August 4, 2022

SUBMITTED ELECTRONICALLY VIA 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 Bank ("CB" 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.

CB is a Delaware-chartered commercial bank headquartered in Wilmington, Delaware, with total assets of approximately $9.6 billion. CB is supervised by the Delaware Office of the State Bank Commissioner, as its chartering authority, and by the FDIC, as its primary federal regulator. CB operates as a credit card only bank under the Competitive Equality Banking Act of 1987. As a result, its primary business is offering revolving private label and co-branded credit cards through brand partners and it only accepts deposits over $100,000. CB does not have any branches, ATMs, or physical deposit taking facilities.

Due in large part to its narrow business scope, CB has received a “limited purpose” designation under the CRA and is examined under the Community Development Test.

CB received an “Outstanding” rating from its most recent CRA examinations for its 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, CB 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 impacts of the proposed regulations on limited purpose banks such as CB. Of the issues discussed in these letters, we would like to emphasize the following:

1.) **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. CB is currently a limited purpose bank, but at some point may considering adding additional products which would result in the loss of its limited purposed designation. This would require it to operate under an approved CRA Strategic Plan in order to demonstrate its compliance with the CRA because banks with more limited, unique business models will be unlikely to succeed under the Large Bank Test. The Proposed Rule does not adequately consider banks with different business models that need the flexibility of the current Strategic Plan 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 CB, 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.

If CB were to surpass the $10 billion threshold, the metrics in the Proposed Rule for large banks with assets >$10 billion would disadvantage banks with unique business models such as CB, 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 CB, 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. This is like comparing apples to oranges. 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.

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.

2.) 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 CB which currently has approximately 21 million consumer loans, mostly credit card loans with relatively small balances. In addition, the majority of CB's credit cards are issued through retailers who may not have the ability to collect all the required information. As a result, CB 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 are concerned that some aspects of the proposal would not accomplish this goal and may impact how banks are able to respond to innovations in the marketplace and force some banks 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,

[redacted]

Baron Schlachter
President, Comenity Bank
One Righter Parkway, Suite 100
Wilmington, DE 19803