National Community Reinvestment Coalition

January 13, 2021

John Conneely
Regional Director
Federal Deposit Insurance Corporation
300 South Riverside Plaza, Suite 1700
Chicago, IL 60606-3447

RE: NCRC Comment Letter on GM Financial Bank Application

Dear Director Conneelly:

The National Community Reinvestment Coalition (NCRC) maintains that GM Financial Bank's application for an Industrial Loan Charter (ILC) has not demonstrated a significant commitment to meeting the convenience and needs of the community to be served as required per the Federal Deposit Insurance Act (FDIA) and the FDIC statement of policy on applications for deposit insurance.[1] GM Financial Bank has developed an incomplete plan for its Community Reinvestment Act (CRA) evaluation that does not adequately serve the credit and deposit needs of the communities, including low-and moderate-income (LMI) communities. The proposed bank and its reliance on subprime auto lending also present serious consumer protection challenges, and its structure as an ILC raises systemic risk issues that are not adequately addressed in the application. NCRC opposes GM Financial Bank's charter application and urges the FDIC to deny it in its current form.

I. Towards a Substantial CRA plan that utilizes the talents and expertise of the applying institution

The FDIC's statement of policy on applications for deposit insurance states that a factor for consideration of approval of a charter application is the "willingness and ability of the applicant to serve those financial needs (credit and deposit needs)." While GM Financial Bank acknowledges its CRA obligations, its CRA plan falls short of demonstrating a commitment to adhere to CRA's obligations commensurate with GM Financial Bank's ability and expertise. GM Financial Bank seeks to evade a retail lending test that would evaluate its automobile financing on a nationwide level. It seeks to constrain its responsibility for financing community development to a regional area around Utah although it will serve consumers throughout the country.

[1] FDIC Statement of Policy on Applications for Deposit Insurance, https://www.fdic.gov/regulations/laws/rules/5000-3000.html

As a wholesale and limited purpose bank, it will have a community development test but no lending test that examines originations or purchases of automobile loans. By proposing to be evaluated as a wholesale and limited purpose bank, it will not subject itself to an evaluation that tests whether it brings its full range of expertise and capacity to its community reinvestment program.

A non-bank applying for a bank charter must apply its talent and expertise in serving the LMI population and develop a rigorous CRA plan as part of its application. Such a plan must be comprehensive, but these qualities are lacking in GM Financial Bank's proposed plan.

NCRC believes the FDIC should consider the following as minimum requirements for creating a rigorous CRA plan:

A. Assessment areas cannot be narrow but must include areas where a substantial amount of business is conducted

GM Financial Bank proposed to establish the Salt Lake City-Provo-Orem Combined Statistical Area (CSA) as its one assessment area.[2] It also acknowledges a responsibility to offer community development finance in a statewide and regional area surrounding the CSA.[3]

The allocation of only one assessment area will create a disconnect between where the proposed bank meets its CRA obligations compared to where it has customers. In the most recent subprime loan securitization from its captive AmeriCredit financing division, operations in four states accounted for slightly more than forty percent of AmeriCredit's lending activity: Texas, with 18.2%; Florida, with 8.6%; California, with 7.5%; and Ohio, with 6.2%.[4] Similar concentrations in areas outside of Utah were observed in the most recent GM Financial Consumer Automobile Receivables (GMCAR) securitization: Texas, with 14.7%, California, with 9.4%; and Florida, with 6.4%[5]

The CRA regulations do not prohibit a branchless bank from establishing assessment areas beyond its headquarters. Assessment areas can include areas where substantial amounts of lending activity occur.[6] Again, if GM Financial Bank's assessment area is restricted to the Salt Lake City CSA, GM Financial Bank is not demonstrating a willingness to serve the credit and deposit needs where it does business as required by the FDIC statement of policy.

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[2] GM Financial Bank application, p. 44

[3] GM Financial Bank application, p. 51.

[4] AmeriCredit. (November 2020). AmeriCredit Automobile Receivables Trust ABS Information. AMCAR 2020-03. *Prospectus Offering Memorandum.* A document retrieved at https://www.gmfinancial.com/en-us/investor-center/asset-backed-securitization/amcar-abs.html

[5] GM Financial. $1,601,390,000 Automobile Receivables Backed Notes GM Financial Consumer Automobile Receivables Trust 2020-3. Retrieved at https://www.gmfinancial.com/en-us/investor-center/asset-backed-securitization/gmcar.html

[6] See § 345.41 (c) (2), Assessment area delineation, of the FDIC CRA regulation. A document retrieved at https://www.fdic.gov/regulations/laws/rules/2000-6500.html#fdic2000part345.41

Using loan data, NCRC believes that the agencies can require non-traditional banks to create assessment areas that capture the vast majority of their loans. An example of lending by state for Lending Club during the time period of 2012 and 2013 shows that assessment areas can be meaningfully created for an online lender (a two-year time period is a typical time period covered by a CRA exam).[7]

During 2012 and 2013, Lending Club made more than 188,000 loans. Most were consumer-related loans, and most often they were made for the purpose of refinancing outstanding debts. Ten states each had more than 3 percent of Lending Club's loans. Not all of these states were the most populous states, suggesting it feasible for a branchless bank to designate assessment areas that constitute the great majority of their loans and to designate a diversity of states with urban centers and rural counties with pressing needs as assessment areas.

GM Financial Bank should share the location of its automobile lending data by state, county and metropolitan area. It should also provide geographical data on its deposit-taking activity. GM Financial Bank should then confer with community-based organizations and other stakeholders in deciding which geographical areas will constitute assessment areas. Assessment areas should capture the majority of its retail activity and include a healthy mix of states, metropolitan areas, and rural counties.

B. The application contains insufficient information on how the proposed bank will provide safe and sustainable auto loans to low- and moderate-income people

Consistent with agency proposals to change the CRA regulation to evaluate consumer lending, GM Financial Bank should indicate how it will measure its performance in financing automobile lending to LMI borrowers and communities. Will it calculate the percentage of its loans for LMI borrowers and communities and compare these percentages to local demographics and peers (using tables from CRA exams that scrutinize automobile lending for peer banks)? How will it engage community stakeholders in discussions and partnerships, particularly for assessment areas where the performance measures indicate its performance is lagging?

C. The application does not include adequate goals for deposit accounts

In addition, GM Financial Bank establishes no goals for its deposit accounts.[8] NCRC reiterates that it is inappropriate for an institution that is nationwide in scope not to offer a comprehensive plan that includes goals for deposits and services.

Since a significant part of its business will likely be generated from internet operations, GM Financial Bank should adopt benchmarks based on specific guidance on how CRA examiners evaluate alternative delivery systems in the Interagency Questions and Answers Regarding CRA

[7] NCRC's Congressional Testimony On Fintech Oversight, February 2018, see section on assessment areas, https://www.ncrc.org/ncrcs-congressional-testimony-fintech-oversight/
[8] Deposit products discussed on page 3 of the GM Financial Bank application.

(Interagency Q&A).[9] The Interagency Q&A advises that CRA examiners will scrutinize whether a financial institution's alternative delivery systems are effectively delivering services to LMI populations by considering a variety of factors including ease of access, cost to consumers, range of services delivered, ease of use, rate of adoption and use, and reliability of the system.[10]

GM Financial Bank should establish specific performance measures and goals for the LMI community for each of these factors. Factors like the rate of adoption and use and the reliability of the system should have separate metrics and goals specifically set for rural as well as urban areas and for underbanked populations.

D. Community development lending, investments, and services are not benchmarked against the proposed bank's peers

GM Financial Bank offers a ratio of community development financing divided by assets annually and for a three-year time period.[11] While these propositions are a step in the right direction, the proposed measure is incomplete. It does not include peer comparisons, making it difficult for members of the public to judge whether GM Financial Bank will be a leader or a laggard on this measure.

Likewise, GM Financial Bank should also commit to a quantitative measure for community development services. It should propose total hours for employee community development services compared to assets as well as the number of hours per employee. With these measures, members of the public would know how the bank performs relative to its peers.

GM Financial Bank indicates it will use the financial literacy curriculum developed by its parent. It is positive that the bank indicates it uses its curriculum in schools.[12] The bank should also use its capacity and expertise to educate the public about obtaining automobile financing and how to ensure that this financing is affordable and within family budgets.

E. Execution of the plan must involve robust community input

GM Financial Bank's application lacks a description of how it plans to engage the community in assessments of whether it is meeting community needs, which of course, is the central aim of the Community Reinvestment Act (CRA). NCRC urges any applicant to provide a thoughtful and rigorous description of community engagement. In particular, NCRC urges applicants for charters to commit to establishing CRA committees composed of representatives of community organizations and other community stakeholders. These committees would meet on a periodic

[9] Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment Act Guidance, OCC, Board of Governors of the Federal Reserve System, FDIC, Fed. Reg. 81, 142 at 48506, https://www.gpo.gov/fdsys/pkg/FR-2016-07-25/pdf/2016-16693.pdf
[10] Interagency Q&A at 48542.
[11] GM Financial Bank application, p. 56.
[12] Ibid.

basis to consider a bank's CRA plan, to review the bank's progress in meeting the plan's goals, and to offer additional proposals for improving CRA performance.

F. Approval of applications involving branchless banks is premature before the completion of an interagency CRA modernization rule

The Federal Reserve Board has issued an Advance Notice of Proposed Rulemaking (ANPR) on CRA that entails a more thoughtful approach to CRA evaluations for automobile lenders and branchless banks than the approach utilized in this application. The Board asks the public whether consumer lending, including automobile lending, should be regularly evaluated on CRA exams. The Board is also considering establishing local assessment areas that capture significant amounts of lending activity beyond the headquarters of branchless banks. This important component of the Board's proposal would define how a branchless lender would be examined for its lending and community development activity. Given the evolving landscape in the regulatory approach to CRA, we believe that charter applications that would be affected by this rule are premature and should not be considered until the issue of assessment areas for branchless banks has been adequately proscribed on an interagency basis. If this application moves forward, it must, at minimum, address the CRA obligations, consumer protection concerns and systemic risk issues described in this letter.

II. No commitment to responsible lending in the application

A charter application for an industrial bank must include a detailed plan for how the institution will implement policies and procedures for compliance with fair lending and related consumer protection laws. A federal regulatory agency simply cannot approve an application for a bank charter that lacks a comprehensive section on these topics. GMAC and ResCap, two predecessors of GM Financial, engaged in troubling business practices that harmed consumers.[13] [14] Despite this, the application barely discusses fair lending and consumer protection compliance. The application states that its fair lending policy is confidential,[15] which is an inappropriate

[13] In the past, GM captive financing units have engaged in dangerous lending that undermined consumers and contributed to the overall destabilization of our housing finance markets. A predecessor of GM Financial (GMAC Mortgage Corporation, its related subsidiaries Residential Funding Corporation and Ditech.com, and its successor subsidiary Residential Capital "ResCap" Corporation), originated many subprime, poorly-underwritten loans. Many of those loans fell into foreclosure because of their inherently risky structures. In 2005, more than 82 percent of Residential Capital Corporation's mortgage loans held for investment were non-prime, making the company one of the largest participants in subprime mortgage lending in the United States. ResCap noted that a large portion of its prime loans were "high loan-to-value" and thus non-conforming. In 2012, GMAC ResCap (the reorganized version of GMAC) filed for bankruptcy and was liquidated in 2013. See Residential Capital Corporation. (2005, July 15). Form S-4, filed to the Securities and Exchange Commission. Retrieved at https://www.sec.gov/Archives/edgar/data/1145701/000095012405004263/k96200sv4.htm#007

[14] Center for Public Integrity. (2009, May 6). *"The Subprime 25."* Retrieved at https://publicintegrity.org/inequality-poverty-opportunity/the-subprime-25/ The Center for Public Integrity included GMAC in its list of top 25 subprime lenders "whose bad loans led to the near collapse of the economy."

[15] GM Financial Bank application, p. 19.

treatment in a bank application and makes it impossible for the public to judge whether the proposed bank would have adequate fair lending and consumer protection safeguards.

A. Subprime loans backed by depreciating assets will drive borrowers into a long-term cycle of debt

The FDIC must acknowledge the risks associated with chartering a financial institution that makes risky, high-cost loans. GM Financial, the wholly-owned captive financing subsidiary of GM, securitizes its consumer retail auto loan receivables through two different channels: prime loans through GM Financial Consumer Automobile Receivables Trust (GMCAR) and subprime loans through AmeriCredit Automobile Receivables Trust (AMCAR).

AMCAR is a very large subprime lender. In the first nine months of 2020, it issued three asset-backed securitizations containing more than $2.2 billion in retail loans. Consider important details revealed in the March 2020 investor prospectus describing the AmeriCredit Automotive Receivables Trust (2020-03).[16] The trust consisted of automobile loans originated by GM Financial through its AmeriCredit subsidiary, a wholly-owned business within GM Financial. The pool - the third AMCAR securitization of 2020 - consisted of nearly $1.2 billion in loans. Each descriptor of the pool underscores AMCAR's high-cost, high-risk nature:

- A weighted average annual percentage rate (APR) of 12.1 percent.
- A weighted average term of 72 months, with some loans having terms of as long as 84 months.
- A weighted average credit bureau score of 585.

These practices put consumers at risk of falling into debt traps. Auto loans are unique among the universe of secured financial products in that they are backed by depreciating assets. When loans of these durations are made at these interest rates, it is inevitable that borrowers will fall "below water" - meaning that their debt will exceed the value of the asset they purchased.

By any reasonable estimation, the performance of AMCAR loans has been poor. Even though the loans in the portfolio were, on a weighted average, only six months old, 12.3 percent had already been delinquent for between 31 and 60 days at least once, and 9.2 percent had already received a credit extension by fall 2020.[17] Since the public does not have detailed data on default rates for automobile lenders, we call upon the FDIC to investigate whether AMCAR default rates are high compared to peers to carefully weigh the safety and soundness of this application.

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[16] AmeriCredit Financial Services, Inc. $1,095,050,000 Automotive Receivables Backed Notes. AmeriCredit Automotive Receivables Trust 2020-03, Issuing Entity CIK No. 0001829012. *Prospectus Offering Memorandum.* Retrieved from Investor Relations, GM Financial, at https://www.gmfinancial.com/en-us/investor-center/asset-backed-securitization/amcar-abs.html
[17] Ibid.

Moreover, the aforementioned weighted-average interest rate in that pool was actually well below the rates charged by AmeriCredit (legacy AMCAR) in the prior decade.[18] The rates charged in the early part of the previous decade demonstrate that rates as high as those currently offered are actually low when viewed from a longer-term context, and given that the driving factor in setting retail loan rates are prime rates and ten-year Treasuries, we must recognize that AMCAR's future weighted-average interest rates are likely to be higher than 12 percent in the future. Together, these factors underscore the view that GM Financial's AMCAR subsidiary has been a subprime lender in the past, is currently a subprime lender and will continue to be a subprime lender.

B. The leadership of the proposed bank will likely expand its subprime activities

We have concerns that, given the experience of the proposed Board of Directors of GM Financial, the proposed entity will use its lower cost of capital to take greater risks with more subprime lending. The proposed CEO of the Bank formerly worked for a high-cost consumer finance installment lender and separately, a Utah ILC-chartered bank that issues loans under a rent-a-charter framework. A second board member formerly served on the Board of a national pawn lender. A third was formerly a senior executive at a national subprime debt collection company, and prior to that, a senior executive at a national secured credit card issuer. A fourth is a Director at a bank at which one of the primary business lines is the *AccessFreedom* prepaid debit card, a release card distributed by state and for-profit correctional facilities and whose fees have been challenged in a 2017 class-action suit in Washington state.[19] Notably, GM Financial's application states that the fourth director "will enhance the risk management and regulatory expertise of the Bank's Board of Directors." In all, four of the five named Directors have backgrounds in subprime lending, and the other Director brings subject matter knowledge in fields outside of finance.

III. A subprime ILC introduces substantial risks to the financial system

A. ILCs present an unacceptable risk to the financial system

NCRC is opposed to ILC charters as problematic from a safety and soundness perspective. ILC charters can include a parent institution that is not a financial institution. Federal agencies cannot comprehensively examine the parent nor other affiliates and subsidiaries for their safety and soundness. The ability of the FDIC to thoroughly monitor the relationship between the ILC and

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[18] AmeriCredit. (November 2020). Loans in AmeriCredit's 2007-A securitization had a weighted average coupon rate (WAC) of 17.08%. The WAC in the 2010-A securitization was 17.45%.

[19] *Reichert v. Keefe Commissary Network, LLC, d/b/a Access Corrections; Rapid Investments, Inc., d/b/a Rapid Financial Solutions, d/b/a Access Freedom; and Cache Valley Bank*. Retrieved at https://www.classaction.org/news/wa-man-files-suit-over-prepaid-debit-cards-issued-after-jail-release For example, the complaint indicated that the *AccessFreedom* Card charged a $2.75 weekly maintenance fee, a $10 account closure fee, and a $2.95 ATM withdrawal fee. In the class action suit, the plaintiffs noted that such a fee rule means that card holder can no longer receive cash when the account has a balance of less than $22.94, as ATMs generally disburse funds in increments of $20.

its parent and to monitor the risk the parent poses to the ILC has been questioned by the Government Accountability Office and other stakeholders.

During the financial crisis, two ILCs, Security Savings Bank, based in Nevada, and Advanta Bank Corp, based in Utah, failed. In addition, many parents of ILCs, including Lehman Brothers, General Motors, Flying J Inc., CIT Group Inc., Capmark Financial Group Inc., and Residential Capital, LLC, filed for bankruptcy.[20] Notably, the last two institutions in this list were at one point a part of GMAC, and the bankruptcies of both can be tied to decisions made by the management of GMAC.

B. GMs ILC application does not suggest the proposed bank can mitigate these risks

Indeed, a genuine concern of any ILC application is the possibility that a business will use a charter to subsidize the operational costs of its primary business. All indicators suggest that GM is a prime example of a business that could use a charter for this aim, with the additional effect of introducing new risks to the broader financial system. By offering loans to borrowers whose credit scores might otherwise prevent them from qualifying for an automobile loan elsewhere, GM can increase its sales. Such a practice introduces risk to the financial system, but through the practice of securitization, GM Financial can shift that risk to external actors. Giving a charter to GM will only allow it to expand that approach without addressing how these practices create systemic risk.

We are also concerned about the safety and soundness of GM Financial. At the moment, four bond ratings agencies rate GM Financial's debt in the lowest tier within the "investment grade" universe.[21] As long as GM Financial's bonds remain at or above this level, commercial banks can still invest in its securities. If those ratings fall, however, the demand for GM Financial's securitizations would fall, problems could occur, and risks would multiply. It would be sanguine to believe that problems will not occur in the future, as the automobile industry is very cyclical, questions exist about the long-term sustainability of the dealership channel in an era of direct-to-consumer online sales and car-sharing,[22] and GM Financial's AMCAR securitizations are composed of loans made to high-risk borrowers. Taken together, those factors (and others) provide compelling reasons to ask if this charter application represents a means for GM's leadership to improve its finances without fundamentally improving its core capital strategy.

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[20] Statement of Martin J. Gruenberg, Chairman, Federal Deposit Insurance Corporation on De Novo Banks and Industrial Loan Companies before the Committee on Oversight and Government Reform; U.S. House of Representatives; 2157 Rayburn House Office Building, https://www.fdic.gov/news/news/speeches/spjul1316.html

[21] GM Financial Investor Relations. (November 5, 2020). *Strategic and Operational Overview.* Presentation page 17: "Committed to Investment Grade." Retrieved at https://www.gmfinancial.com/en-us/investor-center/events-and-presentations.html

[22] KPMG US. (January 2019) *"Will This Be the End of Car Dealerships as We Know Them? Online Shopping, Ride-Sharing Services, Collision Avoidance Technology, and Self-Driving Cars Will Lead to a Sharp Drop in Dealer's Sales and Profits."* A white paper presented at the 2019 Detroit Auto Show. KPMG compared the current dealership model to Blockbuster Video prior to the ascension of Netflix. Retrieved at https://advisory.kpmg.us/content/dam/institutes/en/manufacturing/pdfs/archive/the-end-of-car-dealerships.pdf

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IV. Conclusion

GM Financial Bank's charter application cannot be approved by the FDIC. The current CRA plan does not illustrate a willingness to meet credit and deposit needs in all areas in which the bank does business as required by the convenience and needs factor for charter approval. In addition to a lack of a robust CRA plan, GM Financial Bank does not offer an explicit and ironclad commitment to responsible and fair lending in its charter application. Furthermore, this application presents several safety and soundness concerns. We ask the FDIC to reject this application and implement a high standard for any non-bank seeking the privilege of a bank charter.

Thank you for the opportunity to comment on this important matter. If you have any questions, you can reach me or Josh Silver (jsilver@ncrc.org) or Adam Rust (arust@ncrc.org) on 202-628-8866.

Sincerely,

Jesse Van Tol

CEO