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Close Industrial Loan Company Loophole

Background:

Industrial loan companies (ILCs) are the functional equivalent of full-service state-chartered banks, except they are allowed to be controlled by commercial entities. ILC parent companies are not subject to the same federal regulatory supervision as bank parent companies. ILCs engage in commercial and consumer lending as well as deposit taking and have access to the Federal Reserve payments system and FDIC deposit insurance. A loophole in the Bank Holding Company Act allows commercial companies to own or acquire ILCs, subject only to approval by the FDIC. Federal law prohibits all other full-service banks, whether federal or state chartered, from being owned by commercial companies.

When the ILC charter was created, ILCs were very small institutions with limited powers. These charters may be issued by only a handful of states, though they grant the power to operate a bank nationwide. Congress and the bank regulators have been concerned by the ILC loophole and the firms seeking to obtain these charters, such as Walmart and Rakuten (the "Amazon" of Japan). After a three-year statutory moratorium and hiatus of 10 years following enactment of the Dodd-Frank Act, the Federal Deposit Insurance Corporation (FDIC) approved ILC deposit insurance applications from Square Financial Services, Inc., and Nelnet Bank in March 2020. \ In June 2024, Thrivent Bank's application was approved. Ford Credit Bank's application remains pending. New ILCs and applicants have holding companies and affiliates that engage in diverse, non-financial, commercial activities and chose the unique Utah ILC charter to avoid the legal prohibitions and restrictions on commercial activities under the Bank Holding Company Act. ICBA is urging closure of the ILC loophole for new applicants for deposit insurance. ILCs should be subject to the same restrictions and supervision that apply to any bank holding company.

Status:

Given the dangers of mixing banking and commerce nationwide and the regulatory blind spot created by the ILC loophole, ICBA strongly supports efforts in Congress to close the ILC loophole.

- The Close the Shadow Banking Loophole Act (S. 3538), which would amend the Bank Holding Company Act to permanently close ILC loophole while grandfathering existing ILCs, was advanced in the Senate in December by a bipartisan group of Senators, led by Chairman Brown (D-OH) and Senator Kennedy (R-LA). Chairman Brown designated S. 3538 as "priority legislation" for 2024.
- Last Congress, bipartisan legislation to close the ILC Loophole (H.R. 5912) passed out of the House Financial Services Committee.

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ICBA Position:

Mixing Banking and Commerce Gives Big Tech Enormous Economic Power and Puts Consumers Privacy at Risk

The prohibition on mixing banking and commerce was first established in the 1930s in response to concerns about concentration of economic power. Mixing banking and commerce inevitably creates dangerous market distortions and leads to cross-sector consolidation.

In the age of big tech, social media and e-commerce conglomerates, this threat is greater now than it was in the 1930s. We should be cautious before giving these companies yet more reach into the economic life of Americans by allowing them to leverage ownership of bank-like ILCs. The integration of technology and banking firms would not only result in an enormous concentration of financial and technological assets but also would pose conflicts of interest in our banking system and privacy concerns for consumers.

What will happen when social media giants extend their reach into our financial lives? Access to Americans' personal, financial data – monthly paycheck direct deposits, account balances, expense patterns, political contributions, history of late fees, transaction records, etc. – would create a whole new level of targeted marketing and analytics-based price manipulation.

ILCs Create a Blind Spot in Financial Supervision

Commercial companies that own ILCs are not subject to federal consolidated supervision, unlike other companies that own banks. This leaves a dangerous gap in safety and soundness oversight, described as a "blind spot" in a GAO report.

The Bank Holding Company Act provides for consolidated supervision by the Federal Reserve of the holding company and its affiliates as a group. This is important because, according to the Fed, "financial trouble in one part of an organization can spread rapidly to other parts of the organization." Only consolidated supervision allows for risk monitoring across corporate boundaries. Because ILCs are exempt from the Bank Holding Company Act, ILC parent companies are not subject to consolidated supervision. This creates an unacceptable level of risk.

Key Talking Points:

- Commercial ownership of ILCs has the potential to change the American financial services landscape and puts consumer privacy and the safety and soundness of the financial system at risk.
- Support the Close the Shadow Banking Loophole Act (S. 3538) and the introduction of similar legislation in the House. This legislation will prevent big tech companies from obtaining ILC charters while grandfathering existing ILCs.