AFSA
AMERICAN FINANCIAL SERVICES ASSOCIATION

December 15, 2023

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

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

Dear Chairman Brown and Ranking Member Scott:

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. At the end of 2022, ILCs collectively held $248 billion in assets and $197 billion in deposits; both amounts are less than 1% of the total amount held by all insured depositories.[2] Furthermore, ILCs (9.9%) have a higher Equity to Assets ratio than banks (9.4%) and remain strong while navigating current economic uncertainties.[3]

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."[4] 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.[5]

To highlight the importance and the benefits ILCs bring to the financial services marketplace, a group of bipartisan Senators, including several Banking, Housing, and Urban Affairs Committee members recently wrote to the FDIC to voice their support by stating, "The ILC charter allows new and expanding credit opportunities in the regulated banking sector."[6] Furthermore, the group

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[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 2022 (2023)
[3] *Id.*
[4] Congressional Research Service: Industrial Loan Companies (ILCs): Background and Policy Issues (2020)
[5] FDIC, Final Rule: Parent Companies of Industrial Banks and Industrial Loan Companies (86 FR 10703), (2021)
[6] Senators express support for ILC in letter to FDIC (September 15, 2022)

noted "ILCs can enhance sector or local economies in ways traditional financial institutions do not."[7]

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-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.

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.[8]

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.

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

[7] *Id.*
[8] GAO Report, https://www.gao.gov/assets/gao-12-160.pdf