eta ELECTRONIC TRANSACTIONS ASSOCIATION
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June 22, 2022

The Honorable Maxine Waters
Chairwoman
House Committee on Financial
Services
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
House Committee on Financial
Services
Washington, DC 20515

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of the Electronic Transactions Association (ETA), we're pleased to share our views on H.R. 5912, a bill which we would oppose if it were considered by the Committee during the May 17, 2022 markup. We remain concerned that this legislation will negatively impact innovation and the use of technology in financial products and services for consumers and small businesses.

ETA is the world's leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world. ETA members make commerce possible by processing approximately $22.5 trillion annually in purchases worldwide and deploying payments innovation to merchants and consumers.

H.R. 5912, the Close the ILC Loophole Act
Industrial loan companies (ILC) banks are an important part of the banking system in the U.S. and were created as part of the Bank Holding Company Act (BHCA), which was enacted in 1956 to enhance competition and consumer choice.[1] Congress later redefined the term "bank" by enacting the Competitive Equality Banking Act of 1987 (CEBA).[2] CEBA largely shaped the current regulatory framework and resulting policy debates related to ILCs.

Under CEBA, an ILC is not considered a bank if it is chartered in a state that required Federal Deposit Insurance Corporation (FDIC) insurance as of March 1987 and cannot offer demand deposits.[3] While Congress has enacted new laws addressing policy issues surrounding ILCs over the past thirty years, there have been a circumspect policy decisions made by lawmakers to expressly create an exemption in the law to allow for commercial ownership of banks in a small number of states subject to specific restrictions and limitations. This can be seen by tracing how the BHCA covered and did not cover ILCs and other institutions since its enactment.

However, as written, H.R. 5912 would end new ILC charters, limit ownership of ILC charter banks, and place unprecedented requirements on ILC parent companies. This punitive action is unwarranted since ILC charter banks are a strong, safe, and both regulated and insured by the FDIC.

The FDIC has the authority to examine any affiliate of any ILC, including the parent company. Moreover, state regulatory authorities in California, Nevada, and Utah have the authority to conduct examinations of both the parents and affiliates of ILCs. Like ordinary banks, ILCs are subject to Sections 23A and 23B of the Federal Reserve Act, which restricts transactions among ILCs, affiliates, and parents and are prohibited from extending loans of significance to their parent or affiliates or from offering them on

[1] See Bank Holding Company Act of 1956, Pub. L. No. 84-511, §§ 1-12, 70 Stat. 133 (1956) (codified at 12 U.S.C. §§ 1841 et. seq.)
[2] Pub. L. No. 100-86, § 101, 101 Stat. 552, 554 (1987). See S. Rep. No. 100-19, at 5-11
[3] 12 U.S.C. §1841(c)(2)(H)

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preferential non-market terms.[4] Additionally, the FDIC tends to impose stricter prudential standards on ILC banks – two recent approval orders set a leverage ratio of 20%[5] and 12%[6], whereas statutory leverage ratio for ordinary banks of similar sized is 9%.[7] Similar to bank holding companies, ILC parent companies are subject to Section 38A of the Federal Deposit Insurance Act which makes sure they can act as a "source of financial strength" should an industrial bank face financial distress.[8]

Joint supervisory approach to overseeing ILCs with the FDIC and state regulators has been effective in ensuring that ILCs are safe and sound (eg. capital standards) as well as compliance with federal consumer protection, community reinvestment, and anti-money laundering laws.[9] With appropriate safeguards in place – such as those for ILCs – state regulators and federal regulators are able to address the unique considerations that stem from commercial ownership of a depository institution as allowed by Congress.

ETA encourages policymakers to focus on a framework that ensures a positive policy environment – encouraging growth and innovation governed by common principles but tailored appropriately to a company's particular risk profile. As the industry continues to evolve it is imperative the framework is equipped to embrace the proper safeguards to protect consumers without stifling progress.

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Considering the tangible benefits of such technological advancements, ETA urges policymakers to remain thoughtful and forward-thinking in how to best support industry's on-going efforts to provide opportunities for all consumers to access and benefit from innovative financial products and services. Efforts by policymakers to regulate financial products and services should be done collaboratively with industry participants and with careful consideration of the many types of business models and products in the marketplace. ETA stands willing to work with the Committee and other interested parties to refine these proposals and to create a positive legislative environment.

If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott, at stalbott@electran.org

Sincerely,

Jeff Patchen
Director of Government Affairs
Electronic Transactions Association

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[4] 12 U.S.C. §§ 371c and 371c-1
[5] FDIC, Re: Square Financial Services, Inc., Order, March 17, 2020
[6] FDIC, Re: Nelnet Bank, Order, March 17, 2020
[7] FDIC, "Community Bank Leverage Ratio Framework," Financial Institution Letters FIL-66-2019, November 4, 2019
[8] 2 U.S.C. § 371c
[9] FDIC, "Parent Companies of Industrial Banks and Industrial Loan Companies," 85 Federal Register 17771-17773, March 31, 2020