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**SUBMITTED ELECTRONICALLY VIA [www.FDIC.gov](http://www.FDIC.gov)**

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

James P. Sheesley, Assistant Executive Secretary. Attention: Comments RIN 3064-AF8  
Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, DC 20429

Chief Counsel's Office, Attention: Comment Processing  
Office of the Comptroller of the Currency  
400 7th Street SW, Suite 3E-218  
Washington, DC 20219

**Re: Community Reinvestment Act: Notice of Proposed Rulemaking and Request for Comment**

Dear Ladies and Gentlemen:

Comenity Capital Bank (“CCB” or the “Bank”) thanks you for the opportunity to submit comments to the Joint Notice of Proposed Rulemaking (the “Proposed Rule”), issued on May 5, 2022, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (“FDIC”) and the Office of the Comptroller of the Currency (collectively, the “Agencies”), proposing amendment to the regulations implementing the Community Reinvestment Act of 1977 (the “CRA”), 12 CFR Parts 25, 228 and 345.

CCB is a Utah industrial bank headquartered in Draper, Utah, with total assets of approximately \$10.9 billion. CCB is supervised by the Utah Department of Financial Institutions, as its chartering authority, and by the FDIC, as its primary federal regulator. Its primary business is offering consumers and some commercial customers revolving private label credit cards and co-branded credit cards, primarily through brand partners. CCB does not have any branches, ATMs or physical deposit taking facilities. CCB takes consumer deposits on a nationwide basis via the internet.

Due in large part to its narrow business scope, CCB has received a “limited purpose” designation under the CRA and is examined under the Community Development Test. However, the Bank has made recent additions to its product offerings and anticipates that it will soon no longer

qualify for the limited purpose designation. As such, CCB is currently pursuing the CRA Strategic Plan option as the method by which the FDIC will assess its record of helping meet the credit needs of its community.

CCB received an “Outstanding” rating from its most recent CRA examinations for its lending, investment and grant activities in the community in which it operates. We are affirmatively proud of our work and investments in our community and are committed to an active and engaged partnership in CRA activities with our community.

The Bank agrees that the CRA regulations should be updated and commends the Agencies on their efforts. In general, we agree with the Agencies that modifications need to be made to more effectively meet the needs of low- and moderate-income (“LMI”) communities and address inequities in credit access through changes that account for a banking system that has evolved away from the traditional branch network. We also agree with the need to provide greater clarity regarding CRA-eligible activities. However, there are some aspects of the Proposed Rule on which we have specific comment.

In general, CCB supports the comments submitted by the American Bankers’ Association, the Utah Bankers’ Association and the National Association of Industrial Bankers and directs you to their comment letters for a deeper understanding of the impact of the Proposed Rule on large banks with unique business models, such as CCB. Of the issues discussed in these letters, we would like to emphasize the following:

**1.) Establishment and exam weighting of Retail Lending Assessment Areas (“RLAA”) for large banks with more than \$2 billion in assets**

We agree that the current the definition of “assessment areas” needs to be updated to reflect the digital transformation of financial products and services. However, we do not agree with how the Proposed Rule determines what constitutes a RLAA and the evaluation methodology and CRA exam weighting given to the RLAA.

*Assessment Area Delineation.* The Proposed Rule would require banks with more than \$2 billion in assets to delineate a RLAA in any MSA (or combined non-MSAs areas) where it does not have a physical presence and in which it has originated at least 100 home mortgage or 250 small business loans. These low thresholds would have a significant impact on banks with unique business models without providing a meaningful impact to the relevant community, including LMI communities. For example, CCB does not make home mortgage loans and its small business lending is generally limited to small business credit card loans offered through its brand partners at point of sale. Small business credit card loans comprise less than 1% of CCB’s loan portfolio and CCB generally does not determine the markets in which such small business credit card loans are made. For CCB, its small business credit card lending, which is insignificant and only incidental to its business model, would require the creation of 7-10 additional assessment areas in geographies where CCB has no meaningful market presence or that are not central to its broader business strategy. In addition, because CCB does not control where these loans are made, CCB’s RLAA’s could change year to year, but the impact on the LMI communities in these RLAA’s would not be as meaningful as it could be if the RLAA’s were in markets where CCB has a meaningful presence or that are central to its broader business strategy.

An unintended consequence of such low thresholds may be that banks with unique business models limit or curtail their lending altogether in locations that are insignificant to their business strategy and where they do not actively market their products. As an alternative, we recommend either increasing the triggers for RLAAAs based on a loan count that is material to the bank and/or where the bank has a material market share or allowing for nationwide assessment areas. We acknowledge the Agencies' desire to evaluate retail lending outside facility-based assessment areas which nationwide assessment areas would accomplish. A nationwide assessment area would allow banks to focus on the markets where they have the most opportunity to make a meaningful impact with their CRA lending rather than diluting their efforts among a large number of RLAAAs where they have no meaningful presence.

*Performance Metrics.* The Agencies must ensure that any thresholds established or benchmarks used to evaluate a bank's CRA performance are to banks with similar business models operating under a similar performance context. The metrics in the Proposed Rule for large banks with assets >\$10 billion would disadvantage banks with unique business models such as CCB, because the rule applies the same performance metrics to all banks operating in an assessment area, regardless of whether the bank has a digital or physical presence. For example, the rule would evaluate CCB, which primarily offers credit card loans, with a retail bank (internet and/or brick and mortar), that offers a myriad of lending and deposit products. The result of such an evaluation is that the bank with the unique business model will necessarily fail. Such an evaluation does not provide a true measure of either bank's dedication to the community, including the LMI community, and does not benefit anyone including, most of all, the communities the banks serve.

*Weighting.* The weighting and structure of the Retail Lending Test under the Proposed Rule also would disadvantage banks with unique business models. Under the rule, the Retail Lending Test would constitute 45% of a bank's final CRA Rating. In CCB's case, this means that 45% of its final CRA rating will be based on its incidental product line, small business credit card loans, which comprises less than 1% of its loan portfolio. Such a measure does not accurately reflect CCB's dedication to its communities or the quality loans and investment it does provide to its LMI communities.

## **2.) Retail Services and Products Test**

Branchless banks, such as CCB, should not be evaluated geographically as their products are available to anyone with the internet. The Proposed Rule would evaluate banks based on the use of their products and services by persons in LMI geographies. The flaw in this proposed evaluation is that branchless banks do not target a particular geography as much as they target the financial services needs of populations across the county. A bank generally cannot control who uses their products through the internet and generally cannot even identify the census tracts of those they are reaching.

## **3.) The Strategic Plan option needs to retain the flexibility available in the current regulation and limit public input**

*Flexibility.* The Strategic Plan option should explicitly retain the flexibility with respect to assessment areas, evaluation measures and establishment of goals found in the current CRA regulations to allow banks with unique business models to successfully meet their CRA

obligations through activities consistent with their existing business model. Banks with unique business models will be unlikely to success under the Large Bank Test based on the issues discussed above. The Proposed Rule does not adequately consider these banks with different business models who need the Strategic Plan flexibility allowed in the current regulation to effectively demonstrate that they are meaningfully meeting the credit needs of their communities, including LMI communities and otherwise complying with the letter and spirit of the CRA. The lack of a truly flexible Strategic Plan option could have unintended consequences such as stifling financial innovation and limiting credit access in certain geographies as banks may be unwilling to add additional products or enter new geographies which would disproportionately impact their CRA rating.

While the Proposed Rule provides a Strategic Plan option, it states that “[b]anks approved to be evaluated under a CRA Strategic Plan option would have the same assessment area requirements as other banks and would submit plans that include the same performance tests and standards that would otherwise apply unless the bank is substantially engaged in activities outside the scope of these tests.” This language is vague as to the criteria would be used to determine if the bank is “substantially” engaged in activities outside the scope of these tests. Banks such as CCB, engaged in nationwide lending with no physical branch network, have business models that are significantly different than traditional retail bank business models and serve their communities in different ways. These banks should have the assurance that they can continue to be evaluated under a Strategic Plan using a different, customized set of tools and metrics.

*Public Input.* The Proposed Rule would publish Strategic Plans on the Agencies’ websites for public comment. We believe input from the bank’s community is a valuable part of the Strategic Plan process. However, we propose putting parameters around public input, such as limiting commenting to those within the bank’s community. We would not want to see the process become a public forum for those outside a bank’s community. As an alternative, we suggest Strategic Plans be placed on the relevant bank’s website as newspapers are quickly becoming obsolete in many communities.

#### **4.) Additional data gathering and reporting requirements for banks with more than \$10 billion in assets is a heavy burden without identifiable benefits to LMI communities**

The Proposed Rule requires significant additional data gathering and reporting requirements for banks with more than \$10 billion in assets. Any additional recordkeeping and reporting requirements would be highly burdensome, time consuming and expensive—both on a one-time and on-going basis. This is particularly true for CCB which currently has approximately 21 million consumer loans, mostly credit card loans with relatively small balances. In addition, the majority of CCB’s credit cards are issued through retailers who may not have the ability to collect all the required information. As a result, CCB would be required to undertake costly (and somewhat intrusive) outreach to consumers on simple credit card loans. It is not clear from the Proposed Rule that the benefits of the additional data outweigh the detriments, including a potentially unpleasant customer experience. We encourage the Agencies to find ways to use existing reports to gather information.

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We applaud the Agencies for their effort to modernize the CRA but have deep concerns that many aspects of the proposal would not accomplish this goal and may impact how banks are able to respond to innovations in the marketplace. Some banks would be forced to either change their business model or withdraw from some geographies. Banks should be provided a way to comply with the letter and the spirit of CRA within their current business model.

Sincerely yours,



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