ability to oversee a bank and follow the tenets of the Community Reinvestment Act (CRA).

A fully-developed public record is necessary because the decision is of clear significance to the future of banking and our economy. When such an examination is complete, we believe it will be clear why the Federal Deposit Insurance Corporation (FDIC) should deny Wal-Mart's application.

But make no mistake—we believe that there is ample cause for the FDIC to turn down this application. The record-setting comments in opposition show both the qualitative and quantitative concern from a broad swath of interests and citizens. In addition, by both substantive and numeric measurements, those who are testifying at these unprecedented public hearings will give the FDIC a broad and deep official transcript which will certainly reflect strong opposition to this application.

Wal-Mart and Banking

Wal-Mart's current attempt to acquire an industrial bank fits squarely into its stated desire to offer full-service commercial banking. Wal-Mart officials consistently have said they want to expand their financial offerings, including providing services available only through a banking institution. Company CEO Lee Scott has dubbed financial services an attractive growth opportunity, and its Web site proudly proclaims that Wal-Mart is a "trusted name in financial services."¹ Wal-Mart spokesman Tom Williams has stated: "Our customers really want banking in the [Wal-Mart super-] centers, and they want banking that Wal-Mart backs with its name."² If Wal-Mart had an ILC charter, it would be able to offer everything from savings accounts to mortgages, car loans and even small-business loans. Marty Heires, a Wal-Mart spokesman, said: "We are very interested in expanding these offerings."³

This latest application follows a pattern by Wal-Mart of attempting to purchase institutions to get its foot in the door of the commercial banking industry.

- In 1999, Wal-Mart tried to acquire Federal Bank Centre, a small federal savings and loan company located in Oklahoma. The Office of Thrift Supervision (OTS) denied the acquisition because it violated banking and retail regulations.
- In 2001, Wal-Mart attempted to enter the banking industry again with a proposal to jointly operate Toronto-Dominion Bank branches in its stores. Once again, OTS denied this proposal.⁴ Wal-Mart then tried to establish a partnership with TD Banks USA, but OTS rejected the proposal, saying it would illegally combine commerce and banking. Wal-Mart had planned

¹ John Engen, "Brand Envy," *US Banker*, 5/05

² "Wal-Mart tries to break into banking - yet again," *Retail Banker International*, May 28, 2002

³ Jenifer K. Nii, "Wal-Mart is Planning to Open Bank in Utah," *Deseret Morning News*, 7/19/05

⁴ Steve Cocheo, "Always aggressive, always Wal-Mart," *ABA Banking Journal*, 5/1/03

to have their cashiers provide some teller-like services⁵ and wanted to offer checking and savings accounts in its stores.⁶

- In 2002, Wal-Mart attempted to buy Franklin Bank, a small ILC in California, under the same pretense of saving money on electronic transactions. The California Assembly's Banking Committee Chair, Louis J. Papan, urged caution, "The applicant is using the state of California and ... the industrial bank charter to accomplish that which it could not otherwise achieve if it attempted to acquire another California chartered financial institution. If allowed, this merger will have a detrimental impact upon banking in California and in the nation."⁷ Ultimately, the California Legislature enacted a law preventing such purchases, causing Wal-Mart spokesman Bob McAdam to remark "We will continue our efforts, and they won't be in California."⁸

Beyond owning a bank, Wal-Mart has sought to offer financial services under its own brand. In fact, Wal-Mart has an entire subsidiary to promote and coordinate its financial services activity. Wal-Mart leases space for over 1,000 banks in its stores, many of which are branded with the Wal-Mart logo with names such as "Wal-Mart Money Center" or "Wal-Mart Money Center by SunTrust."⁹ According to the company, it is "actively seeking new financial institutions as tenants."¹⁰ At least 800 of Wal-Mart's ATMs are branded with the Wal-Mart logo, even though they are owned by banks such as Bank of America.¹¹ Wal-Mart already offers paycheck cashing, money order purchases, money transfers, on-line credit reports, and check printing. Just recently, Wal-Mart has branded a "Wal-Mart" Discover credit card with GE Financial Services.

Wal-Mart's justification to form a bank in order to save money on transactions is misleading. Wal-Mart's seeks to add to its already diverse financial service offerings, which would require owning a bank. Interestingly, in February 2005, when asked if they would seek to acquire an ILC, Marty Heires, a company spokesman said, "We have no plans for that right now."¹² Less than five months later, Wal-Mart filed its current application to form an ILC bank in Utah.

Wal-Mart Bank: Risk to the Bank Insurance Fund

⁵ *ibid*

⁶ Rob Blackwell, "Once Again, Wal-Mart Stirs Debate On Policy," *American Banker*, 5/30/02

⁷ *ibid*

⁸ "Wal-Mart will look elsewhere to buy bank," *Sacramento Business Journal*, 8/2/02

⁹ John Engen, "Brand Envy," *US Banker*, 5/1/05

¹⁰ Becky Yerak and Josh Noel, "Bankers shiver over Wal-Mart's latest plan," *Chicago Tribune*, 7/20/05

¹¹ Steve Cocheo, "Always aggressive, always Wal-Mart," *ABA Banking Journal*, 5/1/03

¹² John Hielscher, "Wal-Mart could put banking in its big box," *Sarasota Herald-Tribune (Florida)*, 2/25/05

A key factor in assessing Wal-Mart's application is, as the FDIC writes, "the risk presented by such depository institution to the Bank Insurance Fund or the Savings Association Insurance Fund." We believe that a Wal-Mart Bank would pose a significant risk to the bank insurance fund because of the inherent hazards of mixing banking and commerce combined with the business practices of Wal-Mart.

Mixing Banking and Commerce

The FDIC as a regulatory institution knows the potential dangers of mixing banking and commerce. ILCs pose a unique risk to the FDIC because the banking operations are insured, but can also be a wholly-owned subsidiary to a primarily non-financial corporation. Ultimately taxpayers and the banking system bear the cost if something happens to the parent. Federal Reserve Chairman Alan Greenspan elaborates, "It is also worth emphasizing again that these large, insured ILCs with unregulated parents could be placed at significant risk by the operations or difficulties of their parent...Any subsequent losses to the FDIC ultimately have the potential of taxpayer liability and increased deposit insurance premiums for insured bank subsidiaries of regulated bank holding companies."¹³ His concerns have been verified by the banking scandals that led to financial collapses experienced by Japan and other Asian countries that permit the common ownership of commercial companies and banking institutions.

Moreover, ILCs lack the stricter oversight required of bank holding companies. Commenting on a proposed bill to allow ILCs offer business checking accounts, Federal Reserve Board Governor Mark Olson remarked, "Congress should not grant this new branching authority to industrial loan companies. . .unless the owners of these institutions are subject to the same type of consolidated supervision and activities restrictions as the owners of other insured banks."

Wal-Mart's Business Practices

Any proposal to loosen the general prohibition on mixing banking and commerce must be carefully analyzed because of the myriad of risks that are involved. In the case of Wal-Mart these risks are magnified because we would be empowering the world's largest retailer with the ability to quickly become one of the leading banks in the United States.

Wal-Mart publicly states that its bank will be used solely to save money on transactions and will be relegated to a back office. However, Wal-Mart history has shown that Wal-Mart, rarely if ever does anything on small scale. Wal-Mart was founded in 1962 with one discount store and has grown exponentially to now more than 5,000 stores. The company brings in more than \$280 billion in sales annually and operates \$120 billion in assets. Next year, Wal-Mart plans to add another 55 million square feet of space, or roughly the equivalent of 1,000 football fields or 15 Pentagons.¹⁴ With such incredible

¹³ Rob Blackwell, "Greenspan Digs In on Fight Over ILC Charters; Federal Reserve Board chief on industrial loan companies," *American Banker*, 7/15/03

¹⁴ Wal-Mart Annual Report 2005

growth, it is clear that Wal-Mart competes with the goal of dominating markets. In 2004, Wal-Mart accounted for nearly 60 percent of all sales in the US general merchandise industry.¹⁵ In 2003, Wal-Mart accounted for 19 percent of all groceries and 16 percent of all pharmaceutical products in the U.S.¹⁶ This means that Wal-Mart sold 30 percent of all household staples bought in the U.S., including items such as toothpaste, shampoo, and paper towels.¹⁷

Wal-Mart grows using a saturation strategy—the company builds stores in nearby connected markets in order to stifle any competition in the targeted area.¹⁸ This ethos has closed not only local businesses, but also has been the primary factor in the bankruptcies¹⁹ and closings of major national competitors.²⁰ This strategy of flooding markets with ever-expanding stores and services continues to lead Wal-Mart to massive sales growth. However, a key component of Wal-Mart’s business practices is to contravene federal and state fair trade laws whenever such necessary market protections get in the way of boosting sales and profit. Wal-Mart has a consistent history of being accused of violating pricing, copyright, and trademark laws, in addition to strong-arming or breaking contracts with its vendors.²¹

¹⁵ Chain Store Guide: Directory of Discount and General Merchandise Stores, 2004

¹⁶ Anthony Bianco and Wendy Zellner, “Is Wal-Mart Too Powerful?” *Business Week*, 10/6/03

¹⁷ *ibid*

¹⁸ Jessica Hall and Jim Troy, “Wal-Mart Go Home! Wal-Mart’s Expansion Juggernaut Stumbles as Towns Turn Thumbs Down and Noses Up,” *Warfield’s Business Record*, 7/22/94

¹⁹ The following is a partial list of Wal-Mart’s direct competitors that have entered bankruptcy: K-Mart - 2002; Ames - 2001; Montgomery Ward - 2000; Bradlees - 2000; Service Merchandise - 1999; Caldor - 1999; Woolworth - 1997; Rich’s Department Stores - 1997; Jamesway - 1995; Stuart’s Department Stores 1995.

²⁰ “In the past 3.5 years, there have been 11 major supermarket bankruptcy filings . . . Nine of the 11 were influenced by or catalyzed by Wal-Mart’s expansion in food.” Burt Flickinger, Reach Marketing, quoted in “Wal-Mart Will Shake Things Up – It looks to Do for Supermarkets What it Did to Discount Department Stores” by Bob Niedt, *The Post-Standard, Syracuse*, NY, 2/12/01. Ames Discount Stores announced that it was closing all of its stores (“Ames Plans to Close All Stores.” *Associated Press*. 8/14/02.)

²¹ Pricing: In 2000, an Oklahoma grocery store sued Wal-Mart for violating the Unfair Sales Act and Oklahoma Antitrust Reform Act alleging the chain had dropped prices below cost on certain items in an attempt to drive the grocery store out of business (“The Hometown Bulletin,” *Institute for Self Reliance*, November 2000, www.newrules.org.) In 1986, Wal-Mart was found to have violated the Oklahoma Unfair Sales Act, and after an unsuccessful effort to repeal the law, Wal-Mart settled out of court. (Ortega, *In Sam We Trust: The Untold Story of Sam Walton and How Wal-Mart is Devouring America*. Times Business, Random House, 1998. Pg. 175.) Also in 2000, the Wisconsin Attorney General charged Wal-Mart with violating the state Unfair Sales Act, and said the state had sent four warning letters to Wal-Mart since 1993. (“Wal-Mart Faces State Charges of Illegally Cutting Prices” by Tom Daykin, *Milwaukee Journal-Sentinel*, 9/26/00) In 1999, Michigan Attorney General Jennifer M. Granholm charged Wal-Mart has “chosen to ignore the state’s item-pricing law, and now must pay the consequences.” (*Supermarket News*, 9/6/99) According to *Inside Retailing*, no date available, Argentina fined Wal-Mart for charging higher prices than those listed on the shelves. Eight Tennessee firms, which market gasoline for Shell, BP, Amoco, Texaco and Phillips, sued Wal-Mart for violating the state’s Petroleum Trade Practices Act by selling regular gasoline below cost. (*Oil Express*, 3/8/99) The Mexican Federal Competition Commission has launched an investigation into Wal-Mart’s practice of bullying suppliers to sell below cost. (*Financial Times*, 6/19/02)

Wal-Mart's repeated attempts to acquire a bank reflect a strategy to apply its aggressive business practices to the banking industry. If given the opportunity, the company has an existing store network that could house thousands of Wal-Mart banks. Utah is one of 22 states that permit interstate branch banking. Wal-Mart currently operates 1,748 stores in the 22 branch banking states.²² If its Utah charter is approved, Wal-Mart could become, practically overnight, one of the leading national bank operators. Additionally, Wal-Mart's ability to house banking facilities will only grow-- in fact, Wal-Mart has built more than 400 stores over the last five years in the 22 states alone that permit branch banking.²³

Wal-Mart Bank: Can it Serve the Needs of the Community?

A critical consideration for acceptance of a Wal-Mart Bank is, as the FDIC writes, whether "the convenience and needs of the community" is served by the depository

Copyright Infringement: Wal-Mart agreed to pay Tommy Hilfiger Corp. \$6.4 million to settle a lawsuit after a court found that Wal-Mart was continuing to sell fake Hilfiger merchandise despite a 1996 injunction to stop the sales. (*Wall Street Journal*, 7/15/99) Wal-Mart also faced a lawsuit in New York charging it with selling fake Polo, Ralph Lauren, Nautica and Fubu clothing. (Associated Press, 7/15/99) While a jury found that Wal-Mart infringed on Samara Bros.'s designs and awarded it \$1.5 million in damages and attorney's fees (*USA Today*, 1/19/00), the Supreme Court later overturned the ruling. (*Wall Street Journal*, 3/23/00) Wal-Mart settled a suit filed by the creators of the television program Teletubbies with an agreement to destroy its "Bubbly Chubbies" knockoffs. (Reuters Business Report, 5/20/99) Cabin Creek Quilts sued Wal-Mart for selling "Cobble Creek Quilts" made in China. (*Wilmington, NC, Morning Star*, 3/26/99) Native American artists sued Wal-Mart for selling jewelry made in China as having been produced by Native Americans. (*Racine Labor*, 1/22/99) A Baltimore, MD, charitable trust, Parent's Choice Foundation, which is a nonprofit evaluator of children's products, filed suit against Wal-Mart for misappropriating its trademark for Wal-Mart's "Parents' Choice" brand of children's products. (Associated Press, 8/24/01)

Deceptive Practices: Wal-Mart sought to pass the buck for violations of Pennsylvania water quality and other environmental laws during construction of its Honesdale, PA, store in 1998 to its contractor. The construction contractor charged Wal-Mart with violating the consent order it signed with the Pennsylvania Department of Environmental Protection, which ordered the chain to pay a \$100,000 fine. Furthermore, the contractor said it merely followed Wal-Mart's plans. (*Business Week*, date unknown) Mexican grocery distributor Valores Corporativos SA won a \$624 million judgment against Wal-Mart in a Texas Court for breaking its agreement to jointly supply grocery products to retailers in Mexico. (*Wall Street Journal*, 5/18/99) The Tennessee Court of Appeals upheld an award of \$7 million in damages and interest against Wal-Mart for failing to open a store it had leased. (*Nashville Tennessean*, 4/29/99) GTO Inc. won a \$500,000 settlement against Wal-Mart in a dispute over the chain's practice of charging it for unrelated products along with returned goods. (*Inc. magazine*, 5/1/99). In August 2002, Golight Inc. of Culbertson, Nebraska won a \$464,280 judgment in federal district court against Wal-Mart for patent infringement. ("Wal-Mart Ordered to Pay in Dispute" Associated Press. 8/13/02.)

²² 2005 Wal-Mart 10-K Annual Report

²³ Wal-Mart 10-K Annual Report 2000 & 2005.

institution. We believe that the conflicts of interests inherent with the mixing banking and commerce would make a Wal-Mart owned bank unable to meet the standard.

One of the primary arguments against mixing banking and commerce is to protect depositors-- a bank with commercial links may prejudice the interests of its depositors. This concern is intensified in the case of Wal-Mart, which is engaged in nearly every retail segment and is situated in thousands of communities across the United States. The potential for conflicts of interest raises key questions:

- Would a Wal-Mart bank extend credit to local businesses that it potentially competes with—like hardware stores, clothing shops, florists, pharmacies, auto care centers, or grocery stores?
- Would businesses in search of financing be comfortable sharing confidential business plans with Wal-Mart, a potential competitor with a history of co-opting business plans and product designs? As award-winning Wall Street Journal reporter Bob Ortega detailed in his recent book, subtitled *The Untold Story of Sam Walton and How Wal-Mart Is Devouring America*:

Rita DeVaney and Linda Brackin of Indianapolis won a \$7.1 million federal court judgment against Wal-Mart after a jury found that company executives committed civil fraud against the women. Brackin and DeVaney ran a business conducting food demonstrations at stores; Wal-Mart's Sam's Club was a client. But when Wal-Mart executives decided to switch to a rival firm, they first tricked the women into turning over their business records, then gave those records to the other firm and canceled the contract with Brackin and DeVaney. The rival used their records to take over the women's schedules and workers, the jury found. "When I called and asked why they were doing this, they said 'That's the way Sam's does business.'" DeVaney said.²⁴

- What will Wal-Mart do to prevent pressure on suppliers and vendors to transfer banking relationships to a Wal-Mart bank? This question is relevant due to Wal-Mart's history of pressuring vendors and suppliers to

²⁴ Bob Ortega, *In Sam We Trust: The Untold Story of Sam Walton and How Wal-Mart is Devouring America*, New York: Times Business, Random House, 1998, Pg. 375. There are numerous court cases involving big as well as small businesses that allege similar unsavory business practices by Wal-Mart: *Mercantile Stores Company, Inc. v. Wal-Mart Stores, Inc.* 96-CV-4016 JG (E.D. New York), 1996; *Desktop Images, Inc. v. Wal-Mart Stores, Inc., Sam's Wholesale Club, a Division of Wal-Mart Stores, Inc., et al*, 95-K-2229 (District of Colorado), 1996; *Samara Brothers, Inc. v. Wal-Mart Stores, Inc.* 165 F.3d 120, U.S. Court of Appeals for the Second Circuit, 1998; *Nike, Inc. v. Wal-Mart Stores, Inc. and Hawe Yue, Inc.* 138 F.3d 1437, U.S. Court of Appeals for the Fourth Circuit, 1998; *Elaine Campbell v. Marie Osmond and Wal-Mart Stores, Inc. et al.* 93-1162-CIV-T-17B (M.D. Florida), 1996; *National Presto Industries, Inc. v. Dazey Corporation and Wal-Mart Stores, Inc.* 90 C 06614 (N.D. Illinois), 1990.

contribute to charities that Wal-Mart favors²⁵, and for special deals as the price of doing business with Wal-Mart.²⁶

- Will Wal-Mart coerce its more than one million “associates” into financial relationships with a Wal-Mart owned bank—such as direct paycheck deposit—to the significant detriment of competing banks that currently service Wal-Mart’s employees? This question is relevant given Wal-Mart’s practice of pressuring employees into raising money for various charities and claiming corporate credit for the contributions, thus burnishing its image in the community.²⁷
- What will Wal-Mart do to prevent a recurrence of its previous violation of National Automated Clearing House Association rules? Wal-Mart has been accused of inducing Florida banks to electronically debit as much as \$600,000 from customers’ accounts to cover checks stolen in an armored car heist.²⁸

Not only is it questionable to allow a Wal-Mart ILC into the banking industry, it is unnecessary. If demand for banking exists in an area where Wal-Mart operates, the vast majority of Wal-Mart stores are large enough to lease space to an existing local bank and thus avoid the complications of mixing banking and commerce. Currently more than 1,000 banks are already housed in Wal-Mart stores.

Wal-Mart Bank: Questionable Character of Fitness

One major factor in evaluating Wal-Mart’s application is, as the FDIC writes, “the general character and fitness of the management of the depository institution.” We believe that Wal-Mart’s pattern of non-compliance demonstrates that it lacks the internal controls that are fundamental for a company to be entrusted with a bank.

For a financial company to start a bank holding company, the company should exhibit a clear adherence to corporate and legal ethics. For a non-financial company to control a bank holding company, the non-financial company should exhibit an even clearer history of abiding to regulations, because of the risks that are involved. Because of the less regulated nature of ILCs, for a non-financial company to control an ILC, there should be an expectation that the non-financial company has an unambiguous history of accountability, abiding to internal ethics, and complying with government regulations. A brief review of Wal-Mart’s corporate record shows that it fails to meet this standard.

²⁵ Ortega also points out (Pg. 195-6) that Wal-Mart has pressured vendors to donate goods for various hurricane relief programs and claimed public credit for the amounts “at the retail price of goods.”

²⁶ “Mexico’s anti-monopoly commission weighs probe of allegations of price fixing at Wal-Mart Mexico unit” *Financial Times*, 5/28/02

²⁷ Ortega, pg. 195.

²⁸ Bruce Bryant-Friedland, “Wal-Mart’s lost check debits upset customers,” *Jacksonville Times-Union*, September 5, 1997

The UFCW believes that a company's willingness to intentionally violate laws protecting workers speaks volumes about the character of an applicant. Wal-Mart has a consistent record of flouting basic laws for fair treatment and safe working conditions, ignoring internal memos that suggest remedies, and failing to act even after major fines and litigation.

Wal-Mart and Women Employees

Wal-Mart is the largest employer of women, however the company has a record of failing to act upon internal warnings that it was falling far behind in promoting women. In 1996, Wal-Mart formed a committee to address diversity issues. By 1998, the committee created a task force to identify ways to ensure diversity in management. The task force recommended that Wal-Mart begin a mentoring program to begin by 2000. Company executives did not carry out the recommendations and in fact both the diversity committee and the task force was disbanded in 1999. The situation only deteriorated. In 2000, Coleman Peterson, then executive vice president of the division that handles personnel issues at Wal-Mart, wrote to other executives: "Female management representation at Wal-Mart super centers, Sam's and logistics and, therefore, total company are worse than prior year."²⁹

After years of company inaction, in 2001, six women sued Wal-Mart in California claiming gender discrimination in pay and promotion. The lawsuit has expanded to potentially the largest class action in U.S. history – more than 1.6 million current and former female employees. In 2001, while two-thirds of the company's hourly workers were female, women held only one-third of managerial positions and constituted less than 15 percent of store managers. These patterns of discrimination in promotion and pay were found in all regions where Wal-Mart operates in the United States. *Dukes v. Wal-Mart* was certified on June 21 2004 as the largest class action lawsuit ever and is now being appealed by Wal-Mart.³⁰ "Wal-Mart was sued many, many times for sex discrimination," says case attorney Joseph Sellers. "A case of this magnitude was required to force these changes."³¹

Wal-Mart and Undocumented Workers

In a similar pattern, the federal government has repeatedly found Wal-Mart to systemically hire undocumented workers—with Wal-Mart failing to adequately remedy the situation. In 1998 and 2001, federal agents arrested more than a hundred

²⁹ "Wal-Mart Stores Inc. took no action on internal warnings seven years" *Bloomberg*, 7/15/05

³⁰ Neil Buckley and Caroline Daniel, "Wal-Mart vs. the Workers: Labour Grievances Are Stacking Up Against the World's Biggest Company," *Financial Times*, 11/20/03

³¹ "Wal-Mart Stores Inc. took no action on internal warnings seven years," *Bloomberg*, 7/15/05

undocumented workers at Wal-Mart stores around the country.³² In 2003, as part of a four year investigation, federal agents raided 61 Wal-Mart stores in 21 states. 250 nightshift janitors who were undocumented workers were arrested. In fact, the government said they had wiretaps showing that Wal-Mart executives knew the company was using illegal workers.³³ Wal-Mart was forced to pay an \$11 million dollar settlement in order to avoid prosecution, a record settlement in a civil immigration case.³⁴

Many of the involved janitors have decided to sue Wal-Mart and their case was certified as a class action in 2004, alleging that Wal-Mart knowingly coordinated their exploitation. Some of the plaintiffs worked 7 days per week for 8 months, earning \$325 for 60-hour weeks.³⁵ Included in the lawsuit are charges that Wal-Mart locked janitors in stores overnight, and sometimes did not pay them at all, exploiting their status as illegal aliens. It was “virtual slavery,” according to the workers.³⁶

Wal-Mart and Child Labor

Wal-Mart’s knowledge of violations of child labor laws over the last decade manifest Wal-Mart’s inability to comply with basic standards. In Maine, Wal-Mart was fined \$205,650 for 1,436 violations of child labor laws for the period 1995 to 1998. The settlement represents the largest fine and greatest number of citations ever issued by the Maine Department of Labor for child labor violations and was partially so severe because Wal-mart had failed to heed previous warnings.³⁷ Furthermore, the U.S. Department of Labor alleged that Wal-Mart broke child labor laws in 24 incidences between 1998 and 2002.³⁸ Wal-Mart denied the charges but agreed to pay the penalty.

These abuses appear to be ongoing. The state of Connecticut found numerous violations in three Wal-Mart stores from 2003 to 2005.³⁹ The state is continuing unannounced inspections to state stores to ensure Wal-Mart stops violating state child labor laws.

Once again, Wal-Mart was well aware of these issues far before the government investigations. An internal audit July 2000, one week of time records from 25,000 employees in July 2000 found 1,371 instances of minors working too late, during school

³² “Everyday Low Wages: The Hidden Price We All Pay for Wal-Mart,” A Report By the Democratic Staff of the Committee on Education and the Workforce, U.S. House of Representatives, Representative George Miller, 2004

³³ “Wal-Mart pays \$11M over illegal labor ,” *CNN Money*, 2005

³⁴ “Class Action Against Wal-Mart Picks Up,” *Law.com*, 2005

³⁵ Steven Greenhouse, “Suit By Wal-Mart Cleaners Asserts Rackets Violation,” *New York Times*, 10/11/03

³⁶ “Class Action Against Wal-Mart Picks Up,” *Law.com*, 2005

³⁷ “State has strong words for Wal-Mart on child labor,” *Maine Times*, 5/03

³⁸ Ann Zimmerman, “Wal-Mart's Labor Agreement Is Criticized by Former Official,” *Wall Street Journal*, 2/15/05

³⁹ “Wal-Mart Is Fined for Child Labor Violations,” *Los Angeles Times*, 6/22/05

hours, or for too many hours in a day. There were 60,767 missed breaks and 15,705 lost meal times.⁴⁰

Wal-Mart and Wage and Hour Violations

Wal-Mart's operations continued to be marked by pervasive and persistent off-the-clock work, despite litigation exposing the problem. In 2000, Wal-Mart paid \$50 million to settle a class-action suit that asserted that 69,000 current and former Wal-Mart employees in Colorado had worked off the clock. In 2002, Wal-Mart was ordered by courts to pay up to 120 workers in Gallup, New Mexico and 400 workers in 27 stores in Oregon for violating wage and hour laws. This year, Wal-Mart reports that it faces 44 wage and hour lawsuits. Over the last several years, major law-suits have also been won or are pending in other states such as California, Indiana, Minnesota, New Jersey, and Washington.⁴¹

Wal-Mart spokesman William Wertz attempted to minimize the issue when he explained that "off-the-clock work is an infrequent and isolated problem, which we correct whenever we become aware of it." However the pattern of abuse speaks to the contrary. In fact, John Fraser, who ran the Federal Wage and Hour Administration for 11 years, said it was unlikely that the small number of complaints indicated anything about the pervasiveness of unpaid work. Workers are often reluctant to complain, fearing they might lose their jobs if investigators contact their employer.⁴²

Wal-Mart and Worker Compensation

In terms of worker injuries, Wal-Mart has been far from a model. Putting aside the frequency of injuries in Wal-Mart's stores, Wal-Mart has taken a combative and damaging approach to worker compensation claims, so caustic that Washington State ordered the company to relinquish control of its workers' compensation claims handling in 2000 after five audits between 1993 and 1999 showed the company failed to properly handle legitimate claims. Fewer than six companies have been put on similar probation since the regulation took effect in 1972. Wal-Mart is the only employer to have its program seized that was *not* going bankrupt. "Time and time again they made a commitment to carry out their policies, but it didn't happen." Douglas Connell, assistant director of Washington insurance services.⁴³

The issue is pervasive. Arkansas Business described Wal-Mart as "the state's most aggressive" when it comes to challenging worker's compensation claims. In 1999, Wal-

⁴⁰ Steven Greenhouse, "In-House Audit Says Wal-Mart Violated Labor Laws," *New York Times*, 1/13/04

⁴¹ Wal-Mart Annual Report 2005

⁴² Sources include Associated Press, "Federal Jury Finds Wal-Mart Guilty in Overtime Pay Case," *Chicago Tribune*, 12/20/03 and Steven Greenhouse, "Suits Say Wal-Mart Forces Workers to Toil Off the Clock," *New York Times*, 6/25/02

⁴³ Dan Zehr, "State blasts Wal-Mart, seizes plan for workers," *Arkansas Democrat-Gazette*, 12/07/05

Mart reported to controvert claims almost three times as often as the average for all workers' compensation insurers.⁴⁴

Wal-Mart and Labor Law

Wal-Mart has a history of refusing to negotiate with employees who have been organized. In 2000, when a small meat cutting department successfully organized a union at a Wal-Mart store in Texas, Wal-Mart responded a week later by announcing the phase-out of its meat cutting departments nationwide.⁴⁵ In fact, a Wal-Mart employee in Quebec filed a request in a Canadian Superior Court seeking a class-action lawsuit against Wal-Mart Canada, saying the retailer's decision to close a recently organized Jonquiere, Quebec store violated the rights of its workers and entitles them to compensation and damages.⁴⁶

The company has a pattern of ignoring and breaking labor laws. In the last few years, well over 100 unfair labor practice charges have been lodged against Wal-Mart throughout the country, with 43 charges filed in 2002 alone. Since 1995, the U.S. government has issued at least 60 complaints against Wal-Mart at the National Labor Relations Board.⁴⁷

Wal-Mart and Discrimination

Wal-Mart has a similarly blemished record on race and other forms of discrimination spanning over the years. As experience has demonstrated, there is a wide gulf between Wal-Mart's written policies and their application in the real world. In 1997, Equal Employment Opportunity Commission (EEOC) won four verdicts against Wal-Mart in 1997 in cases involving different types of discrimination -- race, gender, and disability. EEOC district office stated, "[t]he common thread [in the cases] was evidence that Wal-Mart made little or no attempt to train its managerial employees in compliance with the federal anti-discrimination laws."⁴⁸ This opinion is not only held by the EEOC, but was also repeated by at least three different appellate judges in recent discrimination cases:

⁴⁴ "State Worst Offender in Comp Reporting," *Arkansas Business*, 1/8/01

⁴⁵ Pan Demetrakakes, "Is Wal-Mart Wrapped in Union Phobia?" *Food & Packaging*, 8/1/03 and Dan Kasler, "Labor Dispute Has Historical Precedent," *Scripps Howard News Service*, 11/3/03

⁴⁶ "Quebec Union Seeks Class-Action Suit vs. Wal-Mart," *Supermarket News*, 4/22/05

⁴⁷ International Confederation of Free Trade Unions (ICFTU), "Internationally Recognised Core Labour Standards in the United States: Report for the WTO General Council Review of the Trade Policies of the United States," 1/04

⁴⁸ "EEOC office claims 4 judgments for '97 Wal-Mart loses in four lawsuits," *San Antonio Express-News*, 11/27/97

- “The mere existence of a policy [prohibiting sexual harassment] carries very little weight, however, when Wal-Mart failed to train any of its supervisors about the policy.”⁴⁹
- “Wal-Mart’s assertion of a generalized policy of equality and respect for the individual does not demonstrate an implemented good faith policy of educating employees on the [Americans With Disabilities] Act’s accommodation and nondiscrimination requirements. The evidence demonstrates a broad failure on the part of Wal-Mart to educate its employees, especially its supervisors, on the requirements of the ADA, and to prevent discrimination in the workplace.”⁵⁰
- “[A]pparently Wal-Mart was aware of this [sexual harassment], since [the supervisor’s] conduct was witnessed by high-level supervisory personnel [who] allowed the harassment to continue with ‘utter indifference to the consequences.’”⁵¹

The problems persist. Wal-Mart is currently being sued in federal court for allegedly denying truck-driving jobs to African Americans in 12 Southern states. The EEOC noted that only one of the 20 drivers Wal-Mart hired in 2002 was black. The EEOC also noted that Wal-Mart hired some white drivers with more serious driving violations and less experience than black applicants. The suit is seeking class-action certification on behalf of more than 100 African-American truck drivers who have been denied employment by W-M.⁵²

Wal-Mart and its Code of Ethics

The most telling example of Wal-Mart’s inability to maintain accountability is the case of former Wal-Mart Vice Chairman Thomas Coughlin. Wal-Mart claims that Thomas Coughlin had “misappropriated hundreds of thousands of dollars in corporate assets to pay for personal expenditures ranging from the petty to the extravagant.” Furthermore, Wal-Mart has implicated dozens of Coughlin’s subordinates. In fact, because of the extensive nature of the internal corporate abuse, which goes beyond violating company ethics, Wal-Mart has submitted the case to a federal grand jury for investigation. Coughlin in his defense has claimed that he submitted false invoices to obtain reimbursements for secret anti-union activities which, if true, is an admission of serious violations of federal labor and criminal law. Amidst these developments, Wal-Mart fired

⁴⁹ Judge Heaney, 8th Circuit Court of Appeals, dissenting from a reduction in a jury-awarded punitive damages to a victim of sexual harassment. 107 F.3d 568 (1997)

⁵⁰ “Court Affirms \$75,000 in Punitive Damages To Hearing-Impaired Former Wal-Mart Worker,” *Daily Labor Report*, August 26, 1999, quoting the opinion of Judge Carlos F. Lucero.

⁵¹ “\$1.9 Million Tort Verdict in Harassment Case Affirmed by New Mexico Supreme Court,” *Daily Labor Report*, 3/1/99, quoting the opinion of Justice Joseph Baca.

⁵² Tammy Joyner, “Truck driver applicant accuses Wal-Mart of racial bias,” *Cox News Service*, 9/23/04 and *Nelson v. Wal-Mart Stores, Inc*

the vice-president who originally reported Coughlin's transactions, which raises serious questions about the company's application of whistleblower protection programs.⁵³

Wal-Mart and Accountability

Wal-Mart seems to be unable or unwilling to improve its internal controls. Because of Wal-Mart's pattern of ignoring warning signs and inability to abide by regulations, major investors, including the Chairman of the Illinois State Board of Investment and New York City Comptroller, made a written request to the company in May 2005. Worried about the potential risks of further breakdowns, they requested that Wal-Mart form a committee of independent directors to conduct an evaluation of the internal and government legal and regulatory controls. After such an evaluation they requested that Wal-Mart issue a report by the end of the year. They explained to Wal-Mart:

“The frequency of the reports suggests that non-compliance with internal standards as well as with laws and regulations, may be far too commonplace at Wal-Mart. . . Strong internal controls are not only essential to ensure accurate financial reporting, they are also critical to ensuring full legal and regulatory compliance. . . Robust company policies, combined with effective legal and regulatory compliance are necessary predicates to any company's ability to protect and create long-term value for its shareholders.”⁵⁴

Wal-Mart still has not responded to the shareholder's request.

Wal-Mart Bank: Avoiding Community Reinvestment?

When Congress passed the Community Reinvestment Act (CRA) in 1977 it made clear that all “regulated financial institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities.” Wal-Mart stated in its application that it should be considered CRA exempt because Wal-Mart Bank will serve a narrow internal role. Wal-Mart's claim is inaccurate and indicates its unwillingness to be responsible to the surrounding community.

Rather than performing a narrow and internal role, the Wal-Mart Bank will accept deposits from non-profit, charitable and education organizations and from individual investors through deposit brokers. These deposits will transfer funds from banks abiding by the CRA to Wal-Mart Bank. This will have an affect on the total amount of CRA funds that are available.

⁵³ “Former Wal-Mart Exec files complaint,” *CNN/Money*, 5/24/05

⁵⁴ NYC Office of Comptroller- accessed 7/05 at:

http://www.comptroller.nyc.gov/press/pdfs/jun01-05_letter_toaudit_committee_chair.pdf

Wal-Mart's desire to avoid the CRA is not surprising as it is unclear whether a Wal-Mart Bank would be able to comply with its directives. As noted earlier, Wal-Mart has an underlying interest to suppress area competition rather than lending to see competitors develop. Moreover, we have already discussed how Wal-Mart appears to ignore instances of discrimination and is unable or unwilling to effectively implement a systematic program to root out such practices.

In addition, Wal-Mart's business practices have demonstrated that Wal-Mart growth is synonymous with the destruction of local businesses and consolidation of industries. However, Wal-Mart's presence not only adversely affects local business, but also local financial and other institutions that serve the local community. Local businesses tend to invest with local banks, which often reinvest in local communities. Wal-Mart's global approach to profits does little to invest in local communities. A local bank president explained the effects of Wal-Mart's practice of quickly transferring daily sales back to headquarters in Bentonville, Arkansas in the following way: "Wal-Mart's situation was different in that they took the money and then it went out of state and so it wasn't here long enough for us to actually be able to generate loans and be able to use it for further development in our local community. It almost went out as fast as it came in."⁵⁵ Adding a bank to the company's operations would only accelerate Wal-Mart's disinvestments in communities where it operates by allowing Wal-Mart to not only ship revenues to Bentonville, but also other financial deposits.

Certain Wal-Mart practices suggest that rather than seeking to give back to the community, Wal-Mart approaches its area governments expecting to be on the receiving end of public assistance. For instance, an economic development official in Delaware explained that Wal-Mart "expects" public subsidies to be made available such as free land, property tax breaks, bond financing, and infrastructure assistance.⁵⁶ A Wal-Mart official stated that "it is common" for the company to request subsidies "in about one-third of all [retail] projects."

Wal-Mart pits communities against each other in order to receive public subsidies. Wal-Mart makes local governments often feel compelled to resort to taxpayer-backed incentives because they fear the loss of tax revenue if a Wal-Mart opens in a neighboring locale. A local official who worked on a deal involving a Wal-Mart distribution center in Tennessee remarked: "I couldn't believe we were giving away all this money."⁵⁷

The first ever national report on Wal-Mart subsidies documented through news searches and interviews at least \$1 billion in subsidies from state and local governments. This however is the tip of the iceberg, because public disclosure requirements are minimal. It is impossible to calculate the total value of subsidies because there is no central information source.⁵⁸

⁵⁵ Interview with James Florences, Bank President, Hearne, Texas

⁵⁶ Phil Mattera and Anna Purinton, "Shopping For Subsidies: How Wal-Mart Uses Taxpayer Money to Finance Its Never-Ending Growth," *Good Jobs First*, 5/04

⁵⁷ *ibid*

⁵⁸ *ibid*

Wal-Mart's expectations for receiving public benefits extend also to their own employees. Wal-Mart offers its employees poverty-level wages and health benefits. In 2003, sales associates, the most common job in Wal-Mart, earned on average \$8.23 an hour for annual wages of \$13,861. The 2003 poverty line for a family of three was \$15,260.⁵⁹ If a full-time employee elected for family health insurance coverage, an average employee would have to spend 27 percent of earnings before the health insurance covered any costs.⁶⁰

The result of this below-average compensation is that hundreds of thousands of employees qualify for public assistance. The estimated total amount of federal assistance for which Wal-Mart employees were eligible in 2004 was \$2.5 billion or approximately \$2,100 per employee.⁶¹ In fact, it is reported that Wal-Mart managers actively encourage their employees to utilize public assistance programs such as Medicaid.⁶²

The results of these manager efforts are evident in Wal-Mart employee usage of state public health care programs. Wal-Mart employees use state provided insurance programs more than any other national company. Over the last two years, 13 states have disclosed employers that are major users of state provided health insurance programs which are aimed at low-income families. Wal-Mart has topped the list in all the states, except Massachusetts where it was second and Wisconsin, which did not disclose the usage of employers other than Wal-Mart. In these states, on average for every nine Wal-Mart employees, at least one Wal-Mart family member is getting state-provided health care.

Wal-Mart is well aware of this issue. Wal-Mart Vice President Ray Bracy says, "Yeah, we have a lot of people on state rolls. We wish it wasn't so." However, the company has not taken any significant action to improve their employee compensation as to prevent this widespread usage of public assistance. Instead, the company merely seeks to justify it. President and CEO Lee Scott explains, "In some of our states, the public program may actually be a better value - with relatively high income limits to qualify, and low premiums."⁶³

It is our opinion that Wal-Mart's stated desire to avoid the CRA runs counter to the FDIC mandate that a bank should meet "the convenience and needs of the community." Accepting the Wal-Mart Bank application would not just place our financial system at unnecessary risk but would also reverse the progress of community reinvestment.

Wal-Mart Bank: Unanswered Questions?

⁵⁹ Anthony Bianco and Wendy Zellner, "Is Wal-Mart Too Powerful?" *Business Week*, 10/6/03

⁶⁰ Wal-Mart 2004 Associate Guide and UFCW Analysis

⁶¹ "Harper's Index," *Harper's Magazine*, Vol. 310, No. 1858, 3/05

⁶² <http://www.pbs.org/wgbh/pages/frontline/shows/walmart/interviews/lehman.html>

⁶³ Transcript of Lee Scott Speech, 4/5/05

The FDIC and the public at large must consider other factors when evaluating Wal-Mart's bank application such as what the FDIC notes:

- The financial history and condition of the depository institution.
- The adequacy of the depository institution's capital structure.
- The future earnings prospects of the depository institution.
- Whether the depository institution's corporate power are consistent with the purposes of the FDIC.

However, rather than embracing transparency for this unprecedented application, Wal-Mart has instead hidden key portions of its application. By not publicly disclosing the entire application, the public file is incomplete. We, as the community at large, are unable to conclusively discern the scope and impact of Wal-Mart, the world's largest retailer, having a bank. However we can determine, based on Wal-Mart's unusual actions of failing to publicly disclose the full application and demanding exemption from CRA regulators, that Wal-Mart actively avoids standard and necessary oversight. This is a detrimental character trait for a financial institution.

Conclusion

Our reason for this extensive list of illegal and questionable practices committed by Wal-Mart is due to the importance of this application, and because Wal-Mart's actions must be put in the proper context for the Federal Deposit Insurance Corporation to consider. In example after example, the company has failed to remain accountable to customers, employees, communities, shareholders, and regulators. All of this raises serious concerns about its application. Wal-Mart has an established pattern of irresponsible, and in many cases unethical and illegal, practices. This is precisely the type of information that the FDIC needs in order to fully consider and examine the application of Wal-Mart, and the character of the company behind that application.

In addition, as the world's largest retailer, Wal-Mart has substantial economic resources at its command. The millions of dollars of advertising that it spends each year is not merely to advertise its "everyday low prices everyday" but portray it as an ideal employer of women—notwithstanding the numerous gender discrimination lawsuits – including the largest in the nation's history. It accurately claims to be the largest employer of African-Americans – notwithstanding the numerous discrimination claims at both the state and federal level. They claim to have great health care benefits – a claim at odds with the ongoing effort in more than thirty states that are moving to force the company to pay for health care for its own workers instead of forcing the states to pick up the tab.

All of these points are relevant as you consider this application. Does the FDIC believe the Wal-Mart presentation, and the small, demure insignificant request for this little ILC charter, or does the FDIC look at the entire record, the entire chronology of attempting to enter the banking industry, the whole history of the company, and compare those facts to the criteria for approving charters?

Rejection of this application will uphold the well-grounded policy goals of the nation's financial regulators. For these reasons, the UFCW strongly urges rejection of the proposed purchase.

Thank you for your consideration of this submission. Please feel free to contact us for clarification, amplification or to respond to any questions.

Sincerely,

Michael Wilson