Dec 15, 2023

The Honorable Sherrod Brown
Chairman
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable John Kennedy
United States Senate
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
437 Russell Senate Office Building
Washington, D.C. 20510

Re: Support for the Close the Shadow Banking Loophole Act

Dear Chairman Brown and Senator Kennedy,

The undersigned organizations, which together represent a broad cross-section of regulated banks, credit unions, and consumer protection organizations, write today to thank you, as well as Senators Braun, Casey, Van Hollen and Wicker, for introducing the Close the Shadow Banking Loophole Act, and to express our support for this critical legislation which would close the industrial loan company (ILC) loophole in current law.

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.

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 evaded the type of consolidated supervision meant to ensure soundness and regulatory compliance. Subsequently, these companies required public bailouts during the 2007-2008 financial crisis.

Moreover, the loophole provides a way for large 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 large 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 (BHCs). 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.

To remedy this disparity, the legislation closes the loophole from the Bank Holding Company Act for the parent companies of any new ILCs. Also, recognizing that some firms have previously acquired an ILC in reliance on the exception and in the spirit of fairness, the legislation "grandfathers" existing ILCs to remain supervised by the FDIC, while prohibiting other commercial companies, as well as other companies not subject to a BHC-equivalent regulatory regime, from acquiring an existing ILC. We feel that this is a balanced approach and commend the effort to seek a compromise to satisfy other stakeholders.

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. As financial services trades and consumer advocates, we come together to fully support this legislation and look forward to working with the committee to advance this legislation in the future.

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 Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low-income clients)
U.S. PIRG

cc: Senator Mike Braun
Senator Bob Casey
Senator Chris Van Hollen
Senator Roger Wicker