February 10, 2023

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: Pending FDIC Deposit Insurance Applications by Industrial Loan Companies

Dear Chairman Gruenberg,

In September 2022, nine members of the United States Senate addressed a letter to your office expressing support for the industrial loan company (ILC) charter and to "remind you to ensure the Federal Deposit Insurance Corporation (FDIC) continues to follow the laws that Congress carefully designed for the FDIC to consider new deposit insurance applicants, including ILCs."[1] Currently, there are four pending applications for deposit insurance awaiting a decision by the FDIC.[2]As ICBA[3] has argued in the past, the ILC charter, and its exemption from the Bank Holding Company Act, presents outsized risks to the Deposit Insurance Fund, financial stability, consumers, and taxpayers. To prevent the expansion of this dangerous loophole, which erodes the foundational separation of banking and commerce in the United States, the FDIC must deny the pending applications pursuant to the authority expressly delegated to the agency by Congress.

ICBA has submitted objections to three of the pending deposit insurance applications, which we incorporate into this letter by reference.[4] The applications that we filed objections to would all create an

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[1] Sen. Mitt Romney, et. al., "Letter to Acting Chairman Gruenberg" (Sept. 15, 2022), available at: https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2022/09/FinalILCLettertoFDIC.pdf.
[2] The four pending applicants are GM Financial Bank, Rakuten Bank America, Thrivent Bank, and Ford Credit Bank.
[3] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than $5.8 trillion in assets, over $4.8 trillion in deposits, and more than $3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.
[4] *See* Independent Community Bankers of America, "FDIC Deposit Insurance Application of GM Financial Bank" (Jan. 13, 2021), available at: https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/icba-gm-financial-bank-deposit-insurance-application-comment-letter.pdf?sfvrsn=c3e33217_0; Independent Community Bankers of America, "FDIC Deposit Insurance Application Rakuten Bank America" (June 25, 2020), available at: https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/comment-letter-to-the-fdic-on-rakuten.pdf?sfvrsn=23a02717_0; Independent Community Bankers of

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ILC with a commercial (i.e. non-financial) parent company. In our view, ownership of depository institutions by commercial firms is uniquely risky because it creates unavoidable conflicts of interest and insurmountable supervisory challenges. However, even ILCs without a commercial parent company are unduly risky because they could be acquired and dramatically increased in size by a commercial company. ICBA, along with a Broad Coalition of banking trade associations and consumer advocacy groups, strongly support S. 5189, the Close the Shadow Banking Loophole Act, which was sponsored by Sen. Sherrod Brown, the chairman of the Senate Banking, Housing, and Urban Affairs Committee, and would prevent the creation of new ILCs and limit the circumstances where existing ILCs could be acquired by a commercial firm.[5]

However, the FDIC is not required to wait for Congress to close the ILC Loophole in order to deny the pending deposit insurance applications of ILCs. The FDIC has the statutory authority to reject deposit insurance applications where there is substantial evidence that a prospective depository institution fails to satisfy one or more of the factors specified in the Federal Deposit Insurance Act (FDI Act). Congress created these factors to ensure that only financially sound, well-managed depository institutions that serve the convenience and needs of their communities would have access to FDIC insurance. There is substantial evidence that the pending ILCs fail to satisfy at least two of the factors outlined in the FDI Act because they create an undue risk to the Deposit Insurance Fund and are unlikely to satisfactorily serve the convenience and needs of the community. Therefore, the FDIC has not only the ability, but a statutory duty to deny their applications.

Standard of Review

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.[6]

According to the FDIC's Statement of Policy (SOP) on Applications for Deposit Insurance, "In general, the applicant will receive deposit insurance if all of these statutory factors … are resolved favorably."[7] Based on this interpretation of the FDI Act, if an applicant fails to satisfy the requirements imposed by a single statutory factor, the FDIC will generally have sufficient basis to deny its application. In our view, GM

America, "Comments of the Independent Community Bankers of America Concerning the Application for Deposit Insurance by Ford Credit Bank" (Aug. 19, 2022), available at: https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/comments-on-ford-credit-bank-deposit-insurance-application.

[5] Close the Shadow Banking Loophole Act, S. 5189, 117th Cong. (2022), available at: https://www.congress.gov/bill/117th-congress/senate-bill/5189.

[6] 12 U.S.C. 1816.

[7] Federal Deposit Insurance Corporation, "Statement of Policy on Applications for Deposit Insurance" (July 7, 1998), available at: https://www.fdic.gov/regulations/laws/rules/5000-3000.html.

Financial Bank, Rakuten Bank America, and Ford Credit Bank all fail to satisfy at least one of the statutory factors, which should result in the denial of their applications.

Applications for deposit insurance must be denied by the FDIC Board, the Board may not delegate the decision to deny an application to agency staff.[8] When an application is denied, the Board must provide "specific reasons in writing for the Board of Directors' determination with reference to the factors described in [Section 6 of the FDI Act]."[9] The FDIC must also comply with the procedures governing adjudications, as outlined in the Administrative Procedure Act (APA) while formulating an order to deny an application for Deposit Insurance.

We are confident that the FDIC is conducting a thorough review of the pending applications and that any decision to act on the applications will comply with the relevant requirements of the FDI Act and the APA, as described above. Because the decision to approve or deny an application for deposit insurance is clearly within the FDIC's statutory authority, any order that the agency issues to deny an application should be treated with deference by a reviewing court. The APA specifies that courts should overturn agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or that are "unsupported by substantial evidence."[10] According to the Supreme Court, "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[11]

The FDIC has substantial evidence that the pending ILC applications do not satisfy all the relevant factors in the FDI Act. A reasonable mind could conclude than, 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 undue risk of losses to the DIF. This risk is further substantiated by the fact that one of the applicants, General Motors, previously controlled an ILC that needed to be bailed out by taxpayers during the 2008 Financial Crisis. Furthermore, it is reasonable to conclude that institutions which plan to conduct business nationwide but that proposes to be evaluated for purposes of the Community Reinvestment Act (CRA) in only the location of their main office and that will predominately focus on lending to the customers of their parent company rather than the public as a whole are unlikely to meaningfully serve the convenience and needs of the community. Because the FDIC has substantial evidence that the applicants fail these factors, it is on firm legal ground to deny their applications.

Risk Presented to the Deposit Insurance Fund

According to the FDIC's Statement of Policy (SOP) on Applications for Deposit Insurance, "In order to resolve this factor favorably, the FDIC must be assured that the proposed institution does not present an undue risk to the Bank Insurance Fund or the Savings Association Insurance Fund. As a general matter, the FDIC interprets this factor very broadly."[12] The FDIC should deny the applications of GM Financial Bank, Rakuten Bank America, and Ford Credit Bank because there is substantial evidence that the

[8] 12 U.S.C. 1815(a)(6).
[9] 12 U.S.C. 1815(a)(5).
[10] 5 U.S.C. 706(2).
[11] Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229, 59 S. Ct. 206, 217, 83 L. Ed. 126 (1938).
[12] Federal Deposit Insurance Corporation, "Statement of Policy on Applications for Deposit Insurance" (July 7, 1998), available at: https://www.fdic.gov/regulations/laws/rules/fdic-interagency-statements.html.

ownership of an ILC by a commercial parent company, creates an undue risk to the Deposit Insurance Fund, particularly when the ILC is created to lend to the customers or affiliates of the parent company. In these circumstances, there is an unavoidable conflict of interest which is foreseeably leads to the reduction of underwriting standards to increase the sales of the commercial parent company. For this reason, ILCs with a commercial parent company face a greater risk of becoming insolvent. In addition, the FDIC lacks the statutory tools required to supervise commercial parent companies of ILCs or to recover assets from them in the event of an insolvency. This substantially magnifies the risk to the DIF.

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. ILCs with commercial parent companies, particularly when they are created to lend to customers of their parent companies, are not incentivized to accurately price credit risk. When a 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. In the case of an auto lender owned by an auto manufacturer, for example, the lender may make loans to consumers that would be denied by other lenders in order to increase the sale of cars.

This is harmful to consumers because they may receive a loan that they do not truly have the ability to repay, increasing their likelihood of default. Default on a loan can result in repossession, damage to credit score, reducing their ability to access credit in the future, and bankruptcy. In times of economic stress, there is the possibility that a significant number of these riskier loans will default, jeopardizing the depository institution. The risk to the financial system posed by the conflict of interest inherent to auto manufacturer owned financial subsidiaries has never been greater since outstanding auto loan balances have increased to a record $1.39 trillion.[13]

In the case of Rakuten Bank America, which proposes to make personal loans to consumers, these loans are likely to be among the first that customers choose to default on. In the case of Ford Credit Bank and GM Financial Bank, while auto loans are less likely to default than personal loans, these institutions will still be subject to concentration risk – and a sustained recession could significantly decrease auto lending demand. If one of these institutions does become insolvent, the FDIC's ability to resolve the failed depository institution will be impaired because there are few large banks that would be willing and able to purchase as large and concentrated portfolio of auto loans or personal loans. This may result in the FDIC being required to sell the loan portfolio at a significant discount, leading to greater losses for the DIF.

Highlighting the risk presented by the commercial ownership of ILCs, it is important to consider the performance of commercially owned ILCs in the 2008 Financial Crisis, including the bailout of one of the present applicants, General Motors. The General Motors Acceptance Corporation was founded in 1919 for the limited purpose of providing auto loans. Over time, however, it drifted from this founding purpose, offering insurance, lending to dealerships and manufacturers, and eventually entering the mortgage lending business. Finally, in 2001 GMAC obtained an industrial bank charter for GMAC Bank. By 2008, GMAC Bank was sustaining billions in losses. These losses contributed to the near bankruptcy of the parent company, General Motors, and resulted in GM being forced to divest GMAC Bank so that it could convert to a Bank Holding Company and become "eligible for access to the FDIC's Temporary

[13] Experian, "State of the Automotive Finance Market Q3 2022," (Dec. 2022) available at: PowerPoint Presentation (experian.com).

Liquidity Guarantee Program (TLGP) facility and the TARP's Capital Purchase Program (CPP)."[14] In all, U.S. taxpayers spent $50 billion to bail out GM, $11.2 billion of which was never recovered.[15]

While GMAC was relatively large (approximately $172 billion in assets in 2009), it is difficult to make the case that it was systemically important to the financial system. It was orders of magnitude smaller than a Bank of America or a Citi, and less interconnected than a Goldman Sachs. So why did Treasury conclude that it was appropriate to bail GMAC out using TARP funds? Because its failure would have led to the failure of GM. As the TARP Congressional Oversight Panel later concluded, this importance to GM stemmed not only from GMAC Bank's role as a lender to GMAC customers but from floorplan loans (revolving loans to dealerships), which sustained GM's dealership network and provided a point of sale for its cars. As the Congressional Oversight Panel found, "For the lender, the generally low profit margins in floorplan financing are balanced by an attractive credit profile and gateway business opportunities to other, potentially more lucrative product lines (e.g., consumer auto and dealer real estate lending)."[16]

While GM Financial Bank is technically a new corporate entity, it is appropriate for the FDIC to consider the history of GMAC Bank's failure when evaluating the pending deposit insurance applications of ILCs because they have a similar business model to GMAC Bank and presents similar highly foreseeable risks. While GM Financial Bank is not proposing at this time to engage in mortgage lending, neither did GMAC when it was first created. It is eminently foreseeable that the same mission drift – and subsequent increase in risk and complexity – may occur in the future. Furthermore, GM Financial Bank and Ford Credit Bank are both proposing to engage in lending to auto dealers, the same practice that made GMAC Bank inseparable from its commercial parent's financial viability.

In addition to the heightened risk of failure by commercially owned ILCs, the supervision of the commercial parents of ILCs – and the resolution of a failed ILC – present significant challenges that do not exist with smaller, conventional banking institutions. As we have argued in the past, we believe there are gaps in the ability of the FDIC to supervise these institutions. The FDIC has taken some steps to increase its ability to strengthen its supervision of commercial parents of ILCs by requiring written agreements, but in our view, this still falls short of the robust consolidated supervision of Bank Holding Companies by the Federal Reserve. The commercial parents of ILCs remain exempt from consolidated supervision by virtue of their exemption from the Bank Holding Company Act. Even if there was no difference in regulatory structure, the challenges of examining commercial parent companies that are as large, complex, and multinational as Ford, GM, or Rakuten are immense and outside the scope of expertise of any banking agency.

More troublingly, we believe that the risk to the DIF posed by ILCs with a commercial parent is unduly heightened because commercial companies are not subject to the Dodd-Frank Act's Orderly Liquidation Authority ("OLA"). 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

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[14] Congressional Research Service, CRS Report R41427, "Troubled Asset Relief Program (TARP): Implementation and Status" at 9 (Aug. 21, 2014), available at: https://archive.org/details/R41427TroubledAssetReliefProgramTARPImplementationandStatus-crs.

[15] Eric Beech, *Reuters*, "U.S. government says it lost $11.2 billion on GM bailout" (April 30, 2014), available at: https://www.reuters.com/article/us-autos-gm-treasury/u-s-government-says-it-lost-11-2-billion-on-gm-bailout-idUSBREA3T0MR20140430.

[16] Congressional Oversight Panel, March Oversight Report, "The Unique Treatment of GMAC Under the TARP" (March 10, 2010), available at: https://www.govinfo.gov/content/pkg/CPRT-111JPRT54875/html/CPRT-111JPRT54875.htm.

that mitigates such risk and minimizes moral hazard."[17] Commercial parent companies of ILCs are, by definition, not financial companies, and are therefore outside the scope of OLA.[18] This exemption could make it impossible for the FDIC to reach the assets of Ford, General Motors, or Rakuten in the event of an insolvency of their ILC subsidiary, exacerbating losses to the DIF. This risk is further heightened in the case of Rakuten because most of the assets of its commercial parent are located outside of the United States.

Convenience and Needs of the Community to be Served

According to the FDIC SOP, "[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."[19] The FDIC has the authority to consider a wide array of factors when evaluating whether an institution will serve the convenience and needs of the community. It may consider the adequacy of a prospective depository institution's 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. The FDIC has substantial evidence that GM Financial Bank, Rakuten Bank America, and Ford Credit Bank are unlikely to serve the convenience and needs of their communities sufficient to justify a denial of their applications.

First, all three applicants propose to serve customers nationwide using an online only business model. The prospective ILCs intend to operate only a main office in Utah without opening retail branches. In our view, this is problematic because, despite conducting business nationwide, these institutions will be subject to a relatively narrow evaluation under the Community Reinvestment Act. The pending applicants have applied to be considered "limited purpose banks" 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.[20] A limited purpose bank is currently defined as "a bank that offers *only* (emphasis added) a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market" that has been designated as a limited purpose bank.[21]

This narrow CRA evaluation makes it more difficult for the FDIC to fully assess whether the prospective institutions are serving the convenience and needs of low- and moderate- income (LMI) consumers in the communities where they are actually doing business. The FDIC can and should consider that the institutions are proposing to be evaluated with a more limited CRA evaluation in assessing their commitment to meet the convenience and needs of their community. Furthermore, in the case of Ford Credit Bank and GM Financial Bank, it appears unlikely that they even qualify for the limited-purpose designation because they propose to make loans to dealerships and to finance electric vehicle charging stations, which means that their business is not confined to a narrow product line (auto lending) as required by the regulation.

[17] 12 U.S.C. 5384(a).
[18] 12 U.S.C. 5381(a)(11).
[19] *Supra* note 12.
[20] 12 CFR 345.25.
[21] 12 CFR 345.12(n).

In addition to their proposed limited CRA plan, Ford Credit and GM Financial have a record of consumer compliance allegations. For example, as recently as 2022 GM Financial paid $3.5 million to resolve accusations that it violated the Servicemembers Civil Relief Act for illegally repossessing vehicles belonging to servicemen.[22] In 2007, Ford Credit, doing business as Primus Financial Services, settled a case alleging violations of the Equal Credit Opportunity Act for marking up interest rates to African American borrowers. The settlement agreement, which did not require Ford Credit to admit to discrimination, did require the company to launch a diversity marketing initiative, commit to limits on rate mark-ups, and provide the plaintiffs $2.44 million for legal expenses.[23] Furthermore, in 2005, Ford was required to pay a $700,000 disgorgement and change its disclosures to investors to resolve allegations by the Securities and Exchange Commission that sales materials for the 'Ford Money Market Account' failed "to explain that the "Ford Money Market Account" was not a bank account or a money market mutual fund and that its investors were actually purchasing unsecured corporate debt of Ford Credit."[24]

While we acknowledge that the above cases were resolved without any admission of wrongdoing, we believe that the nature of the accusations is serious enough to warrant consideration by the FDIC. When an institution is accused of racial discrimination, abuse of servicemembers, or misleading consumers, it undermines the public's trust in not just the accused institution but of the fairness of the entire banking system. The FDIC should deny applications by institutions where there is substantial evidence of significant past consumer compliance issues.

Another issue posed by the pending applications is the extent to which they will siphon deposits from existing financial institutions. In West Virginia, the state banking commissioner rejected the charter application of an industrial bank because he concluded that the bank would not serve "the public convenience and advantage" because it would destabilize existing banks in the area it proposed to serve. The West Virginia Supreme Court overturned his decision because it lacked sufficient evidentiary support but said that "Were there evidence in the record that the existence of a new industrial loan company would siphon deposits away from existing banks with outstanding loan obligations, the conclusion of the Commissioner … might have been justified."[25] This case is significant because it stands for the proposition that, in evaluating a charter application, the reviewing agency may appropriately consider, as part of its evaluation of whether it will serve the convenience of its community, the extent to which a new ILC would siphon deposits away from existing banks. Given that none of the three pending applicants discussed in this letter propose to operate a branch network, it seems likely that they would need to pay a significant premium over market rates to attract deposits. The FDIC should evaluate the extent to which this would harm existing banks.

We are also concerned that the anti-competitive nature of the relationships between the ILC applicants and their commercial parent companies will harm consumers, therefore failing to serve the convenience and needs of the community. 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

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[22] Kanishka Singh, *Reuters*, "GM Financial to pay over $3.5 mln to resolve claims it violated U.S. law" (October 5, 2022), available at: https://www.reuters.com/legal/gm-financial-pay-over-35-mln-resolve-claims-it-violated-us-law-2022-10-05/.

[23] Claybrook, et al v. Primus Auto Financial Services, et al, No. 3:02-cv-00382 (M.D. Tenn. filed Feb. 26, 2007).

[24] SEC, "SEC Charges Ford Credit with Unlawful Marketing of 'Ford Money Market Account'" SEC-2005-89, available at: https://www.sec.gov/news/press/2005-89.htm.

[25] Jones v. Mullen, 166 W. Va. 538, 543–44, 276 S.E.2d 214, 217 (1981).

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."[26] 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."[27] 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 2022, captive finance companies like GM Financial and Ford Credit were the leading lenders for new cars, with a 44.23% market share. In 2020, their share was as high as 59.01%.[28] 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. In addition to pushing the market for auto loans further towards oligopoly, approving these applications would strengthen the oligopoly of the domestic car manufacturers. 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, depository institutions 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.

As an example of potential anti-competitive behavior by one of the pending applicants, Rakuten currently offers a promotion called a "Rakuten Shopping Trip." This is a feature where users of the app can earn cash back by making purchases using the Rakuten app. It's promotional materials state "To earn Cash Back, you must click through a Rakuten link every time you shop."[29] Offering cash back in this manner is not in and of itself anticompetitive, but if Rakuten was able to use a depository institution to enhance this feature it would be. For example, Rakuten could issue a credit or debit card that offered enhanced cash back rewards when used to make purchases through the Rakuten app – a practice that Rakuten attempted to engage in in partnership with Synchrony Bank.[30] This practice would be anticompetitive because it would amount to a commercial parent company using its ILC subsidiary to force customers to do business with the commercial parent company, to the detriment of its competitors.

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[26] 12 U.S.C. 1828(c)(5).
[27] United States v. Provident Nat. Bank, 280 F. Supp. 1, 18–19 (E.D. Pa. 1968).
[28] Experian, "State of the Automotive Finance Market Q3 2022," (Dec. 2022) available at: PowerPoint Presentation (experian.com).
[29] Rakuten, *Help Center*, "What is a Rakuten Shopping Trip," (accessed Jan. 27, 2023), available at: https://www.rakuten.com/help/article/what-is-a-rakuten-shopping-trip-360002100588.
[30] *See* Nerdwallet, "5 Things to Know About the Rakuten Cash Back Visa Card," available at: 5 Things to Know About the Rakuten Cash Back Visa Card - NerdWallet.

An ILC cannot serve the convenience and needs of its community when its primary purpose is to lock consumers into doing business with its commercial parent company. This is true whether the commercial parent company is an online retailer or an auto manufacturer. The proposed institutions are not being created to serve the convenience and needs of the community or to meet some underserved need in the market for banking services – their goal is to use FDIC insurance to subsidize their cost of raising capital and to entrench the oligopolistic position of their commercial parent companies. Preventing this type of anti-consumer arrangement is the reason that the separation between banking and commerce has been favored in the United States.

Conclusion

Thank you in advance for considering our renewed objections to the applications for deposit insurance of GM Financial Bank, Rakuten Bank America, and Ford Credit 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 in order to protect consumers and the DIF.

We strongly believe that approving these applications create a worrying fusion of banking and commerce that creates a substantial likelihood of consumer harm and undue risk to the DIF. Commercial ownership of depository institutions create concentrations of economic power that will be used to extract personal data and monopoly profits from consumers. We urge the FDIC to exercise its legal authority under the FDI Act to formally reject the pending ILC applications.

Sincerely,

Rebeca Romero Rainey
President & CEO

CC: Travis Hill, Vice Chairman, FDIC
Michael J. Hsu, Acting Comptroller of the Currency and Director, FDIC
Rohit Chopra, Director of the Consumer Financial Protection Bureau and Director, FDIC
Johnathan McKernan, Director, FDIC