

118TH CONGRESS
1ST SESSION

S. 3538

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 14, 2023

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Close the Shadow
5 Banking Loophole Act”.

6 **SEC. 2. INDUSTRIAL BANKS.**

7 (a) DEFINITIONS.—In this section:

8 (1) APPROPRIATE FEDERAL BANKING AGEN-
9 CY.—The term “appropriate Federal banking agen-

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

4 (2) CORPORATION.—The term “Corporation”
 5 means the Federal Deposit Insurance Corporation.

6 (3) INDUSTRIAL BANK.—The term “industrial
 7 bank” means an entity described in section
 8 2(c)(2)(H) of the Bank Holding Company Act of
 9 1956 (12 U.S.C. 1841(c)(2)(H)), as in effect on the
 10 day before the date of enactment of this Act.

11 (b) EXCEPTION FROM DEFINITION OF BANK.—Sec-
 12 tion 2(c)(2)(H) of the Bank Holding Company Act of
 13 1956 (12 U.S.C. 1841(c)(2)(H)) is amended, in the mat-
 14 ter preceding clause (i), by inserting after “similar institu-
 15 tion” the following: “which has been approved to receive
 16 deposit insurance from the Federal Deposit Insurance
 17 Corporation on or before September 23, 2021 (or, with
 18 respect to such an entity to which section 2(c) of the Close
 19 the Shadow Banking Loophole Act applies, which is in
 20 compliance with such section 2(c)), and”.

21 (c) TREATMENT OF DEPOSIT INSURANCE APPLICA-
 22 TIONS PENDING ON SEPTEMBER 23, 2021.—

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

1 before the Corporation that was submitted on or be-
 2 fore September 23, 2021, the Corporation—

3 (A) shall provide for a 90-day public com-
 4 ment period and a public hearing with respect
 5 to that application; and

6 (B) may only approve that application by
 7 a $\frac{2}{3}$ vote of the members of the Board of Di-
 8 rectors of the Corporation.

9 (2) DEADLINE FOR APPROVING APPLICATION.—

10 If the Corporation does not approve an application
 11 described in paragraph (1) before September 30,
 12 2024, that application shall be deemed to have been
 13 denied.

14 (3) RULE OF CONSTRUCTION.—Except to the
 15 extent explicitly provided in this subsection, this sub-
 16 section may not be construed to affect the authority
 17 of the Corporation to consider deposit insurance ap-
 18 plications under sections 5 and 6 of the Federal De-
 19 posit Insurance Act (12 U.S.C. 1815, 1816).

20 (d) AUTHORITY WITH RESPECT TO DEPOSIT INSUR-
 21 ANCE APPLICATIONS GRANTED AFTER SEPTEMBER 23,
 22 2021.—

23 (1) DEFINITIONS.—In this subsection:

24 (A) BANK; DEPOSITORY INSTITUTION.—

25 The terms “bank” and “depository institution”

1 have the meanings given those terms in section
2 of the Bank Holding Company Act of 1956
3 (12 U.S.C. 1841), as amended by this section.

4 (B) COVERED INDUSTRIAL LOAN COM-
5 PANY.—The term “covered industrial loan com-
6 pany” means an industrial bank that has an
7 application to receive deposit insurance from
8 the Corporation approved after September 23,
9 2021.

10 (C) PARENT COMPANY.—The term “parent
11 company” means an entity that has control over
12 a covered industrial loan company.

13 (D) PRIMARY FINANCIAL REGULATORY
14 AGENCY.—With respect to a parent company,
15 the term “primary financial regulatory agen-
16 cy”—

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

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

24 (2) AUTHORITY.—The primary financial regu-
25 latory agency with respect to a parent company may

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

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

8 (i) The financial condition of the par-
9 ent company or subsidiary.

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

13 (iii) The transactions of the parent
14 company or subsidiary with depository in-
15 stitution subsidiaries of the parent com-
16 pany.

17 (B) Impose any conditions or restrictions
18 on the parent company or any subsidiary of the
19 parent company (other than a bank), including
20 restricting or prohibiting transactions between
21 the parent company or subsidiary and any de-
22 pository institution subsidiary of the parent
23 company, if those conditions or restrictions
24 would promote the safety and soundness of the

1 parent company or any of its depository institu-
2 tion subsidiaries.

3 (e) CHANGE OF CONTROL.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the appropriate Federal banking agency
6 shall disapprove a change in control, as provided in
7 section 7(j) of the Federal Deposit Insurance Act
8 (12 U.S.C. 1817(j)), of an industrial bank.

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

11 (A) that—

12 (i) is in danger of default, as deter-
13 mined by the appropriate Federal banking
14 agency, provided that the entity acquiring
15 control of the industrial bank is an entity
16 described in clause (iii);

17 (ii) results from the acquisition of vot-
18 ing shares of an issuer that controls the in-
19 dustrial bank and the securities of which
20 are listed on a national securities ex-
21 change, if, after the acquisition, the acquir-
22 ing shareholder (or group of shareholders
23 acting in concert) holds less than 25 per-
24 cent of any class of the voting shares of,

1 and does not otherwise exercise control
2 over, that issuer; or

3 (iii) will be controlled, directly or indi-
4 rectly, by an entity subject to consolidated
5 supervision by the Board of Governors of
6 the Federal Reserve System as a—

7 (I) bank holding company;

8 (II) savings and loan holding
9 company; or

10 (III) foreign bank that is treated,
11 as of July 1, 2020, as a bank holding
12 company under the International
13 Banking Act of 1978 (12 U.S.C. 3101
14 et seq.); and

15 (B) that has obtained all regulatory ap-
16 provals otherwise required with respect to the
17 change in control under any applicable Federal
18 or State law, including section 7(j) of the Fed-
19 eral Deposit Insurance Act (12 U.S.C. 1817(j)).

20 **SEC. 3. SUPERVISION OF PARENT COMPANIES OF INDUS-**
21 **TRIAL LOAN COMPANIES.**

22 The Bank Holding Company Act of 1956 (12 U.S.C.
23 1841 et seq.) is amended by inserting after section 5 (12
24 U.S.C. 1844) the following:

1 **“SEC. 6. SUPERVISION OF PARENT COMPANIES OF INDUS-**
 2 **TRIAL LOAN COMPANIES.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) CORPORATION.—The term ‘Corporation’
 5 means the Federal Deposit Insurance Corporation.

6 “(2) PARENT COMPANY OF AN INDUSTRIAL
 7 LOAN COMPANY.—The term ‘parent company of an
 8 industrial loan company’ means a company—

9 “(A) that is not directly or indirectly sub-
 10 ject to a primary financial regulatory agency
 11 (as defined in section 2 of the Dodd-Frank Wall
 12 Street Reform and Consumer Protection Act
 13 (12 U.S.C. 5301)); and

14 “(B) that has control over an entity that—

15 “(i) is an industrial loan company, in-
 16 dustrial bank, or other similar institution;

17 “(ii) is not a bank; and

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

23 “(b) AUTHORITY RELATING TO A PARENT COMPANY
 24 OF AN INDUSTRIAL LOAN COMPANY.—

25 “(1) IN GENERAL.—Subject to paragraph (2),
 26 the Corporation shall have the same authority to re-

1 quire a parent company of an industrial loan com-
2 pany (or a subsidiary of such a parent company) to
3 make reports and submit to examinations as the
4 Board has with respect to a bank holding company
5 or a subsidiary of a bank holding company.

6 “(2) CONDITIONS.—In carrying out the report
7 and examination authority described in paragraph
8 (1) and with respect to the parent company of an in-
9 dustrial loan company that has been approved to re-
10 ceive deposit insurance from the Corporation on or
11 before September 23, 2021, the Corporation shall
12 tailor any requirements to the size, complexity, and
13 nature of the business of that parent company.

14 “(3) ENFORCEMENT.—The Corporation may,
15 using the authorities under section 8 of the Federal
16 Deposit Insurance Act (12 U.S.C. 1818), enforce the
17 report and examination authority under this section
18 with respect to a parent company of an industrial
19 loan company (or a subsidiary of such a parent com-
20 pany) to the same extent as the Board may enforce
21 the report and examination authority of the Board
22 with respect to a bank holding company or a sub-
23 sidiary of a bank holding company.

24 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion may be construed as a reduction of the authority of

1 the Corporation, as in effect on the date of enactment of
2 this section.

3 “(d) RULEMAKING.—The Corporation may issue
4 rules to implement this section.”.

5 **SEC. 4. APPLICATION WITH RESPECT TO CONTRACTS AND**
6 **OTHER AGREEMENTS.**

7 (a) DEFINITION.—In this section, the term “indus-
8 trial loan company” means an industrial loan company,
9 industrial bank, or other similar institution.

10 (b) APPLICATION.—This Act, and the amendments
11 made by this Act, may not be construed to affect or im-
12 pair—

13 (1) the authority of the Federal Deposit Insur-
14 ance Corporation to enter into any agreement with
15 a parent company of an industrial loan company (as
16 defined in section 6 of the Bank Holding Company
17 Act of 1956, as added by section 3 of this Act) or
18 an industrial loan company, or to impose any condi-
19 tion in connection with the approval by the Corpora-
20 tion of an application; or

21 (2) the validity of any agreement described in
22 paragraph (1) entered into before the date of enact-
23 ment of this Act.

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