

January 23, 2024

The Honorable Sherrod Brown
U.S. Senate
Washington, D.C. 20510

The Honorable John Kennedy
U.S. Senate
Washington, D.C. 20510

The Honorable Mike Braun
U.S. Senate
Washington, D.C. 20510

The Honorable Bob Casey
U.S. Senate
Washington, D.C. 20510

The Honorable Chris Van Hollen
U.S. Senate
Washington, D.C. 20510

The Honorable Roger Wicker
U.S. Senate
Washington, D.C. 20510

Re: Support for the Close the Shadow Banking Loophole Act (S. 3538)

Dear Senators Brown, Kennedy, Braun, Casey, Van Hollen, and Wicker:

On behalf of the Independent Community Bankers of America (ICBA), the undersigned state banking associations, and the thousands of community banks we represent, we write to express our strong support for the Close the Shadow Banking Loophole Act (S. 3538), which would amend the Bank Holding Company Act to permanently close the industrial loan company (ILC) loophole while grandfathering existing ILCs. This legislation will prevent Big Tech, online mass retailers, and other large commercial firms from exploiting this loophole to gain access to the federal deposit insurance safety net and put our financial system at risk.

While ILCs are not new, non-financial firms' pursuit of the ILC charter could rapidly shift the financial landscape. Notably, Rakuten, the "Amazon of Japan," recently sought an ILC charter. As long as the loophole remains open, commercial firms will race to acquire ILCs, adding bank-like powers without the oversight and supervision that applies to other bank holding companies. Commercial company ownership of ILCs runs counter to our nation's long-standing policy of separating banking and commerce, which is fundamental to a diverse and prosperous economy.

ILCs are the functional equivalent of federally insured, state-chartered banks and engage in a broad range of consumer and business credit and other financial services. Though chartered by only a handful of states, ILCs operate on a nationwide basis, providing consumer and commercial loans, savings and certificate of deposit accounts, and exporting interest rates to all 50 states. ILCs are supervised by the FDIC, and their parent companies are subject to limited supervision by the same agency. However, regulation of ILC parents is significantly less robust than bank holding companies' consolidated supervision by the Federal Reserve and the Bank Holding Company Act's prohibitions on commercial activities. For example, the FDIC's authority to examine the commercial parent is limited to what affects the ILC. This is inadequate. A regulator must have a complete picture of the commercial parent, its risk management practices, and its capital standards in order to ensure commercial ownership does not threaten the federal safety net. Any company that wishes to own a full-service bank should be subject to the same restrictions and supervision that apply to any other bank holding company. The ILC loophole creates a dangerous regulatory blind spot.

In an era of Big Data, social media and e-commerce conglomerates, artificial intelligence, and financial technology, mixing banking and commerce extends the reach of these firms into the lives of American consumers and creates a new dimension of risk to consumer privacy, price manipulation, and fraud.

What's more, bank independence from commercial activities is essential to their ability to assess risk and create fair access to credit based on credit worthiness and economic potential. Credit allocation would be jeopardized if commercial firms were allowed to own or control banks or their functional equivalents.

Thank you for introducing the Close the Shadow Banking Loophole Act. We look forward to working with you to advance it.

Sincerely,

Independent Community Bankers of America

Arkansas Community Bankers

Independent Community Bankers of Colorado

Community Bankers Association of Georgia

Indiana Bankers Association

Community Bankers Association of Kansas

Louisiana Bankers Association

BankIn Minnesota

Missouri Independent Bankers Association

Nebraska Independent Community Bankers

New Jersey Bankers Association

Independent Bankers Association of New York State

Independent Community Banks of North Dakota

Community Bankers Association of Oklahoma

Independent Banks of South Carolina

Tennessee Bankers Association

Virginia Association of Community Banks

Community Bankers of West Virginia

Wyoming Bankers Association

Alabama Bankers Association

California Community Banking Network

Florida Bankers Association

Community Bankers Association of Illinois

Community Bankers of Iowa

Bluegrass Community Bankers Association

Community Bankers of Michigan

Mississippi Bankers Association

Montana Independent Bankers

Community Bankers Association of New Hampshire

Independent Community Bankers Association of New Mexico

North Carolina Bankers Association

Community Bankers Association of Ohio

Pennsylvania Association of Community Bankers

Independent Community Bankers of South Dakota

Independent Bankers Association of Texas

Community Bankers of Washington

Wisconsin Bankers Association