



April 5, 2022

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Re: Support for H.R. 5912, *The Close the ILC Loophole Act*

Dear Chairwoman Waters and Ranking Member McHenry,

The undersigned organizations, which together represent a broad cross-section of regulated banks, credit unions, and consumer protection organizations, write today to strongly urge Congress to promptly close the industrial loan company (ILC) loophole in current law by passing the bipartisan H.R. 5912, *The Close the ILC Loophole Act*, introduced by Representatives Chuy Garcia (D-IL) and Lance Gooden (R-TX).

ILCs operate under a special exemption in federal law that permits any type of organization — including a large technology company or commercial firm — to control a full-service FDIC-insured bank *without* being subject to the same oversight and prudential standards or limitations on the mixing of banking and commerce that Congress has established for the U.S. financial system. When this exception was initially created, ILCs were typically small financial institutions, and companies used the charter for the limited purpose of providing small loans to industrial workers who could not otherwise obtain credit. However, since that time, large commercial companies have used the ILC charter to gain access to the U.S. financial system and control entities that have essentially all of the powers of a full-service

commercial bank, including the ability to accept deposits, make consumer and commercial loans and effectuate payments.¹

Although ILCs have the powers of a commercial bank, their corporate owners — unlike the owners of commercial banks — are not subject to consolidated supervision and regulation by a federal banking agency, which can allow risks to build up in the organization outside the view of any federal supervisor. Simply put, this regulatory loophole creates safety and soundness risks for the institution, risks to the financial system and additional risks for consumers and taxpayers. Currently, ILCs of any size can collect FDIC-insured savings from retail customers and offer mortgages, credit cards and consumer loans, which enable them to operate as full-service banks.

The risks to consumers and the financial system from ILCs are not theoretical. It should come as no surprise that several large companies that used the loophole to acquire ILCs, evading the type of consolidated supervision meant to ensure soundness and regulatory compliance, then subsequently required public bailouts during the 2007-2008 financial crisis.

Moreover, the loophole provides a way for technology firms offering a wide variety of services to acquire a full-service bank along with all of the privileges of a bank — even though Congress has generally prohibited the mixing of banking and commerce. These technology firms thereby gain access to FDIC-insured deposits and potentially a vast trove of consumer financial information all without being subject to the information security and prudential standards that apply to regulated bank holding companies. In addition, because the corporate owners of ILCs are not considered bank holding companies, they also evade the limitations imposed by Congress on the ability of banking organizations to expand into new activities if their insured depository institution subsidiaries have a less than Satisfactory record of performance under the Community Reinvestment Act.²

We recognize that some firms have previously acquired an ILC in reliance on the exception and may continue to operate as such, subject to appropriate safeguards that permit the ILC's federal supervisor to protect the safety and soundness of the FDIC-insured ILC, the financial system and consumers. However, any of these pre-existing ILCs should *not* be permitted to essentially sell that status to an unaffiliated third party, thereby allowing a new company to take advantage of the exception after the loophole is closed by Congress. Permitting such a transfer would allow, for example, a technology firm to evade Congress's action to close the ILC loophole by simply acquiring one of the several dozen ILCs that operate under the exception today. After doing so, the company could alter the institution's business strategy, product set and geographic scope in ways that would make it unrecognizable to its former self and greatly expand — rather than constrict — the risks posed by the exception.

ILC owners should not have the ability to sell their status rights to the highest bidder and therefore exploit consumer data, undermine trust in our banking system and otherwise put our financial system at risk. To put it more simply, allowing existing ILCs to transfer their rights to an unaffiliated party would

¹ See Testimony of Scott G. Alvarez, General Counsel, Board of Governors of the Federal Reserve System, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, October 4, 2007, available at <https://www.federalreserve.gov/newsevents/testimony/alvarez20071004a.htm>.

² See 12 U.S.C. § 1843(j).

be the legislative equivalent of attempting to close the barn door but leaving the side of the barn wide open.

The time is now for Congress to close the ILC loophole before it is further exploited by firms seeking to gain all of the advantages of an FDIC-insured bank charter without the concomitant supervision and regulation that Congress has established for the corporate owners of full-service insured banks. H.R. 5912, *The Close the ILC Loophole Act*, introduced by Representatives Garcia and Gooden, addresses these concerns and is a comprehensive solution to closing the ILC loophole once and for all. As financial services trades and consumer advocates, we come together to fully support this important legislation and encourage the committee to pass it quickly.

Respectfully,

Americans for Financial Reform
Bank Policy Institute
Center for Responsible Lending
Consumer Federation of America
Credit Union National Association
Independent Community Bankers of America
Mid-Size Bank Coalition of America
National Association of Federally-Insured Credit Unions
National Consumer Law Center (on behalf of its low-income clients)
National Community Reinvestment Coalition
U.S. PIRG

cc: Members of the House Financial Services Committee