II

117TH CONGRESS
2D SESSION

S. 5189

To address applications for deposit insurance submitted by industrial banks to the Federal Deposit Insurance Corporation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2022

Mr. BROWN (for himself, Mr. CASEY, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To address applications for deposit insurance submitted by industrial banks to the Federal Deposit Insurance Corporation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Close the Shadow Banking Loophole Act".

SEC. 2. INDUSTRIAL BANKS.

(a) DEFINITIONS.—In this section:

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agen-

cy'' has the meaning given the term in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(2) CORPORATION.—The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(3) INDUSTRIAL BANK.—The term ''industrial bank'' means an entity described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)), as in effect on the day before the date of enactment of this Act.

(b) EXCEPTION FROM DEFINITION OF BANK.—Section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended, in the matter preceding clause (i), 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, with respect to such an entity to which section 2(c) of the Close the Shadow Banking Loophole Act applies, which is in compliance with such section 2(c)), and''.

(c) TREATMENT OF DEPOSIT INSURANCE APPLICATIONS PENDING ON SEPTEMBER 23, 2021.—

(1) IN GENERAL.—With respect to an industrial bank that, on the date of enactment of this Act, has an application to receive deposit insurance pending

before the Corporation that was submitted on or before September 23, 2021, the Corporation—

(A) shall provide for a 90-day public comment period and a public hearing with respect to that application; and

(B) may only approve that application by a ⅔ vote of the members of the Board of Directors of the Corporation.

(2) DEADLINE FOR APPROVING APPLICATION.—If the Corporation does not approve an application described in paragraph (1) before September 23, 2023, that application shall be deemed to have been denied.

(3) RULE OF CONSTRUCTION.—Except to the extent explicitly provided in this subsection, this subsection may not be construed to affect the authority of the Corporation to consider deposit insurance applications under sections 5 and 6 of the Federal Deposit Insurance Act (12 U.S.C. 1815, 1816).

(d) AUTHORITY WITH RESPECT TO DEPOSIT INSURANCE APPLICATIONS GRANTED AFTER SEPTEMBER 23, 2021.—

(1) DEFINITIONS.—In this subsection:

(A) BANK; DEPOSITORY INSTITUTION.—The terms "bank" and "depository institution" have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), as amended by this section.

(B) COVERED INDUSTRIAL LOAN COMPANY.—The term ''covered industrial loan company'' means an industrial bank that has an application to receive deposit insurance from the Corporation approved after September 23, 2021.

(C) PARENT COMPANY.—The term ''parent company'' means an entity that has control over a covered industrial loan company.

(D) PRIMARY FINANCIAL REGULATORY AGENCY.—With respect to a parent company, the term ''primary financial regulatory agency''—

(i) has the meaning given the term in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301); and

(ii) with respect to a parent company for which clause (i) does not apply, means the Corporation.

(2) AUTHORITY.—The primary financial regulatory agency with respect to a parent company may

take any of the following actions with respect to the parent company:

(A) Conduct such examinations of, and obtain 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 the parent company or subsidiary.

(ii) The systems of the parent company or subsidiary for maintaining and controlling financial and operating risks.

(iii) The transactions of the parent company or subsidiary with depository institution 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 those conditions or restrictions would promote the safety and soundness of the parent company or any of its depository institution subsidiaries.

(e) CHANGE OF CONTROL.—

(1) IN GENERAL.—Except as provided in paragraph (2), 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 bank.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to a change in control of an industrial bank—

(A) that—

(i) is in danger of default, as determined by the appropriate Federal banking agency, provided that the entity acquiring control of the industrial bank is an entity described in clause (iii);

(ii) results from the acquisition of voting shares of an issuer that controls the industrial bank and the securities of which are listed on a national securities exchange, 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, and does not otherwise exercise control over, that issuer; or

(iii) 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 that is 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

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

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 (12 U.S.C. 1844) the following:

"SEC. 6. SUPERVISION OF PARENT COMPANIES OF INDUSTRIAL LOAN COMPANIES.

"(a) DEFINITIONS.—In this section:

"(1) CORPORATION.—The term 'Corporation' means the Federal Deposit Insurance Corporation.

"(2) PARENT COMPANY OF AN INDUSTRIAL LOAN COMPANY.—The term 'parent company of an industrial loan company' means a company—

"(A) that is not directly or indirectly subject to a primary financial regulatory agency (as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301)); and

"(B) that has control over an entity that—

"(i) is an industrial loan company, industrial bank, or other similar institution;

"(ii) is not a bank; and

"(iii) is not a person regulated by a State insurance regulator, as that term is defined in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481).

"(b) AUTHORITY RELATING TO A PARENT COMPANY OF AN INDUSTRIAL LOAN COMPANY.—

"(1) IN GENERAL.—Subject to paragraph (2), the Corporation shall have the same authority to require a parent company of an industrial loan company (or a subsidiary of such a parent company) to make reports and submit to examinations as the Board has with respect to a bank holding company or a subsidiary of 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 that has been approved to receive deposit insurance from the Corporation on or before September 23, 2021, the Corporation shall tailor any requirements to the size, complexity, and nature of the business of that parent company.

"(3) ENFORCEMENT.—The Corporation may, using the authorities under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), enforce the report and examination authority under this section with respect to a parent company of an industrial loan company (or a subsidiary of such a parent company) to the same extent as the Board may enforce the report and examination authority of the Board with respect to a bank holding company or a subsidiary of a bank holding company.

"(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed as a reduction of the authority of the Corporation, as in effect on the date of enactment of this section.

"(d) RULEMAKING.—The Corporation may issue rules to implement this section.".

SEC. 4. APPLICATION WITH RESPECT TO CONTRACTS AND OTHER AGREEMENTS.

(a) DEFINITION.—In this section, the term "industrial loan company" means an industrial loan company, industrial bank, or other similar institution.

(b) APPLICATION.—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, or to impose any condition in connection with the approval by the Corporation of an application; or

(2) the validity of any agreement described in paragraph (1) entered into before the date of enactment of this Act.

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