Goldman Sachs Bank USA | 200 West Street | New York, NY 10282

February 16, 2021

Via Electronic Mail

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: *Community Reinvestment Act: Advance Notice of Proposed Rulemaking and Request for Comment* (Docket No. R-1723, RIN 7100-AF94)

Ladies and Gentlemen:

Goldman Sachs Bank USA ("*GS Bank,*" "*the Bank,*" "*we*," or "*our*") appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking[1] (the "*ANPR*") of the Board of Governors of the Federal Reserve System (the "*Board*") to amend the Board's Regulation BB, implementing the Community Reinvestment Act ("*CRA*") for state member banks. We share the Board's commitment to help meet the credit and financial needs of all the communities we serve, including low- and moderate-income ("*LMI*") neighborhoods, in furtherance of the CRA statute and its core purpose. We also support the Board's intent to modernize the CRA's regulatory framework to reflect changes in the banking industry and to increase the clarity, consistency and transparency of supervisory assessment standards.

GS Bank is a New York State chartered bank and member of the Federal Reserve System. The Bank's principal office is in New York City, and we have two domestic branches in Salt Lake City and Draper, both of Utah. Accordingly, we have two CRA assessment areas under the Board's existing regulations. We operate with a wholesale bank designation, in recognition of our primary business activities, and our retail banking business is conducted primarily online.

GS Bank endorses the comments included in several other letters in which we have participated.[2] We are submitting this letter to highlight specific recommendations related to the modernization and

[1] 85 Fed. Reg. 66410 (Oct. 19, 2020).

[2] We participated with a coalition of digital banks in a letter that discusses and makes recommendations regarding wholesale and limited purpose bank designations and evaluations, strategic plan development and administration, and the application of the CRA to digital banks. We also participated in the letters of the Bank Policy Institute ("*BPI*"),

tailoring of the CRA framework as it relates to primarily digital banks. We believe the issues addressed in this letter will become more common as banking continues to evolve toward digital platforms and away from traditional branch networks.

RECOMMENDATIONS

We strongly support the Board's intent to "address the issue of how to define a bank's local communities, which impacts where banks' CRA performance is evaluated and is critical for ensuring that the CRA fulfills its purpose of encouraging banks to meet the credit needs of their local communities."[3] We believe that a critical component of any CRA modernization effort is to create a tailored evaluation framework for primarily digital banks. While the CRA performance of these banks is currently evaluated in connection with their physical locations (i.e., main office and branches), the business of banking for digital banks is not tied to any particular geography or local community. As noted in the ANPR, this "results in assessment areas that are much smaller than the bank's actual business footprint."[4] Digital banks operate on a nationwide basis with a nationwide customer base. In much the same way that the Board's existing retail test is not suitable or appropriate to apply to wholesale and limited purpose banks with their very different business model, digital banks are sufficiently distinct from branch-based retail banks to merit an independent, tailored assessment framework that includes CRA credit for activities nationwide, after satisfaction of obligations in their assessment areas.

A. Implement a tailored whole-bank evaluation framework for digital banks.

We recommend that primarily digital banks with national footprints have the flexibility to reach communities of need nationwide in their CRA programs. Further, we suggest that the Board adopt a retail lending test tailored to digital banks with nationwide client bases that will evaluate lending on an assessment area basis around each digital bank's physical main office and any physical branches that it may have, and on a whole bank (nationwide) basis.[5]

American Bankers Association ("*ABA*"), and National Association of Affordable Housing Lenders ("*NAAHL*") regarding (i) the restructuring of the Board's CRA examination tests into Retail Lending, Retail Services, community development ("*CD*") Financing (including both lending and investing), and CD Services subtests; (ii) developing a list of qualifying CRA activities; (iii) assessment area definitions; (iv) wholesale and limited purpose bank designations; (v) strategic plans; (vi) ratings; and (vii) data collection. We would emphasize our agreement with the points in these letters regarding the important role that strategic plans play in CRA tailoring. Strategic plans provide more certainty and predictability to banks to aid in longer term business planning, enabling CRA programs to more effectively serve their communities. In addition to our comments in this letter, we recommend that the Board retain the existing strategic plan framework, but consider clarifying regulatory expectations and improving the administrative process.

[3] ANPR, at 66410.

[4] ANPR, at 66418.

[5] The CRA requires that the appropriate federal supervisor assess a bank's "record of meeting the credit needs of its entire community, including low-and moderate-income neighborhoods," but it does not define "entire community," and its written report requirements do not mandate geographic analysis except with respect to any branch office or other facility that accepts deposits. Evaluating a digital bank's nationwide record is therefore consistent with the statutory requirements to evaluate such a bank's "entire community."

With respect to a digital bank's CD evaluation, the Board should mirror the current assessment area rules for wholesale and limited purpose banks, which for decades have been effective in allowing these banks with unique business models to address the needs of both the local communities where they have physical locations and other areas around the country that are in need of investment. If a digital bank has adequately met the CD needs of its assessment areas around its main office (and any branch locations that it has), it should receive consideration for any additional CD activity nationwide.[6] Further, the Board's proposed impact score should be used to incentivize digital banks to make loans and investments that are responsive to local community needs in distressed areas. The impact score should reflect the extent to which a bank's CD activity is directed to distressed areas and the extent to which its CD activity is innovative, complex and responsive to community needs. High marks on the impact score would contribute to achievement of an "Outstanding" rating. Implementing the impact score in this manner would allow the Board to evaluate the quality, not just the quantity, of a digital bank's efforts and help ensure that CD activity is directed to where it is needed most.

With respect to a digital bank's retail lending evaluation, borrower and geographic distributions should be compared to national benchmarks as part of a national evaluation, such as the percentage of LMI households nationwide and the national aggregate of peer performance, and to local benchmarks as part of an evaluation of the bank's performance in its facility-based assessment areas. A digital bank's performance context should be taken into account when evaluating its performance against national benchmarks, in the same way that a branch-based bank's performance context is considered currently when evaluating such a bank at its assessment area level.

B. Do not exacerbate banking deserts with deposit-based assessment areas.

The ANPR asks whether the Board should delineate deposit-or lending-based assessment areas for digital banks. We do not believe it should. As long as such a bank's CRA efforts are rationally designed to satisfy the credit and community development needs that are the focus of the CRA's purpose—providing credit and investment capital in LMI neighborhoods, for LMI individuals and families, and for community development—it should not matter whether those efforts are focused on geographies where deposits are more or less concentrated.

As the Board recognizes in the ANPR based on stakeholder feedback and its own analysis of data, the largest sources of deposits geographically are concentrated in a relatively small number of major metropolitan areas where there is already significant competition for CRA-related investments and loans among numerous banks. In fact, a depositor's location (especially for nationwide and multi-national corporations) may not represent where the economic activity that generates the deposits occurred. A few large corporate depositors could easily skew a bank's deposit "geography," both by almost single-handedly creating deposit-based assessment areas, and then by creating a sufficiently large retail deposit "denominator" in a limited area that required thresholds to meet CRA requirements may become unattainable.

[6] We encourage the Board to allow other types of banks to obtain credit for CRA-qualifying loans and investments outside of their assessment areas, to help achieve the purpose of the CRA and maximize CD activities in underserved areas.

Furthermore, the addition of deposit-based or lending-based assessment areas will only intensify CRA "hot spots," while providing little to no relief for CRA "deserts." Under the approach adopted by the Office of the Comptroller of the Currency ("*OCC*") in its current CRA regulations, banks have the option of drawing deposit-based assessment areas at any level up to the state level, in order to mitigate the negative consequences of lacking a physical presence in a given geography. However, such statewide assessment areas still do not satisfactorily solve the principal concern of intensifying CRA investments in areas that are already well-served and ignoring other areas of need. While a bank may have some additional flexibility outside of its immediate assessment areas, it would remain limited to specific statewide geographies. The effect is to heighten competition within the states where a bank already has a banking presence, rather than permit it to move anywhere it perceives a significant need after it has sufficiently addressed the need in its own assessment areas. [7]

CONCLUSION

We appreciate the significant amount of research and thought that went into constructing the ANPR. We support the Board's desire to provide more clarity, consistency and certainty as to the ratings process, as well as retaining some of the qualitative aspects of the existing assessment framework. We encourage the Board to focus its efforts on modernization, tailoring and flexibility to enable all banks, whether traditional brick and mortar or primarily digital, to more effectively meet the credit and financial needs of our communities in a safe and sound manner. We also encourage the Board to find a way to implement uniform CRA regulations in conjunction with the OCC, Federal Deposit Insurance Corporation, and state authorities.

Sincerely,

Carey Halio
Chief Executive Officer
Goldman Sachs Bank USA

[7] In this respect, deposit-based assessment areas would not align with the Board's stated interest in increasing the reach of CD investing and lending. Under a deposit-based assessment area framework, even if expanded to the state, we would not receive CRA credit for our involvement in projects that are distant from our facilities and from concentrations of depositors in places such as Maryland and Mississippi.