



Consumer Federation of America

May 16, 2022

Congresswoman Maxine Waters
Chairwoman
House Financial Services Committee
2221 Rayburn House Office Building
Washington, DC 20515

Congressman Patrick McHenry
Ranking Member
House Financial Services Committee
2004 Rayburn House Office Building
Washington, DC 20515

Re: [H.R. 5912](#), Close the ILC Loophole Act; [H.R. 7732](#), Strengthening the Office of Investor Advocate Act; [H.R. 4395](#), Payment Choice Act of 2022

Dear Chairwoman Waters and Ranking Member McHenry,

Consumer Federation of America (CFA) writes to you in strong support of three important bills that protect consumers: [H.R. 5912](#), Close the ILC Loophole Act; [H.R. 7732](#), Strengthening the Office of Investor Advocate Act; [H.R. 4395](#), Payment Choice Act of 2022

The Close the ILC Loophole Act ([H.R. 5912](#))

The industrial loan company (ILC) loophole allows any type of organization—including large technology companies and other commercial firms—to own and operate a full-service FDIC-insured bank without the same regulatory oversight, activity limitations, and prudential safeguards that Congress established for every other federally-insured depository institution. In recent years, large commercial companies have used the ILC charter to gain access to the financial system and control entities that have essentially all of the powers of a full-service commercial bank, including the ability to accept deposits, make consumer and commercial loans, and effectuate payments. However, ILCs are not subject to consolidated supervision and regulation by a federal banking agency. This regulatory loophole creates risks for consumers, safety and soundness risks for the institution, and risks to the financial system.

Further, some existing ILC charters have been known to offer predatory products to consumers. Certain ILC charters have engaged in predatory rent-a-bank lending, renting their charter to high cost installment lenders to offer loans as high as 179.99% APR.¹ In addition, existing ILC charters have offered deferred interest credit cards, which lure consumers in with enticing interest free promotions only to hit them with a lump sum interest charge dating back to the purchase.² These products push consumers into a cycle of debt nearly impossible to escape due to the massive interest payments.

¹ See National Consumer Law Center, High-Cost Rent-a-Bank Loan Watch List, <https://www.nclc.org/issues/high-cost-small-loans/rent-a-bank-loan-watch-list.html>, (last visited May 13, 2022).

² See National Consumer Law Center, “Beware Holiday Shoppers: Deferred Interest Promotions Promise No Interest Now, but Can Cost Big Bucks Later” (November 15, 2018), <https://www.nclc.org/media-center/pr-beware-holiday-shoppers-deferred-interest-promotions-promise-no-interest-now-but-can-cost-big-bucks-later.html>.

This legislation is critical to preventing new ILCs from engaging in these predatory practices, as well as apply new rules to the sale and transfer of an existing ILC so that companies currently taking advantage of these privileges aren't able to pass along their special exemptions indefinitely. This bipartisan legislation, that is supported by both consumer advocates and financial services trades,³ would help to protect the longstanding separation between banking and commerce and is a comprehensive solution to closing the ILC loophole once and for all.

The Strengthening the Office of Investor Advocate Act ([H.R. 7732](#))

The SEC Office of Investor Advocate (OIA) was established by Congress in the Dodd-Frank Act in order to strengthen the SEC and ensure that the interests of retail investors are better represented within the agency.⁴ The Investor Advocate has several key functions, including:

- Providing a Voice for Investors to ensure that the needs of investors are considered as decisions are made at the SEC, at self-regulatory organizations (SROs), and in Congress. This work includes analyzing the potential impact on investors of proposed regulatory changes, identifying problems that investors have with investment products and financial service providers, and recommending changes to statutes and regulations for the benefit of investors;
- Assisting retail investors in resolving problems they may have with the Commission or an SRO; and
- Studying investor behavior to help inform policy choices. In addition, the OIA reviews the economic analyses of rulemakings to ensure that they appropriately reflect the impact on investors from proposed rule changes.⁵

Congress specifically sought to ensure that the OIA would be independent from the Commission in carrying out its functions. For example, the Dodd-Frank Act requires the Investor Advocate to submit reports directly to Congress, without any prior review or comment from the Commissioners or SEC staff.⁶ Unfortunately, that independence has been undermined in recent years.⁷ Specifically, the previous chair of the agency, in an effort to advance his own policy preferences, impeded the search for objective research and evidence that potentially ran counter to his preferred policy outcomes. This presented a direct threat to the OIA's mission and undermined OIA's ability to help inform the policy process.

³See Consumer Federation of America, et. al, Letter to Chairwoman Waters and Ranking Member McHenry Re: Support for H.R. 5912, The Close the ILC Loophole Act, (April 5, 2022) <https://consumerfed.org/wp-content/uploads/2022/04/Consumer-Groups-Credit-Unions-and-Banks-Call-for-Passage-of-Bipartisan-Solution-to-Close-ILC-Loophole-Letter-4.5.22.pdf>.

⁴ See Creation of Office of the Investor Advocate, S.Rept. 111-176, THE RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010, 111th Congress (2009-2010), Section 914, <https://www.congress.gov/congressional-report/111th-congress/senate-report/176/1?overview=closed>

⁵ See SEC, Office of the Investor Advocate, <https://www.sec.gov/advocate> (last visited May 13, 2022).

⁶ See Dodd-Frank Act, Section 915.

⁷ See Office of the Investor Advocate, Report on Activities, Fiscal Year 2020, at 13-14, 57 <https://www.sec.gov/files/sec-investor-advocate-report-on-activities-2020.pdf>.

In order to safeguard the OIA's long-term mission and ensure that the OIA can engage in rigorous, evidence-based research and advocacy for the benefit of investors, it is critical to strengthen the OIA's independence and ensure that the OIA is insulated from any political decisions or pressures by the SEC chair or SEC commissioners.

This bill would accomplish these goals in two primary ways. First, it would provide a specific budgetary authorization for the OIA, which would ensure that the OIA has the freedom to pursue research projects based on policy considerations. This would ensure that potential research projects are not at risk of being blocked based on the political preferences of the SEC chair or any SEC commissioner. Second, this bill would allow the OIA to publish research results at the discretion of the Investor Advocate without any prior review by the Commission. This will ensure that political considerations do not stifle the publication of information that is relevant to policy determinations. These changes will help to promote more high-quality research that better informs the policy debate on important issues affecting investors. Accordingly, we urge you to vote for this important legislation.

The Payment Choice Act ([H.R. 4395](#))

The Payment Choice Act would preserve the option for people to pay for purchases with cash at retail locations. Approximately 37 million adults may lack access to digital forms of payment, including credit or debit cards.⁸ Consumers of color and low-income consumers are disproportionately un- or underbanked, and unbanked and underbanked consumers have limited access to noncash forms of payment.

Furthermore, when consumers are forced to pay for goods and services in cashless transactions, they (as well as the businesses where they shop) are also often forced to incur added expenses in the form of network and transaction fees.

Separately, noncash transactions generate vast amounts of data, recording the time, date, location, amount, and subject of each consumer's purchase, which are available to digital marketers and advertisers who are engaged in developing and refining increasingly sophisticated techniques to identify and target potential customers. This bipartisan legislation is supported by nearly 40 consumer, civil rights, and privacy groups,⁹ and it is crucial for consumers to use the payment methods of their choice.

⁸ See FDIC, Report on the Economic Well-Being of U.S. Households in 2020, (May 2012) <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-executive-summary.htm>.

⁹ See Consumer Federation of America, et. al. Letter to Representatives Donald Payne Jr., Sylvia Garcia, and Chris Smith re Support for the Payment Choice Act of 2021 (H.R. 4395) (August 5, 2021), <https://consumerfed.org/wp-content/uploads/2021/08/39-Groups-Voice-Support-for-Payment-Choice-Act-of-2021-8-5-21.pdf>.

Conclusion

We strongly support the Close the ILC Loophole Act, the Strengthening the Office of Investor Advocate Act, and the Payment Choice Act of 2022, and we look forward to working with the Committee to pass these important bills that will protect consumers.

Sincerely,

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