AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5912
OFFERED BY MR. GARCÍA OF ILLINOIS

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.
This Act may be cited as the “Close the ILC Loop-hole Act”.

SEC. 2. NEW INDUSTRIAL LOAN COMPANIES NOT ELIGIBLE FOR THE EXEMPTION FROM THE DEFINITION OF A BANK.

(a) IN GENERAL.—Section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended by inserting after “similar institution” the following: “which has been approved to receive deposit insurance from the Federal Deposit Insurance Corporation on or before September 23, 2021 (or had an application to receive such deposit insurance pending on or before September 23, 2021, where such application was approved after September 23, 2021, and on or before September 23, 2023),”.

(b) TREATMENT OF DEPOSIT INSURANCE APPLICATIONS PENDING ON SEPTEMBER 23, 2021.—
(1) IN GENERAL.—With respect to an industrial
loan company, industrial bank, or other similar insti-
tution that, on the date of enactment of this Act,
has an application to receive deposit insurance pend-
ing before the Federal Deposit Insurance Corpora-
tion that was submitted on or before September 23,
2021, the Federal Deposit Insurance Corporation—
(A) shall provide for a 90-day public com-
ment period and a public hearing with respect
to such application; and
(B) may only approve such application by
a 2/3 vote of the members of the Board of Di-
rectors of the Federal Deposit Insurance Cor-
poration.

(2) DEADLINE FOR APPROVING APPLICATION.—
If the Federal Deposit Insurance Corporation does
not approve an application described under para-
graph (1) before September 23, 2023, such applica-
tion shall be deemed to have been denied.

(3) RULE OF CONSTRUCTION.—Except to the
extent explicitly provided in this subsection, this sub-
section may not be construed to affect the authority
of the Federal Deposit Insurance Corporation to
consider deposit insurance applications under sec-
tions 5 and 6 of the Federal Deposit Insurance Act

(c) AUTHORITY WITH RESPECT TO DEPOSIT INSUR-
ANCE APPLICATIONS GRANTED AFTER SEPTEMBER 23,
2021.—

(1) IN GENERAL.—With respect to a company
that has control over a covered industrial loan com-
pany which has been approved to receive deposit in-
surance from the Federal Deposit Insurance Cor-
poration after September 23, 2021 (the “parent
company”), the primary financial regulatory agency
of such parent company may take the following ac-
tions:

(A) Conduct such examinations of, and ob-
tain reports from, the parent company or any
subsidiary of the parent company (other than a
bank) as the agency determines necessary or
appropriate to assess each of the following:

(i) The financial condition of such
parent company or subsidiary.

(ii) The systems of such parent com-
pany or subsidiary for maintaining and
controlling financial and operating risks.

(iii) The transactions of such parent
company or subsidiary with depository in-
stitution subsidiaries of the parent company.

(B) Impose any conditions or restrictions on the parent company or any subsidiary of the parent company (other than a bank), including restricting or prohibiting transactions between the parent company or subsidiary and any depository institution subsidiary of the parent company, if such conditions or restrictions would promote the safety and soundness of the parent company or any of its depository institution subsidiaries.

(2) DEFINITIONS.—In this subsection:

(A) COVERED INDUSTRIAL LOAN COMPANY.—The term “covered industrial loan company” means an industrial loan company, industrial bank, or other similar institution that—

(i) on the date of the enactment of this Act, is described under section 2(c)(2)(H) of the Bank Holding Company Act of 1956; and 

(ii) has an application to receive de-

posit insurance from the Federal Deposit

(B) PRIMARY FINANCIAL REGULATORY AGENCY.—With respect to a company, the term “primary financial regulatory agency”—

(i) has the meaning given that term under section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(ii) with respect to a parent company that does not have a primary financial regulatory agency under clause (i), means the Federal Deposit Insurance Corporation.

(C) OTHER DEFINITIONS.—The terms “bank” and “depository institution” have the meaning given those terms, respectively, under section 2 of the Bank Holding Company Act of 1956.

SEC. 3. SUPERVISION OF PARENT COMPANIES OF INDUSTRIAL LOAN COMPANIES.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by inserting after section 5 the following:
“SEC. 6. SUPERVISION OF PARENT COMPANIES OF INDUSTRIAL LOAN COMPANIES.

“(a) Authority Relating to a Parent Company of an Industrial Loan Company.—

“(1) In general.—Subject to paragraph (2), the Federal Deposit Insurance Corporation shall have the same authority to require a parent company of an industrial loan company to make reports and submit to examinations as the Board has with respect to a bank holding company.

“(2) Conditions.—In carrying out the report and examination authority described in paragraph (1) and with respect to the parent company of an industrial loan company which has been approved to receive deposit insurance from the Federal Deposit Insurance Corporation on or before September 23, 2021, the Federal Deposit Insurance Corporation shall tailor any requirements to the size, complexity, and nature of the business of such parent company.

“(3) Enforcement.—The Federal Deposit Insurance Corporation and may enforce such report and examination authority under section 8 of the Federal Deposit Insurance Act to the same extent as if the Federal Deposit Insurance Corporation were the primary financial regulatory agency for the parent company of an industrial loan company.
“(b) RULEMAKING.—The Federal Deposit Insurance Corporation shall have the authority to issue rules to implement this section.

“(c) PARENT COMPANY OF AN INDUSTRIAL LOAN COMPANY DEFINED.—In this section, the term ‘parent company of an industrial loan company’ means a company—

“(1) that is not directly or indirectly subject to a primary financial regulatory agency (as defined under section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act); and

“(2) that has control over an entity that—

“(A) is an industrial loan company, industrial bank, or other similar institution;

“(B) is not a bank; and

“(C) is not a person regulated by a State insurance regulator, as such term is defined section 1002 of the Consumer Financial Protection Act of 2010.”.

SEC. 4. CHANGE OF CONTROL.

(a) In GENERAL.—Except as provided in subsections (b) and (c), the appropriate Federal banking agency shall disapprove a change in control, as provided in section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)), of an industrial loan company that is not a bank (as de-
fined under section 2(c) of the Bank Holding Company
Act of 1956 (12 U.S.C. 1841(e)(2)), as amended by this
Act).

(b) EXCEPTIONS.—Subsection (a) shall not apply to
a change in control of an industrial loan company—

(1) that—

(A) is in danger of default, as determined
by the appropriate Federal banking agency,
provided that the acquirer is an entity whose
gross revenues as well as those of its affiliates
from activities that are financial in nature (as
defined in section 4(k) of the Bank Holding
Company Act of 1956 (12 U.S.C. 1843(k)) and,
if applicable, from the ownership or control of
one or more insured depository institutions,
represent no less than 85 percent of the consoli-
dated gross annual revenues of the acquiring
entity;

(B) is the result of the acquisition of con-

control of the industrial loan company by a com-
pany that was an affiliate of the industrial loan
comp any on September 23, 2021, through an
internal corporate reorganization of a company
that directly or indirectly controlled the indus-
trial loan company on that date;
(C) results from an acquisition of voting shares of a publicly-traded company that controls an industrial loan company if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert) holds less than 25 percent of any class of the voting shares of the publicly-traded company; or

(D) will be controlled, directly or indirectly, by an entity subject to consolidated supervision by the Board of Governors of the Federal Reserve System as a—

(i) bank holding company;

(ii) savings and loan holding company;

or

(iii) foreign bank treated as of July 1, 2020, as a bank holding company under the International Banking Act of 1978 (12 U.S.C. 3101 et seq.); and

(2) that has obtained all regulatory approvals otherwise required for such change of control under any applicable Federal or State law, including section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)).

(c) CHANGE OF CONTROL SUBJECT TO LIMITATIONS.
(1) IN GENERAL.—Subsection (a) shall not apply to a change of control of an industrial loan company that was approved for deposit insurance on or before September 23, 2021, and that was not subject to an exception in subsection (b), if—

(A) after the date of the change of control, the industrial loan company does not—

(ii) offer—

(I) any product or service, other than those products or services that the industrial loan company consistently and lawfully offered and sold to unaffiliated third parties prior to the date of application of a change of control, as determined by the Financial Stability Oversight Council when approving a change of control under this subsection; or

(II) any product or service that the Financial Stability Oversight Council determines—

(aa) subject to a hearing described under paragraph (7), was offered by the industrial loan company for the purpose of evad-
(bb) is not consistent with the preponderance of activities that the industrial loan company offered before the date of application of a change of control;

(ii) offer or market products or services of an affiliate that are not permissible for bank holding companies to offer or market under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), or permit products or services of the industrial loan company to be offered or marketed by or through an affiliate (other than an affiliate that engages only in activities permissible for bank holding companies under such section 4(k)), unless such products or services were being so offered or marketed on or before September 23, 2021, and then only in the same manner in which they were being offered or marketed on or before such date; and

(iii) permit or incur an overdraft (including an intraday overdraft) in a Federal
Reserve bank account of such industrial loan company on behalf of an affiliate, other than an overdraft described in paragraph (3);

(B) on and after the date of the change of control, the industrial loan company only effects a material change in or deviation from the industrial loan company’s business plan that is likely to result in increases in the industrial loan company’s total assets, total consolidated revenue, or financial statement categories or subcategories (such as types of loans, funding, revenue, or capital) of 15 percent or more, if—

(i) the industrial loan company submits such change or deviation to the Federal Deposit Insurance Corporation prior to the change or deviation taking effect;

(ii) the Federal Deposit Insurance Corporation determines that such change or deviation—

(I) will not increase threats to the financial stability of the United States, erode consumer or investor protection, reduce competition, or oth-
erwise undermine the separation of
banking and commerce; and

(II) promotes the safety and
soundness of the industrial loan com-
pany; and

(iii) the Federal Deposit Insurance
Corporation provides written approval to
the industrial loan company for such
change or deviation;

(C) the company acquiring control of the
industrial loan company has obtained all regu-
latory approvals otherwise required for such
change of control under any applicable Federal
or State law, including section 7(j) of the Fed-
eral Deposit Insurance Act; and

(D) the Financial Stability Oversight
Council determines, in accordance with such
procedures as the Council may establish by rule
or order, that the change of control will not in-
crease threats to the financial stability of the
United States, erode consumer or investor pro-
tection, reduce competition, or otherwise under-
mine the separation of banking and commerce.

(2) AUTHORITY TO USE NEW METHODS AND
TECHNOLOGIES IN OFFERING PRODUCTS AND SERV-
ICES.—The prohibition under paragraph (1)(A)(i) shall not prohibit an industrial loan company from continuing to innovate and utilize new methods and technologies in offering products and services that are fundamentally consistent with the business of the industrial loan company prior to the date of application of a change of control, if such methods and technologies are consistent with all other applicable laws and regulations.

(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of paragraph (1)(A)(iii), an overdraft is described in this paragraph if such overdraft—

(A) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

(B) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the book-entry system of the Board of Governors of the Federal Reserve System.
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(4) Financial stability oversight council process.—

(A) Public comment and hearing.—In considering an application for change in control of an industrial loan company under paragraph (1)(D), the Financial Stability Oversight Council—

(i) shall provide a period of 90 days beginning on the date of receipt of such application for public comment with respect to such application; and

(ii) shall, not later than 90 days after receipt of such application, convene a public hearing with respect to such application.

(B) Vote and attestation.—

(i) In general.—The Financial Stability Oversight Council may only approve an application described in subparagraph (A) by vote as follows:

(I) An affirmative vote of not fewer than 2/3 of the voting members of the Financial Stability Oversight Council serving on the Council at the time of application shall vote, on a
nondelegable basis, to approve such application.

(II) An affirmative vote of the Chairperson of the Council.

(ii) ATTESTATION.—The voting members described in subparagraph (A) shall submit, along with such affirmative vote, a written attestation that each of the criteria described in paragraph (1) has been met.

(5) MONITORING COMPLIANCE.—An industrial loan company that has a change of control approved under this subsection shall, subject to such procedures as the Federal Deposit Insurance Corporation may establish, submit an annual report to the Corporation providing such information as the Corporation determines to be necessary or appropriate to monitor the compliance of the industrial loan company with the limitations in subparagraphs (A) and (B) of paragraph (1).

(6) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—

(A) IN GENERAL.—With respect to an industrial loan company for which a change of control is approved under this subsection that fails to comply with the limitations in subpara-
graphs (A) and (B) of paragraph (1), each entity that controls the industrial loan company shall, within 1 year after the first day of such noncompliance, either—

(i) divest control of the industrial loan company; or

(ii) register with, and obtain approval to become, a bank holding company in accordance with the Bank Holding Company Act of 1956.

(B) RULEMAKING AND ENFORCEMENT.—

The Federal Deposit Insurance Corporation shall issue rules necessary to effectuate the requirement set forth in subparagraph (A)(i), and the parent company of an industrial loan company shall be considered to be an institution-affiliated party under section 8 of the Federal Deposit Insurance Act for purposes of enforcement of the requirements under subparagraph (A).

(7) EVASION HEARING.—With respect to a product or service that the Financial Stability Oversight Council determines under paragraph (1)(A)(i)(II) was offered by an industrial loan company for the purpose of evading the prohibition de-
scribed under paragraph (1)(A)(i)(I), the Council shall, prior to any final determination by the Council with respect to a change of control application, provide the parties involved in the change of control of the industrial loan company with an opportunity for a hearing for the purpose of demonstrating that such product or service was not offered for purposes of evasion.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term “appropriate Federal banking agency” has the meaning given that term under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(2) INDUSTRIAL LOAN COMPANY.—The term “industrial loan company” means an industrial loan company, industrial bank, or other similar institution.

(3) INSURED DEPOSITORY INSTITUTION.—The term “insured depository institution” has the meaning given that term under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).
SEC. 5. APPLICATION WITH RESPECT TO CONTRACTS AND OTHER AGREEMENTS.

This Act and the amendments made by this Act may not be construed to affect or impair—

(1) the authority of the Federal Deposit Insurance Corporation to enter into any agreement with a parent company of an industrial loan company (as defined in section 6 of the Bank Holding Company Act of 1956, as added by section 3 of this Act) or an industrial loan company (as defined in section 4 of this Act), or to impose any condition in connection with the Corporation's approval of an application; or

(2) the validity of any such agreement entered into before the date of the enactment of this Act.

SEC. 6. GAO STUDY.

(a) STUDY.—The Comptroller General of the United States shall carry out a study on the effects of industrial loan companies, industrial banks, and other similar institutions on the U.S. economy, including the effect on competitiveness, market structure, and different industries.

(b) REPORT.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Comptroller General shall issue a report to the Congress
containing all findings and determinations made in carrying out the study under subsection (a).