September 19, 2015

The Honorable Janet L. Yellen
Chair, Board of Governors of the Federal Reserve
20th Street and Constitution Avenue, NW
Washington D.C. 20551

Ivan Hurwitz
Vice President, Bank Applications Function
Federal Reserve Bank of NY
33 Liberty Street
New York, NY 10045-0001

**RE**: The Notice and Application filed by Goldman Sachs Bank USA ("Goldman Sachs Bank") to acquire by Purchase and Assumption of Certain Deposit Liabilities and Certain Very Limited Non-Financial Assets of GE Capital Bank presently pending before the Federal Reserve Bank of New York ("New York Fed")

Dear Ms. Yellen & Mr. Hurwitz:

I am writing on behalf of the Association for Neighborhood and Housing Development (ANHD) to comment on Goldman Sachs's application to acquire certain assets and liabilities of GE Capital Bank. ANHD is a not-for-profit coalition comprised of 101 neighborhood-based affordable housing and equitable economic development organizations and CDCs with a 30-year track record of engaging in bank reinvestment advocacy on behalf of New York City's low- and moderate-income (LMI) communities. ANHD is a member of the National Community Reinvestment Coalition (NCRC).

We are writing to oppose this merger until certain conditions are met, including **clarity on the bank's future business as a retail lender and what that means for their CRA designation**, an **expansion of assessment areas** that reflect where the bank will be making loans (starting with where GE Capital currently lends), and a **detailed CRA plan for all assessment areas**. We also ask that the **comment period be extended for at least 60 days** and that **public hearings be held** to solicit the most meaningful input from the public on all aspects of this merger. The only formal notice was published in tiny print at the end of August in the NY Post[1] and a Utah paper[2]. It took time after that for community organizations to secure a much redacted copy of the application to review such that the September 19th comment period leaves very little time to generate meaningful comments from the public. More of the document should also be made public.

In this letter, we outline our concerns with the application and the process. We also offer feedback on Goldman Sach's CRA record, including areas we think they do well and areas they could improve.

## Clarity on Goldman Sach's Future Bank Activities and how it will be evaluated under the CRA

[1] http://nyp.nypost.com/2015/08/27/classifieds.pdf
[2] http://www.utahlegals.com/notice.php?id=257782

The application makes numerous references to integrating GE Capital's program, implying that Goldman Sachs will continue GE Capital's lending platform (Page 3-4: "*GS Bank is focused on the smooth integration of the new deposit platform and believes hiring existing employees of GE Bank would assist in providing a stable transition of business operations and continuity of service*") but there is no concrete commitment to doing so, and thus no commitment to fair lending or any indication that the bank will be evaluated on the equity of those loans. It appears that Goldman Sachs will be acquiring and continuing operation of GE Capital's lending platform and thus should be designated as a retail bank. As such, their CRA Exam procedures should reflect that. Further, the bank should be assessed in additional assessment areas in the areas where it does the most lending. GE Capital lends nationwide; in 2014, it made the most loans in California, Texas, Illinois, Florida, and New York.

### GE Capital Bank's CRA Record

We are concerned by GE Capital Bank's record of lending in NYC. Only 20% of their small loans to businesses were in LMI tracts in 2012 and 9% in 2013; the percentage rose to 28% in 2014 but that was more due to a drop in volume from 2013 and a slight increase in lending in LMI tracts. Additionally, no more than 7 loans in any year were to truly small businesses with revenues less than one million dollars.

What is more concerning, however, is how GE Capital's record of small business lending was ignored completely in their most recent 2012 CRA exam. According to the FDIC, the bank is primarily a business lender that operates out of its only branch in Utah:

> *"The bank is not a traditional retail institution serving the general public, and does not operate bank lobby hours or branches with teller lines, or drive-up facilities. GECB offers commercial loans and leases primarily to middle market business, which GECB defines as businesses with annual revenues between $10 million and $1 billion across the United States through affiliated specialty finance businesses. The bank, through its affiliate lending groups, serves the following industries: construction, material handling, transportation, health care, real estate, and franchise among other commercial customers." (Page 5)*

Yet, in spite of this recognition as a business lender, the regulators chose not to evaluate the bank's record of small business lending, stating that they did not make enough loans in their assessment area.

> *"Examiners used large bank CRA procedures for this evaluation; however, examiners were unable to complete each lending and service test analyses. GECB is not a retail institution. The bank does not have a standard retail branch with walk-in traffic. <u>GECB's business plan and product offering is on a nationwide basis.</u> Therefore, the bank originates very few loans within its AA. The bank does not offer small farm loans, mortgage loans, or consumer loans. Although the bank focuses on commercial lending, <u>its target market is nationwide commercial loans and leases primarily to middle-market businesses</u>. Examiners determined that the number of small business loans within the bank's AA was insufficient to complete a meaningful lending test analysis. In addition, the bank's lending activity within its AA is nominal in comparison to its business strategy and overall lending activity, and would not adequately reflect the bank's total lending." (Page 3 – emphasis added)*

This is unacceptable and speaks to both the major failure of this exam to examine the bank's lending and the overall problem with assessment areas under the CRA for the growing segment of limited purpose and online retail banks like this that have just one or two "branches", but do the majority of their lending and business outside of where they are assessed. While it is true that GE Capital made just 51 loans in its assessment area, it made nearly 24,783 loans (nearly $2 billion) nationwide in 2014. The FDIC should have followed the OCC's lead when they evaluated BofI Federal Bank's headquarter MSA as well as six states where the bank did a majority of business. These were only limited scope reviews, but certainly a step in the right direction[3]. GE Capital should have at least been assessed in the areas where it did the most lending, and thus Goldman Sachs should be evaluated there when it takes over this lending platform.

## Lack of a Public Benefits Plan

The application goes into great detail on current and previous CRA activities, and we appreciate that there are no indications that the products will go away. However, this is not a CRA plan, nor an outline of the public benefit as a result of the merger, especially in light of Goldman acquiring GE Capital's lending platform.

**No merger should be approved without a true public benefits plan, or a "CRA plan", developed in partnership with community organizations throughout their assessment areas**. And in this case, that means adding the assessment areas that reflect where the bank does business under the new business model. Then, the bank must create a plan for each area that includes (a) the full range of community development loans, investments and services and (b) goals and commitments to ensure that the new small business lending platform is responsibly meeting the credit needs of businesses in LMI tracts, truly small businesses overall and in LMI tracts, as well as minority and women-owned businesses (MWBE's). We appreciate that Goldman Sachs places considerable emphasis on supporting small businesses in their current community development activities and we believe they should do the same within this lending platform.

And, we believe that in an acquisition by a bank of this magnitude, the resulting CRA activity cannot be allowed to decrease in its current assessment areas. The bank must commit to maintain and expand its CRA activities in its current assessment areas as it creates plans for any new areas it designates.

### Feedback on Goldman Sachs's CRA Activity in New York City

ANHD and our members are very familiar with Goldman Sachs and its reinvestment activities in NYC. These comments are based on information we request in regards to their CRA-related reinvestment activities over the past few years, as well as conversations with bank staff and our membership. Each year, ANHD gathers and analyzes reinvestment activity related to a variety of lending, investments and services that benefit LMI communities. ANHD gathers similar information from 24 other commercial, savings, and wholesale banks so we are able to compare Goldman Sachs to many large NYC banks, and also to its peer wholesale institutions. We use this data to publish an annual "State of Bank Reinvestment in NYC" report.

In 2011, the bank reinvested $196 million (0.62% of its total domestic deposits) back into the New York City community for community development lending, CRA-qualified investments, and philanthropy. That rose to $308 million (0.57% of deposits) in 2012 and down to $257.3 million (0.39% of deposits) in 2013. In 2012 and 2013 the amounts were the 5th highest dollar amount of community development reinvestment among all banks in our study.

As ANHD has commented in the past, we consider Goldman Sachs to be a leader in many aspects of community development. But, in addition to the procedural issues listed above, we do have concerns in some areas that we believe should be addressed before the merger is approved. Both are discussed below.

We appreciate the intentionality of Goldman Sachs' community development activities. They routinely take a leadership role in many areas, especially in areas related to economic development, supporting deals big and small to increase access to quality jobs for lower-income people in NYC. They have also

[3] http://www.occ.gov/static/cra/craeval/oct13/716456.pdf

been a good thought partner to ANHD and members as they explore deals and also seek to better understand the CRA landscape and identify creative opportunities to respond to community needs.

Some positive examples we have noted include:

- The **Food Manufacturers Growth Fund,** developed in partnership with NYD EDC, assists small businesses in the food manufacturing field. The Fund with the industrial business resource center Evergreen (formerly EWVIDCO) as the marketing agency and NYBDC as the lender. This has been a meaningful program to help businesses access technical support and capital.
- Goldman Sachs, together with the Surdna Foundation, supported BOC Capital Corp to create the **NYC Loan mobilization loan fund** for small construction businesses in New York City. Goldman Sachs provided a **$2.8 million loan** as part of a **$3.5 million loan facility** to BOC Capital, which it is using to make loans to small construction contractors that have been awarded construction contracts.
- **New Markets Tax Credits (NMTC)** equity investments and loans have been very effective in leveraging capital and investments to create quality jobs in the manufacturing sector nationwide. One of **Goldman Sachs'** NMTC equity investments was used in 2012 to finance the renovation of Building 128 at the Brooklyn Navy Yard to convert a complex of three vacant connected steel buildings into a modern light industrial facility which will add approximately 338 manufacturing jobs at two companies. Goldman Sachs made an additional Historic Tax Credit equity investment into the site in August 2013 and continues to support the Brooklyn Navy Yard in other areas.

However, there are areas of concern that we believe should be addressed before the merger can be approved.

First and foremost, their **community development grant-making** is inadequate for a bank of this size and importance. While they put out large dollar amounts, we had long been critical of their grantmaking in that they do not do enough to ensure that the dollars have the greatest impact. For the previous two years, they had begun to address that concern by creating a community development grant-making program, some of which was distributed through a formal RFP process with clear guidelines. These grants came out of the Urban Investment Group (UIG), which helped it more closely align with their community development lending and investments. Through this fund, they made grants directly to community development organizations and CDCs, and were also a contributing member of the Change Capital Fund.[4] Programs like these are designed to get at the root causes of poverty in our city. There are many ways to support CDCs that address poverty in a variety of ways – the key is to make funding available, to have a strategy, and to provide an open, transparent way for organizations to apply for funding. Goldman Sachs appeared to do just that, and then in 2015, they discontinued the community development grantmaking program. For a bank of this size, and now growing even larger, this is unacceptable.

We also note that Goldman Sachs does few of its community development loans and investments with nonprofits in general and CDCs in particular. In 2011, 7 of 11 community development loans were to nonprofits, but that dropped to just 1 of 15 in 2012 and 2 of 11 in 2013. Likewise, in 2011, 3 of 7 investments went to nonprofits, but in 2012 just 1 of 11 did and none in 2013. No community development loans were to CDCs. We believe they should commit to doing more deals directly with nonprofits, while still supporting the larger efforts with the City of New York and other entities. They have the capacity to do both.

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[4] The Change Capital Fund is a collaboration of 17 foundations and financial institutions dedicated to the revitalization of distressed New York City communities. Beginning in May 2014, CCF began funding five New York CDCs to help them refine and develop new business models and strategies to address persistent poverty more effectively. Each CDC is to receive up to $1 million over four years as well as access to technical assistance as they implement new or refined approaches in partnership with local organizations, government and philanthropy (www.changecapitalfund.org)

ANHD recognizes Goldman Sachs's strong commitment to community development.  Their local staff are excellent and highly responsive to community needs – they serve as a resource to many in the field.  But we cannot support this merger absent clarification of the new business model; assessment areas that reflect that; and a strong CRA plan that includes the full range of CRA activities; loans, investments, and services, with a commitment to the nonprofit community development sector. We also believe that the comment period should be extended at least 60 days to give the community adequate time to respond.

Thank you for this opportunity to submit comments.  Please do not hesitate to follow-up if you have any questions or need additional information.

Best,

Benjamin Dulchin
Executive Director

CC: William Dudley, President and Chief Executive Officer, Federal Reserve Bank of NY
Dan Nissenbaum & John Olson, Goldman Sachs
John Taylor, NCRC
Claire Kramer Mills, Federal Reserve Bank of NY
Felix Bustelo & Peter Wilde, Federal Reserve Bank of NY

## Summary of Goldman Sachs' 2011, 2012, and 2013 Reinvestment Activities as Reported to ANHD

| | 2011 | 2012 | | 2013 | % change 2012-13 |
|---|---|---|---|---|---|
| **DEPOSITS & TIER 1 CAPITAL (billions)** | | | | | |
| Tier 1 Capital | $18.44 | $19.95 | 8.18% | $19.51 | -2.21% |
| Total Domestic Deposits | $31.80 | $53.77 | 69.09% | $65.38 | 21.59% |
| **COMMUNITY DEVELOPMENT (CD) LENDING (millions)** | | | | | |
| CD Lending (# Loans) | 11 | 15 | 36.36% | 11 | -26.67% |
| CD Lending (dollar amount) | $97.61 | $198.27 | 103.12% | $160.50 | -19.05% |
| CD Lending as % of Deposits | 0.31% | 0.37% | 20.12% | 0.25% | -33.43% |
| CD Loans to Nonprofits (# loans) | 8 | 1 | -87.50% | 2 | 100.00% |
| CD Loans to Nonprofits (dollar amount) | $72.21 | $9.60 | -86.70% | $74.55 | 676.51% |
| **CRA-QUALIFIED INVESTMENTS (millions)** | | | | | |
| CRA Qualified Investments (#) | 7 | 11 | 57.14% | 9 | -18.18% |
| CRA Qualified Investments ($) | $75.84 | $87.09 | 14.84% | $76.22 | -12.48% |
| CRA Qualified Investments as % of Deposits | 0.24% | 0.16% | -32.08% | 0.12% | -28.02% |
| CRA Qualified Investments to NFPs (#) | 0.24% | 0.16% | -32.08% | 0 | -100% |
| CRA Qualified Investments to NFPs ($) | 0.24% | 0.16% | -32.08% | $.00 | -100% |
| **PHILANTHROPY (millions)** | | | | | |
| CRA Eligible Grants in NYC (#) | 75 | 73 | -2.67% | 108 | 47.95% |
| CRA Eligible Grants in NYC ($) | $22.64 | $22.74 | 0.41% | $20.62 | -9.33% |
| CRA Eligible Grants as % of Deposits | 0.071% | 0.042% | -40.62% | 0.032% | -25.43% |
| NBO Grants (#) | 18 | 19 | 5.56% | 10 | -47.37% |
| NBO Grants ($) | $13.23 | $8.02 | -39.36% | $7.47 | -6.88% |
| **REINVESTMENT ACTIVITY (millions)** | | | | | |
| Total Reinvestment Activity (Sum of Community Development Lending, CRA-qualified investments, and philanthropy) | $196.09 | $308.10 | 57.12% | $257.33 | -16.48% |
| Reinvestment Index (% of deposits) | 0.62% | 0.57% | -7.08% | 0.39% | -31.31% |

## GE Capital Small Business Lending in New York City

| | 2012 | 2013 | % Change 2012-13 | 2014 | % Change 2013-14 |
|---|---|---|---|---|---|
| **Small loans to businesses (loans of one million or less to businesses of any size)** | | | | | |
| Small loans to businesses (#) | 125 | 426 | 240.80% | 188 | -55.87% |
| Small loans to businesses ($) | $9.60 | $26.44 | 175.59% | $12.18 | -53.93% |
| ... In LMI Tracts (#) | 26 | 41 | 57.69% | 53 | 29.27% |
| ... In LMI Tracts ($) | $1.67 | $2.21 | 31.98% | $3.41 | 54.26% |
| % LMI (#) | 20.80% | 9.62% | -53.73% | 28.19% | 192.92% |
| % LMI ($) | 17.44% | 8.35% | -52.11% | 27.96% | 234.87% |
| **Small Business Loans (loans of one million or less to businesses with revenue of one million or less)** | | | | | |
| Small Business Loans (#) | 3 | 7 | 133.33% | 5 | -28.57% |
| Small Business Loans ($) | $0.12 | $0.28 | 143.10% | $0.35 | 23.40% |
| ... In LMI Tracts (#) | 0 | 0 | 0.00% | 2 | *up from 0* |
| ... In LMI Tracts ($) | $0.00 | $0.00 | 0.00% | $0.19 | *up from 0* |
| % LMI (#) | 0.00% | 0.00% | 0.00% | 40.00% | *up from 0* |
| % LMI ($) | 0.00% | 0.00% | 0.00% | 53.74% | *up from 0* |