AFSA
AMERICAN FINANCIAL SERVICES ASSOCIATION

December 6, 2022

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Pat Toomey
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Brown and Ranking Member Toomey:

On behalf of the American Financial Services Association (AFSA),[1] I write to you today to oppose the *Close the Shadow Banking Loophole Act*. We appreciate the Committee's interest surrounding the regulatory oversight of industrial banks and hope to provide clarity regarding these types of sound financial institutions. This legislation would undoubtedly hinder financial innovation that provides unique solutions for many niche types of businesses in the banking system.

As know you, industrial banks (also referred to as industrial loan companies or ILCs) are Federal Deposit Insurance Corporation (FDIC)-regulated depository institutions chartered under the laws of California, Colorado, Hawaii, Indiana, Minnesota, Nevada, and Utah. ILCs collectively hold almost $217 billion in assets and $179 billion in deposits; both amounts are less than 1% of the total amount held by all insured depositories.[2]

Industrial banks are subject to the same banking laws and are regulated in the same manner as other depository institutions. The Congressional Research Service has noted, "ILCs are subject to the same laws and regulations as all state banks."[3] Additionally, industrial banks are subject to the same restrictions and requirements, regulatory oversight, and safety and soundness exams as any other kind of FDIC-insured depository institution, including consumer protection, deposit insurance, Community Reinvestment Act, and other requirements.[4]

Earlier this year, a significant portion of the American auto industry, including auto dealers, auto manufacturers, and vehicle finance companies, voiced their opposition to a companion bill introduced in the House of Representatives, H.R. 5912 – *the Close the ILC Loophole Act.* Undoubtedly, *the Close the Shadow Banking Loophole Act* will also adversely impact the vehicle industry by eliminating decades-long ILC charters and unnecessarily prohibiting future auto-

[1] Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance
[2] Utah Center For Financial Services: The Industrial Bank Industry Year End 2021 (2021)
[3] Congressional Research Service: Industrial Loan Companies (ILCs): Background and Policy Issues (2020)
[4] FDIC, Final Rule: Parent Companies of Industrial Banks and Industrial Loan Companies (86 FR 10703), (2021)

related businesses from seeking an ILC charter. In a time of economic uncertainty, consumers, auto manufacturers, and dealers alike need consistent, reliable access to financing. Existing and future industrial banks provide this valuable service.

While not required to be regulated as federal bank holding companies, owners of industrial banks are not "unregulated." Indeed, they are subject to many of the same requirements as bank holding companies, such as strict restrictions on transactions with their bank affiliates. They are regulated under state law, they are subject to examination by the FDIC, and to "prompt corrective action" and capital guarantee requirements if the banks they control encounter financial difficulties.

Currently, the Bank Holding Company Act exemptions apply to many financial institutions, including major auto manufacturers and other nonbank entities. These exemptions benefit bank customers by introducing additional competition into the marketplace, without increased risk to the deposit insurance system. Unfortunately, the draft bill does the opposite and decreases competition within the banking industry by banning any future company from receiving industrial bank charter approval.

For decades, anti-industrial bank advocates have argued that if certain types of companies received an industrial bank charter, the banking system could collapse. However, ILCs have outperformed all other FDIC-insured institutions for over 20 years.[5] According to the FDIC, "industrial banks have been assigned examination ratings for the capital and earnings components that, on average, were very similar to those of other insured institutions."

During the past five decades, industrial banks have compiled among the best records of capitalization and profitability of any group of banks in the nation, and they represent a sector of the financial services industry that should be encouraged to grow, not eliminated.

We appreciate your time and the opportunity to provide insight into the regulatory oversight of industrial banks under your committee's jurisdiction. Should you need additional information or have any questions, please feel free to contact me at cwinslow@afsamailorg or (202) 776-7300.

Sincerely,

Celia Winslow

Celia Winslow
Senior Vice President
American Financial Services Association

[5] NAIB, Industrial Banks: A history of Stability & Strength

June 13, 2022

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

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

Dear Chairwoman Waters and Ranking Member McHenry:

The undersigned organizations, trade associations and companies that represent a significant portion of the American vehicle industry, write today to urge the House Committee on Financial Services to oppose H.R. 5912 – *the Close the ILC Loophole Act*. This bill as drafted will adversely impact the vehicle industry by eliminating decades-long Industrial Loan Company (ILCs) charters and unnecessarily creating a prohibition on future auto-related businesses seeking an ILC charter.

Today, there are several vehicle finance companies operating with ILC charters. These financial institutions help support a range of functions within the auto industry, including vehicle finance providers and their affiliates, auto dealers, and the customers they serve nationwide. ILC charters uniquely benefit niche industries like the vehicle sector by providing credit products and services not generally offered by traditional financial institutions.

At the height of the COVID-19 pandemic, vehicle companies with ILC charters were qualified by the Small Business Administration to lend funds from the Paycheck Protection Program. This allowed some to quickly provide critical economic assistance to local dealerships, supporting small businesses and keeping thousands of workers employed during a public health crisis.[1]

Like other insured financial institutions, ILCs are supervised by the Federal Deposit Insurance Corporation (FDIC) and chartered under state banking authorities. The Congressional Research Service has noted, "ILCs are subject to the same laws and regulations as all state banks."[2] Additionally, they are subject to safety and soundness requirements and must comply with federal consumer protection, community reinvestment, and anti-money laundering laws.

When Congress passed the *Competitive Equality Banking Act of 1987* (CEBA), it intentionally separated ILCs (and other types of financial institutions) from the *Bank Holding Company Act* (BHCA) and required ILCs to be FDIC-insured. In addition, Congress has requested the Government Accountability Office to study the safety and soundness of ILCs several times and has not recommended a significant change or repeal of this unique regulatory structure.[3]

Given the dramatic nature of the drafted *Close the ILC Loophole Act*, we encourage Congress to reconsider legislation that curtails transformative financial innovation. ILCs help vehicle

[1] https://www.autonews.com/finance-insurance/toyota-financial-secured-500-million-ppp-execs-say
[2] https://crsreports.congress.gov/product/pdf/R/R46489
[3] https://www.gao.gov/assets/gao-12-160.pdf

businesses further differentiate their products and services, facilitating greater market competition and reducing potential corporate consolidation, especially during various economic cycles.

As the American vehicle industry moves through the 21st century with a renewed focus on prioritizing investments in a clean energy economy and expanding domestic mobility, we hope Congress can work together without hampering resources within a rapidly changing landscape and highly competitive global marketplace.

Thank you for your consideration regarding this important issue.

Sincerely,

Alliance for Automotive Innovation
American Automotive Policy Council
American Financial Services Association
Autos Drive America
American International Automobile Dealers Association
BMW Bank of North America
Ford Motor Company
National Automobile Dealers Association
National Independent Automobile Dealers Association
Nissan Motor Acceptance Company
Toyota
VW Credit, Inc.