March 2, 2025

Gregory P. Bottone
Regional Director
Chicago Regional FDIC
300 South Riverside Plaza, Suite 1700
Chicago, IL 60606-3447

RE: ICBA Letter in Opposition to the Application for Deposit Insurance by General Motors Financial Bank

Dear Regional Director Bottone,

The Independent Community Bankers of America (ICBA)[1] strongly opposes General Motors (GM) Financial Bank's application for FDIC insurance. Industrial loan companies (ILCs) owned by commercial parent companies – like the proposed GM Financial Bank – cannot function as neutral arbiters of credit due to the inherent conflict of interest at the heart of their business model. Because of this, they pose an undue risk of losses to the Deposit Insurance Fund (DIF) and add unnecessary systemic risks that harm the entire banking system. GM Financial Bank's application for deposit insurance must not be approved by your office and should be denied by the FDIC board.

GM has a history of mismanaging depository institutions as evidenced by the failure of its prior ILC subsidiary, the General Motors Acceptance Corporation (GMAC). The failure of GMAC and its subsequent bailout cost taxpayers $17.2 billion. We see no valid reason for the FDIC to allow GM to benefit from FDIC insurance given the substantial risk that it will repeat the same mistakes. Furthermore, there is no benefit to consumers to be gained from granting GM a bank charter. And consumers agree. Polling by Morning Consult indicates that 58% of Americans agree that allowing commercial companies to own banks without being subject to all banking regulations increases risks to the financial system.[2]

While the creation of new commercial ILCs remains legal, the FDIC has a statutory duty to reject the applications of institutions that pose undue risks to the DIF and that fail to serve the convenience and

[1] The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at icba.org.

[2] ICBA, Press Release, ICBA Commends FDIC Proposal to Enhance Industrial Loan Company Oversight as Polling Shows Concerns with ILC Loophole (Oct. 11, 2024), available at: https://www.icba.org/newsroom/news-and-articles/2024/10/11/icba-commends-fdic-proposal-to-enhance-industrial-loan-company-oversight-as-polling-shows-concerns-with-ilc-loophole.

866-843-4222
icba.org

1615 L Street NW
Suite 900
Washington, DC 20036

518 Lincoln Road
P.O. Box 267
Sauk Centre, MN 56378

needs of the community. It must exercise that duty with respect to the application of GM Financial Bank given GM's demonstrated inability to manage risks at GMAC.

Executive Summary

In this letter, we will argue that GM Financial Bank's application should not be approved by the FDIC because of several important shortcomings with the proposed bank's business model and the risks associated with ownership of an ILC by a commercial parent company. Those shortcomings and risks include:

- **Historical Mismanagement and Risk to the DIF:** GM's previous ILC subsidiary, GMAC, failed and required a $17.2 billion taxpayer bailout, demonstrating GM's inability to responsibly manage a depository institution and posing a significant risk of repeated losses to the DIF.
- **Inherent Conflict of Interest:** As an ILC owned by a commercial parent, GM Financial Bank cannot act as a neutral arbiter of credit, prioritizing GM's sales over sound lending practices, which increases the likelihood of risky loans and potential failure.
- **Monoline Business Model Vulnerability:** GM Financial Bank's focus solely on auto lending, particularly to GM-franchised dealers, lacks diversification, making it highly susceptible to auto market downturns and amplifying potential losses to the DIF.
- **Lack of Consumer Benefit:** The bank offers no new products or services beyond what GM Financial already provides, using FDIC insurance merely to lower borrowing costs and strengthen GM's oligopolistic position in auto lending, rather than meeting unmet community needs. It further fails to serve the auto-buying public as a whole, instead lending only to customers of GM dealerships.
- **Regulatory and Supervisory Gaps:** ILCs like GM Financial Bank are not subject to consolidated Federal Reserve supervision and FDIC orderly liquidation authority, limiting oversight and the ability to mitigate losses, further endangering financial stability and the DIF.

History of the ILC Loophole

ILCs began as small, state-supervised financial institutions created in the early 1900s to provide small loans to industrial workers. Because early ILCs were legally unable to accept deposits, they were not subject to FDIC supervision or eligible to receive deposit insurance. Over time, the distinctions between ILCs and commercial banks diminished, and today ILCs can make all the same types of commercial and consumer loans as full-service banks and can offer Negotiable Order of Withdrawal (NOW) accounts, which are functionally identical to demand deposits and are FDIC insured.

In 1987, Congress passed the Competitive Equality Banking Act (CEBA) which exempted ILCs from the definition of "bank" in the Bank Holding Company Act (BHCA). As a result, non-financial, commercial companies can control an industrial bank without being subject to the BHCA's activities restrictions or consolidated supervision by the Federal Reserve Board. This ILC Loophole provides a dangerous avenue for corporate giants to enter the business of banking and potentially to make risky loans to the customers of their commercial parent companies.

While several commercial giants – including Home Depot and Walmart – have sought ILC charters and subsequently withdrawn their applications in the face of backlash, ILCs have a history of being owned by motor vehicle manufacturers for the purpose of lending to customers of the ILC's parent company. However, history also demonstrates that allowing them this privilege has been an error in judgement.

The failure of GMAC remains a case study in the dangers of the ILC business model. Due to losses incurred by GMAC, General Motors was forced to divest its ownership of the bank so that it could become eligible for a bailout from the Troubled Asset Relief Program. This bailout was necessary not because GMAC itself was systemically important, but rather, because General Motors was an important commercial manufacturer that the government did not want to see bankrupted by its financing arm.

The FDIC should not create a pathway for GM to repeat the troubles of GMAC - it can and should deny applications for deposit insurance applications by institutions that unduly increase risks to financial stability, the DIF, and do not serve the interests of consumers.

Standard of Review for ILC Applications

Section 6 of the FDI Act requires the FDIC to consider the following statutory factors when evaluating applications for deposit insurance:

(1) The financial history and condition of the depository institution.
(2) The adequacy of the depository institution's capital structure.
(3) The future earnings prospects of the depository institution.
(4) The general character and fitness of the management of the depository institution.
(5) The risk presented by such depository institution to the Deposit Insurance Fund.
(6) The convenience and needs of the community to be served by such depository institution.
(7) Whether the depository institution's corporate powers are consistent with the purposes of this chapter.[3]

The FDIC's Statement of Policy (SOP) on Applications for Deposit Insurance states, "In general, the applicant will receive deposit insurance if **all** [*emphasis added*] of these statutory factors … are resolved favorably."[4] In other words, if an applicant fails to satisfy the requirements of a single statutory factor, the FDIC has a sufficient basis to deny its application.

According to GM Financial Bank's application, "the Bank's primary lending activity will be purchasing retail installment sales contracts for vehicles sold through General Motors-franchised automobile dealers."[5] Given that the bank intends to lend to customers of its parent company, rather than to auto buyers more broadly, the applicant's goal is to merely enrich its parent company, rather than to serve the convenience and needs of the community more broadly.

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[3] 12 U.S.C. 1816.
[4] 63 Fed. Reg. 44752 at 44756, available at: https://www.govinfo.gov/content/pkg/FR-1998-08-20/pdf/98-21488.pdf.
[5] "Interagency Charter and Federal Deposit Insurance Application for GM Financial Bank A Utah State Chartered Industrial Bank Submitted to the Federal Deposit Insurance Corporation and Utah Department of Financial Institutions" (Jan. 31, 2025).

Furthermore, when a lender is owned by a commercial parent company and exists to lend to the customers of that parent company, it will not be an entirely neutral arbiter of credit. If this lender lowers its underwriting standards in order to drive sales at the commercial parent company, it is reasonable to conclude that it will be at a greater risk of failure, leading to an increased risk of losses to the DIF.

GM Financial Bank Presents an Undue Risk to the DIF

The FDIC should deny GM Financial Bank's application for deposit insurance because of the outsized risk GM poses to the DIF, based on past precedent the foreseeable risk of future losses. GM has already proven itself to be an irresponsible steward of its previous ILC and the risk that they will repeat the same mistakes that led to the previous failure remains present. The proposed GM Financial Bank is vulnerable to financial stress for two main reasons: its monoline business model and the conflict of interest that is inherent in primarily lending to customers of its commercial parent company.

GM's business model – which it says will be "focused solely on auto lending" – is risky because it lacks diversification. Not only will GM Financial Bank be solely focused on auto lending, but it also intends to lend primarily to customers who purchase cars from General Motors-franchised automobile dealers. This narrow business model leaves the bank incredibly vulnerable to any changes in the demand for automobiles or to the solvency of auto buyers. In the event of a significant economic downturn, the resulting spike in defaults on auto loans would exacerbate stress within GM Financial Bank because it would not have other assets like government and corporate bonds, loans to farms and businesses, and mortgages on its balance sheet.

This would be even more troubling for the DIF because selling the failed institution at a time when there is already weakness in the market for auto loans would likely mean selling GM Financial Bank at a substantial loss. This loss would magnify the losses to the DIF beyond the size of the losses that typically result from a failed institution.

The FDIC itself identified the unique risks posed by ILCs with a commercial parent company in a rulemaking last year, saying:

> Shell and captive bank business models create potentially significant supervisory concerns for industrial banks. The level of concern with these business models is inherently heightened due to the substantial reliance on the parent company or its affiliates, particularly with respect to the primary business operations of the industrial bank. This may include total or nearly exclusive reliance on the parent organization for sourcing business, conducting key operational elements (e.g., underwriting, administering, or servicing customer accounts or relationships), and obtaining a wide range of critical business support services" and that "[t]he FDIC's experience during the 2008–2009 Financial Crisis showed that business models involving an insured depository institution (IDI) inextricably tied to and reliant on the parent and/or its affiliates creates significant challenges and risks to the [Deposit Insurance Fund or] DIF, especially in circumstances where the parent organization experiences financial stress and/or declares bankruptcy.[6]

[6] *See* 89 Fed. Reg. 65556, available at: https://www.fdic.gov/system/files/2024-07/fr-proposed-rule-on-parentcompanies-of-industrial-banks-and-industrial-loan-companies_0.pdf.

In addition, the fact that GM Financial Bank intends to do its lending through GM dealerships means that it is not just vulnerable to downturns in the auto market, it is also vulnerable to weakness in GM's product lineup. Automobiles, like any consumer good, are subject to changing trends and consumer tastes. If GM loses market share because of an unpopular lineup of new models, or a change in consumer preferences, GM Financial Bank could face instability because it would not be well-positioned to lend to customers of other brands. In other words, the financial success or failure of GM Financial Bank is entirely dependent on the success and popularity of GM's cars – a factor which is entirely outside of the bank's control.

Any monoline auto lender would be riskier than a diversified bank – but a monoline auto lender that is owned by an automaker is riskier still because of the inherent conflict of interest at the heart of its business model. Traditional banks serve as neutral arbiters of credit – pricing the risk of default based on a customer's credit history, income, assets, and a variety of other factors. GM Financial Bank would not be incentivized to accurately price credit risk because its primary business is to increase the sales of its parent company GM.

When a traditional bank without a commercial parent makes a loan, it makes a profit if the loan is repaid. However, for an ILC with a commercial parent, its commercial parent can profit from both the repayment of the loan and from the sale of the product. This creates an incentive for GM Financial Bank to misprice loans based on the level of risk they pose, because their primary mission is to drive sales of GM cars. We expect this risk-taking to be further heightened since past experience indicates that if the bank fails, GM itself can expect a taxpayer funded bailout.

The Risk of Losses to the DIF is Heightened by Legal Shortcomings in ILC Supervision

Because of their exemption from the definition of "bank" in the Bank Holding Company Act, ILCs are not subject to consolidated supervision by the Federal Reserve at the holding company level like all other BHCs. Consolidated supervision involves an assessment by the federal reserve of the financial and managerial strength and risks within the consolidated organization as a whole – meaning at the level of the BHC, the bank itself, and at any affiliates. The purpose of consolidated supervision is to ensure that the BHC can fulfill its purpose of serving as a "source of strength" to the bank in times of stress, for example through asset transfers. Consolidated supervision is a complex and specialized process – and it is unlikely FDIC staff, who are hired to examine banks, do not have the appropriate training and experience to conduct the supervision of a large commercial company like GM.

Furthermore, if GM Financial Bank fails, the FDIC would not be able to liquidate the assets of its parent company, GM, to mitigate losses to the DIF. That is because, unlike bank holding companies, the commercial parent companies of ILCs are outside the scope of the FDIC's Orderly Liquidation Authority (OLA) as provided by the Dodd-Frank Act. OLA provides "the necessary authority to liquidate failing **financial companies** (emphasis added) that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard."[7] Commercial parent companies

[7] 12 U.S.C. 5384(a).

of ILCs are, by definition, not financial companies, and are therefore outside the scope of OLA.[8] This exemption could make it impossible for the FDIC to reach the assets of General Motors.

GM Financial Bank Would Not Meaningfully Serve the Convenience and Needs of the Community

According to the FDIC SOP on Deposit Insurance Applications, "[t]he essential considerations in evaluating this factor are the deposit and credit needs of the community to be served, the nature and extent of the opportunity available to the applicant in that location, and the willingness and ability of the applicant to serve those financial needs."[9]

In evaluating an application under this factor, the FDIC may consider the adequacy of a prospective depository institution's Community Reinvestment Act (CRA) plan, a record of previous fair lending and consumer compliance violations whether the depository institution will meet an unmet need in the market, whether the institution will serve its entire market, whether the institution will destabilize competitors by siphoning deposits away from existing institutions, and other factors.

GM Financial Bank will not serve the auto-buying public as a whole but will instead use FDIC insurance as a public subsidy to lower its costs of funds and to enrich its commercial parent company.

GM Financial Bank proposes to serve GM customers nationwide using an online-only business model. The prospective ILC intends to operate only a main office in Utah without opening any retail branches. This is problematic because, despite conducting business nationwide, this institution will be subject to a relatively narrow evaluation under the CRA. GM Financial Bank has applied to be considered a "limited purpose bank" for purposes of their CRA evaluation. Limited purpose banks are evaluated on the basis of their community development activities and not their retail lending under the community development test for wholesale and limited purpose banks.[10]

GM Financial Bank's limited focus on customers of GM dealerships, coupled with the fact they will not be subject to the retail lending test under the CRA and will only have a single assessment area in Utah, means that the bank will have little accountability with regards to its lending to low- and moderate-income customers and in low- and moderate- income census tracts. When a financial institution receives the benefit of federal deposit insurance – it also must expect a comparable level of supervision and the same requirements to fairly serve the underserved as would apply to a traditional bank. Given the stripped-down CRA framework under which GM Financial Bank is proposing to be evaluated, it is clear that it does not intend to serve the convenience and needs of the community in the same way as a traditional bank.

Additionally, it is unclear how consumers would benefit from the FDIC taking the risk of insuring the deposits of GM Financial Bank. GM Financial already makes indirect auto loans to customers at GM dealership – it simply does so by raising money from private debt markets rather than from depositors. In other words, there is no unmet need being met by giving GM a bank charter – FDIC is subsidizing their

[8] 12 U.S.C. 5381(a)(11).
[9] 63 Fed. Reg. 44752 at 44760.
[10] 12 CFR 345.25.

fundraising by providing deposit insurance while simultaneously assuming the risk of failure of company with a history of failure in banking.

ICBA is also concerned that the anti-competitive nature of the relationships between the GM Financial Bank and GM will harm consumers. In the context of bank mergers, agencies must reject any "proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served."[11]

Courts have also held that, when evaluating a bank merger, "if a market can be characterized as oligopolistic, any merger which strengthens this oligopolistic structure must be struck down."[12] If Congress intended for federal regulators to reject bank mergers that promoted anticompetitive effects or strengthened a market's oligopolistic structure, it is not reasonable to believe that Congress would have intended for the FDIC to approve new deposit insurance applications if the effect of doing so would be anticompetitive.

In 2024, captive finance companies like GM Financial and Ford Credit were the leading lenders for new cars, with a 58.67% market share.[13] Relative to the thousands of banks and credit unions they currently compete with, this is a dominant market position that will only be strengthened by the approval of their deposit insurance applications. Approving these applications will effectively subsidize captive lenders, making it more difficult for financial institutions to compete in the auto lending market and more difficult for a new car manufacturer without an FDIC-insured subsidiary to enter the market.

It is inherently anti-competitive for a lender to lend only to the customers of its parent company or to favor customers of its parent company in other ways. Anticompetitive behavior harms consumers because it reduces consumer choice and promotes the creation of monopolies and oligopolies. Therefore, ILC applicants like GM Financial Bank that propose to engage in business practices that are anticompetitive should be denied by the FDIC because there is substantial evidence that they will not serve the convenience and needs of their entire communities.

Conclusion

Thank you for considering the reasons the FDIC should deny the deposit insurance application of GM Financial Bank. While the ownership of ILCs by commercial parents is permissible under federal law – obtaining deposit insurance from the FDIC is a privilege and not a right. The FDIC has the legal authority and obligation to reject applications for deposit insurance that do not satisfy one or more of the statutory factors outlined in the FDI Act. The FDIC has the authority to interpret these factors broadly to protect consumers and the DIF, and should deny the application of GM Financial Bank

[11] 12 U.S.C. 1828(c)(5).
[12] *United States v. Provident Nat. Bank*, 280 F. Supp. 1, 18–19 (E.D. Pa. 1968).
[13] Experian, "State of the Automotive Finance Market Q3 2024," available at: https://www.experian.com/automotive/auto-credit-webinar-form.

Please contact me at Mickey.Marshall@icba.org if you have any questions about the positions stated in this letter.

Sincerely,

Mickey Marshall
AVP and Regulatory Counsel

CC: Travis Hill, Acting Chairman, FDIC
Rodney Hood, Acting Comptroller, OCC
Russell Vought, Acting Director, CFPB