

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 5912  
OFFERED BY MR. GARCÍA OF ILLINOIS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Close the ILC Loop-  
3 hole Act”.

**4 SEC. 2. NEW INDUSTRIAL LOAN COMPANIES NOT ELIGIBLE  
5 FOR THE EXEMPTION FROM THE DEFINITION  
6 OF A BANK.**

7 (a) IN GENERAL.—Section 2(c)(2)(H) of the Bank  
8 Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H))  
9 is amended by inserting after “similar institution” the fol-  
10 lowing: “which has been approved to receive deposit insur-  
11 ance from the Federal Deposit Insurance Corporation on  
12 or before September 23, 2021 (or had an application to  
13 receive such deposit insurance pending on or before Sep-  
14 tember 23, 2021, where such application was approved  
15 after September 23, 2021, and on or before September  
16 23, 2023),”.

17 (b) TREATMENT OF DEPOSIT INSURANCE APPLICA-  
18 TIONS PENDING ON SEPTEMBER 23, 2021.—

1           (1) IN GENERAL.—With respect to an industrial  
2           loan company, industrial bank, or other similar insti-  
3           tution that, on the date of enactment of this Act,  
4           has an application to receive deposit insurance pend-  
5           ing before the Federal Deposit Insurance Corpora-  
6           tion that was submitted on or before September 23,  
7           2021, the Federal Deposit Insurance Corporation—

8                   (A) shall provide for a 90-day public com-  
9                   ment period and a public hearing with respect  
10                  to such application; and

11                  (B) may only approve such application by  
12                  a  $\frac{2}{3}$  vote of the members of the Board of Di-  
13                  rectors of the Federal Deposit Insurance Cor-  
14                  poration.

15           (2) DEADLINE FOR APPROVING APPLICATION.—  
16           If the Federal Deposit Insurance Corporation does  
17           not approve an application described under para-  
18           graph (1) before September 23, 2023, such applica-  
19           tion shall be deemed to have been denied.

20           (3) RULE OF CONSTRUCTION.—Except to the  
21           extent explicitly provided in this subsection, this sub-  
22           section may not be construed to affect the authority  
23           of the Federal Deposit Insurance Corporation to  
24           consider deposit insurance applications under sec-

1 tions 5 and 6 of the Federal Deposit Insurance Act  
2 (12 U.S.C. 1815 and 1816).

3 (c) AUTHORITY WITH RESPECT TO DEPOSIT INSUR-  
4 ANCE APPLICATIONS GRANTED AFTER SEPTEMBER 23,  
5 2021.—

6 (1) IN GENERAL.—With respect to a company  
7 that has control over a covered industrial loan com-  
8 pany which has been approved to receive deposit in-  
9 surance from the Federal Deposit Insurance Cor-  
10 poration after September 23, 2021 (the “parent  
11 company”), the primary financial regulatory agency  
12 of such parent company may take the following ac-  
13 tions:

14 (A) Conduct such examinations of, and ob-  
15 tain reports from, the parent company or any  
16 subsidiary of the parent company (other than a  
17 bank) as the agency determines necessary or  
18 appropriate to assess each of the following:

19 (i) The financial condition of such  
20 parent company or subsidiary.

21 (ii) The systems of such parent com-  
22 pany or subsidiary for maintaining and  
23 controlling financial and operating risks.

24 (iii) The transactions of such parent  
25 company or subsidiary with depository in-

1                   stitution subsidiaries of the parent com-  
2                   pany.

3                   (B) Impose any conditions or restrictions  
4                   on the parent company or any subsidiary of the  
5                   parent company (other than a bank), including  
6                   restricting or prohibiting transactions between  
7                   the parent company or subsidiary and any de-  
8                   pository institution subsidiary of the parent  
9                   company, if such conditions or restrictions  
10                  would promote the safety and soundness of the  
11                  parent company or any of its depository institu-  
12                  tion subsidiaries.

13                  (2) DEFINITIONS.—In this subsection:

14                  (A) COVERED INDUSTRIAL LOAN COM-  
15                  PANY.—The term “covered industrial loan com-  
16                  pany” means an industrial loan company, in-  
17                  dustrial bank, or other similar institution  
18                  that—

19                          (i) on the date of the enactment of  
20                          this Act, is described under section  
21                          2(c)(2)(H) of the Bank Holding Company  
22                          Act of 1956; and

23                          (ii) has an application to receive de-  
24                          posit insurance from the Federal Deposit

1 Insurance Corporation approved after Sep-  
2 tember 23, 2021.

3 (B) PRIMARY FINANCIAL REGULATORY  
4 AGENCY.—With respect to a company, the term  
5 “primary financial regulatory agency”—

6 (i) has the meaning given that term  
7 under section 2 of the Dodd-Frank Wall  
8 Street Reform and Consumer Protection  
9 Act; and

10 (ii) with respect to a parent company  
11 that does not have a primary financial reg-  
12 ulatory agency under clause (i), means the  
13 Federal Deposit Insurance Corporation.

14 (C) OTHER DEFINITIONS.—The terms  
15 “bank” and “depository institution” have the  
16 meaning given those terms, respectively, under  
17 section 2 of the Bank Holding Company Act of  
18 1956.

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

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

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

3 “(a) AUTHORITY RELATING TO A PARENT COMPANY  
4 OF AN INDUSTRIAL LOAN COMPANY.—

5 “(1) IN GENERAL.—Subject to paragraph (2),  
6 the Federal Deposit Insurance Corporation shall  
7 have the same authority to require a parent com-  
8 pany of an industrial loan company to make reports  
9 and submit to examinations as the Board has with  
10 respect to a bank holding company.

11 “(2) CONDITIONS.—In carrying out the report  
12 and examination authority described in paragraph  
13 (1) and with respect to the parent company of an in-  
14 dustrial loan company which has been approved to  
15 receive deposit insurance from the Federal Deposit  
16 Insurance Corporation on or before September 23,  
17 2021, the Federal Deposit Insurance Corporation  
18 shall tailor any requirements to the size, complexity,  
19 and nature of the business of such parent company.

20 “(3) ENFORCEMENT.—The Federal Deposit In-  
21 surance Corporation and may enforce such report  
22 and examination authority under section 8 of the  
23 Federal Deposit Insurance Act to the same extent as  
24 if the Federal Deposit Insurance Corporation were  
25 the primary financial regulatory agency for the par-  
26 ent company of an industrial loan company.

1           “(b) RULEMAKING.—The Federal Deposit Insurance  
2 Corporation shall have the authority to issue rules to im-  
3 plement this section.

4           “(c) PARENT COMPANY OF AN INDUSTRIAL LOAN  
5 COMPANY DEFINED.—In this section, the term ‘parent  
6 company of an industrial loan company’ means a com-  
7 pany—

8                   “(1) that is not directly or indirectly subject to  
9 a primary financial regulatory agency (as defined  
10 under section 2 of the Dodd-Frank Wall Street Re-  
11 form and Consumer Protection Act); and

12                   “(2) that has control over an entity that—

13                           “(A) is an industrial loan company, indus-  
14 trial bank, or other similar institution;

15                           “(B) is not a bank; and

16                           “(C) is not a person regulated by a State  
17 insurance regulator, as such term is defined  
18 section 1002 of the Consumer Financial Protec-  
19 tion Act of 2010.”.

20 **SEC. 4. CHANGE OF CONTROL.**

21           (a) IN GENERAL.—Except as provided in subsections  
22 (b) and (c), the appropriate Federal banking agency shall  
23 disapprove a change in control, as provided in section 7(j)  
24 of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)),  
25 of an industrial loan company that is not a bank (as de-

1 fined under section 2(c) of the Bank Holding Company  
2 Act of 1956 (12 U.S.C. 1841(c)(2)), as amended by this  
3 Act).

4 (b) EXCEPTIONS.—Subsection (a) shall not apply to  
5 a change in control of an industrial loan company—

6 (1) that—

7 (A) is in danger of default, as determined  
8 by the appropriate Federal banking agency,  
9 provided that the acquirer is an entity whose  
10 gross revenues as well as those of its affiliates  
11 from activities that are financial in nature (as  
12 defined in section 4(k) of the Bank Holding  
13 Company Act of 1956 (12 U.S.C. 1843(k)) and,  
14 if applicable, from the ownership or control of  
15 one or more insured depository institutions,  
16 represent no less than 85 percent of the consoli-  
17 dated gross annual revenues of the acquiring  
18 entity;

19 (B) is the result of the acquisition of con-  
20 trol of the industrial loan company by a com-  
21 pany that was an affiliate of the industrial loan  
22 company on September 23, 2021, through an  
23 internal corporate reorganization of a company  
24 that directly or indirectly controlled the indus-  
25 trial loan company on that date;



1 (C) results from an acquisition of voting  
2 shares of a publicly-traded company that con-  
3 trols an industrial loan company if, after the  
4 acquisition, the acquiring shareholder (or group  
5 of shareholders acting in concert) holds less  
6 than 25 percent of any class of the voting  
7 shares of the publicly-traded company; or

8 (D) will be controlled, directly or indi-  
9 rectly, by an entity subject to consolidated su-  
10 pervision by the Board of Governors of the Fed-  
11 eral Reserve System as a—

12 (i) bank holding company;

13 (ii) savings and loan holding company;

14 or

15 (iii) foreign bank treated as of July 1,  
16 2020, as a bank holding company under  
17 the International Banking Act of 1978 (12  
18 U.S.C. 3101 et seq.); and

19 (2) that has obtained all regulatory approvals  
20 otherwise required for such change of control under  
21 any applicable Federal or State law, including sec-  
22 tion 7(j) of the Federal Deposit Insurance Act (12  
23 U.S.C. 1817(j)).

24 (c) CHANGE OF CONTROL SUBJECT TO LIMITA-  
25 TIONS.—

1           (1) IN GENERAL.—Subsection (a) shall not  
2           apply to a change of control of an industrial loan  
3           company that was approved for deposit insurance on  
4           or before September 23, 2021, and that was not  
5           subject to an exception in subsection (b), if—

6                   (A) after the date of the change of control,  
7           the industrial loan company does not—

8                           (i) offer—

9                                   (I) any product or service, other  
10                                   than those products or services that  
11                                   the industrial loan company consist-  
12                                   ently and lawfully offered and sold to  
13                                   unaffiliated third parties prior to the  
14                                   date of application of a change of con-  
15                                   trol, as determined by the Financial  
16                                   Stability Oversight Council when ap-  
17                                   proving a change of control under this  
18                                   subsection; or

19                                   (II) any product or service that  
20                                   the Financial Stability Oversight  
21                                   Council determines—

22   (aa) subject to a hearing de-  
23   scribed under paragraph (7), was  
24   offered by the industrial loan  
25   company for the purpose of evad-

1 ing the prohibition described  
2 under subclause (I); or

3 (bb) is not consistent with  
4 the preponderance of activities  
5 that the industrial loan company  
6 offered before the date of appli-  
7 cation of a change of control;

8 (ii) offer or market products or serv-  
9 ices of an affiliate that are not permissible  
10 for bank holding companies to offer or  
11 market under section 4(k) of the Bank  
12 Holding Company Act of 1956 (12 U.S.C.  
13 1843(k)), or permit products or services of  
14 the industrial loan company to be offered  
15 or marketed by or through an affiliate  
16 (other than an affiliate that engages only  
17 in activities permissible for bank holding  
18 companies under such section 4(k)), unless  
19 such products or services were being so of-  
20 fered or marketed on or before September  
21 23, 2021, and then only in the same man-  
22 ner in which they were being offered or  
23 marketed on or before such date; and

24 (iii) permit or incur an overdraft (in-  
25 cluding an intraday overdraft) in a Federal

1 Reserve bank account of such industrial  
2 loan company on behalf of an affiliate,  
3 other than an overdraft described in para-  
4 graph (3);

5 (B) on and after the date of the change of  
6 control, the industrial loan company only effects  
7 a material change in or deviation from the in-  
8 dustrial loan company's business plan that is  
9 likely to result in increases in the industrial  
10 loan company's total assets, total consolidated  
11 revenue, or financial statement categories or  
12 subcategories (such as types of loans, funding,  
13 revenue, or capital) of 15 percent or more, if—

14 (i) the industrial loan company sub-  
15 mits such change or deviation to the Fed-  
16 eral Deposit Insurance Corporation prior  
17 to the change or deviation taking effect;

18 (ii) the Federal Deposit Insurance  
19 Corporation determines that such change  
20 or deviation—

21 (I) will not increase threats to  
22 the financial stability of the United  
23 States, erode consumer or investor  
24 protection, reduce competition, or oth-

1 otherwise undermine the separation of  
2 banking and commerce; and

3 (II) promotes the safety and  
4 soundness of the industrial loan com-  
5 pany; and

6 (iii) the Federal Deposit Insurance  
7 Corporation provides written approval to  
8 the industrial loan company for such  
9 change or deviation;

10 (C) the company acquiring control of the  
11 industrial loan company has obtained all regu-  
12 latory approvals otherwise required for such  
13 change of control under any applicable Federal  
14 or State law, including section 7(j) of the Fed-  
15 eral Deposit Insurance Act; and

16 (D) the Financial Stability Oversight  
17 Council determines, in accordance with such  
18 procedures as the Council may establish by rule  
19 or order, that the change of control will not in-  
20 crease threats to the financial stability of the  
21 United States, erode consumer or investor pro-  
22 tection, reduce competition, or otherwise under-  
23 mine the separation of banking and commerce.

24 (2) AUTHORITY TO USE NEW METHODS AND  
25 TECHNOLOGIES IN OFFERING PRODUCTS AND SERV-

1 ICES.—The prohibition under paragraph (1)(A)(i)  
2 shall not prohibit an industrial loan company from  
3 continuing to innovate and utilize new methods and  
4 technologies in offering products and services that  
5 are fundamentally consistent with the business of  
6 the industrial loan company prior to the date of ap-  
7 plication of a change of control, if such methods and  
8 technologies are consistent with all other applicable  
9 laws and regulations.

10 (3) PERMISSIBLE OVERDRAFTS DESCRIBED.—  
11 For purposes of paragraph (1)(A)(iii), an overdraft  
12 is described in this paragraph if such overdraft—

13 (A) is permitted or incurred on behalf of  
14 an affiliate which is monitored by, reports to,  
15 and is recognized as a primary dealer by the  
16 Federal Reserve Bank of New York; and

17 (B) is fully secured, as required by the  
18 Board, by bonds, notes, or other obligations  
19 which are direct obligations of the United  
20 States or on which the principal and interest  
21 are fully guaranteed by the United States or by  
22 securities and obligations eligible for settlement  
23 on the book-entry system of the Board of Gov-  
24 ernors of the Federal Reserve System.

1           (4) FINANCIAL STABILITY OVERSIGHT COUNCIL  
2           PROCESS.—

3           (A) PUBLIC COMMENT AND HEARING.—In  
4           considering an application for change in control  
5           of an industrial loan company under paragraph  
6           (1)(D), the Financial Stability Oversight Coun-  
7           cil—

8                   (i) shall provide a period of 90 days  
9                   beginning on the date of receipt of such  
10                  application for public comment with re-  
11                  spect to such application; and

12                   (ii) shall, not later than 90 days after  
13                  receipt of such application, convene a pub-  
14                  lic hearing with respect to such applica-  
15                  tion.

16           (B) VOTE AND ATTESTATION.—

17                   (i) IN GENERAL.—The Financial Sta-  
18                  bility Oversight Council may only approve  
19                  an application described in subparagraph  
20                  (A) by vote as follows:

21                           (I) An affirmative vote of not  
22                           fewer than  $\frac{2}{3}$  of the voting members  
23                           of the Financial Stability Oversight  
24                           Council serving on the Council at the  
25                           time of application shall vote, on a

1                   nondelegable basis, to approve such  
2                   application.

3                   (II) An affirmative vote of the  
4                   Chairperson of the Council.

5                   (ii) ATTESTATION.—The voting mem-  
6                   bers described in subparagraph (A) shall  
7                   submit, along with such affirmative vote, a  
8                   written attestation that each of the criteria  
9                   described in paragraph (1) has been met.

10                  (5) MONITORING COMPLIANCE.—An industrial  
11                  loan company that has a change of control approved  
12                  under this subsection shall, subject to such proce-  
13                  dures as the Federal Deposit Insurance Corporation  
14                  may establish, submit an annual report to the Cor-  
15                  poration providing such information as the Corpora-  
16                  tion determines to be necessary or appropriate to  
17                  monitor the compliance of the industrial loan com-  
18                  pany with the limitations in subparagraphs (A) and  
19                  (B) of paragraph (1).

20                  (6) DIVESTITURE IN CASE OF LOSS OF EXEMP-  
21                  TION.—

22                  (A) IN GENERAL.—With respect to an in-  
23                  dustrial loan company for which a change of  
24                  control is approved under this subsection that  
25                  fails to comply with the limitations in subpara-



1           graphs (A) and (B) of paragraph (1), each enti-  
2           ty that controls the industrial loan company  
3           shall, within 1 year after the first day of such  
4           noncompliance, either—

5                   (i) divest control of the industrial loan  
6                   company; or

7                   (ii) register with, and obtain approval  
8                   to become, a bank holding company in ac-  
9                   cordance with the Bank Holding Company  
10                  Act of 1956.

11           (B) RULEMAKING AND ENFORCEMENT.—

12           The Federal Deposit Insurance Corporation  
13           shall issue rules necessary to effectuate the re-  
14           quirement set forth in subparagraph (A)(i), and  
15           the parent company of an industrial loan com-  
16           pany shall be considered to be an institution-af-  
17           filiated party under section 8 of the Federal  
18           Deposit Insurance Act for purposes of enforce-  
19           ment of the requirements under subparagraph  
20           (A).

21           (7) EVASION HEARING.—With respect to a  
22           product or service that the Financial Stability Over-  
23           sight Council determines under paragraph  
24           (1)(A)(i)(II) was offered by an industrial loan com-  
25           pany for the purpose of evading the prohibition de-

1 scribed under paragraph (1)(A)(i)(I), the Council  
2 shall, prior to any final determination by the Council  
3 with respect to a change of control application, pro-  
4 vide the parties involved in the change of control of  
5 the industrial loan company with an opportunity for  
6 a hearing for the purpose of demonstrating that  
7 such product or service was not offered for purposes  
8 of evasion.

9 (d) DEFINITIONS.—In this section:

10 (1) APPROPRIATE FEDERAL BANKING AGEN-  
11 CY.—The term “appropriate Federal banking agen-  
12 cy” has the meaning given that term under section  
13 3 of the Federal Deposit Insurance Act (12 U.S.C.  
14 1813).

15 (2) INDUSTRIAL LOAN COMPANY.—The term  
16 “industrial loan company” means an industrial loan  
17 company, industrial bank, or other similar institu-  
18 tion.

19 (3) INSURED DEPOSITORY INSTITUTION.—The  
20 term “insured depository institution” has the mean-  
21 ing given that term under section 3 of the Federal  
22 Deposit Insurance Act (12 U.S.C. 1813).

1 **SEC. 5. APPLICATION WITH RESPECT TO CONTRACTS AND**  
2 **OTHER AGREEMENTS.**

3 This Act and the amendments made by this Act may  
4 not be construed to affect or impair—

5 (1) the authority of the Federal Deposit Insur-  
6 ance Corporation to enter into any agreement with  
7 a parent company of an industrial loan company (as  
8 defined in section 6 of the Bank Holding Company  
9 Act of 1956, as added by section 3 of this Act) or  
10 an industrial loan company (as defined in section 4  
11 of this Act), or to impose any condition in connec-  
12 tion with the Corporations's approval of an applica-  
13 tion; or

14 (2) the validity of any such agreement entered  
15 into before the date of the enactment of this Act.

16 **SEC. 6. GAO STUDY.**

17 (a) **STUDY.**—The Comptroller General of the United  
18 States shall carry out a study on the effects of industrial  
19 loan companies, industrial banks, and other similar insti-  
20 tutions on the U.S. economy, including the effect on com-  
21 petitiveness, market structure, and different industries.

22 (b) **REPORT.**—Not later than the end of the 1-year  
23 period beginning on the date of enactment of this Act, the  
24 Comptroller General shall issue a report to the Congress

- 1 containing all findings and determinations made in car-
- 2 rying out the study under subsection (a).

