comenity

February 11, 2021

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Attention: Comments, Docket No. R-1723, RIN 7100-AF94

Comments submitted electronically at www.federalreserve.gov

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

Ms. Misback:

Comenity Capital Bank ("CCB") and Comenity Bank ("CB") (together, the "Banks") thank you for the opportunity to submit comments related to changes to the regulations implementing the Community Reinvestment Act of 1977 (the "CRA"), 12 CFR Part 228. Although the Banks are not regulated by the Federal Reserve, we are providing comments on the ANPR in anticipation that it will be used as a basis for an interagency rule. We encourage the Federal Reserve to pursue a joint CRA rulemaking with the FDIC and OCC. An interagency rule will provide greater benefits to consumers and communities. When financial institutions operate under the same regulatory framework, they can collaborate on CRA activities to better serve the needs of their community.

CB is a state nonmember bank headquartered in Wilmington, DE. CB is examined at the federal level by the Federal Deposit Insurance Corporation and at a state level by the Delaware Office of the State Bank Commissioner. CB is a monoline credit card institution whose primary business is offering private label and cobrand credit cards to consumers. CB does not have any branches, ATMs, or physical deposit taking facilities.

CCB is a Utah industrial bank headquartered in Draper, UT. CCB is examined at the federal level by the Federal Deposit Insurance Corporation and at the state level by the Utah Department of Financial Institutions. CCB is a monoline credit card institution whose primary business is offering private label and cobrand credit cards to consumers. CCB does not have any branches, ATMs or physical deposit taking facilities. CCB takes consumer deposits on a nationwide basis via internet.

Due in large part to the narrow scope of their business, the Banks have received a "limited purpose" designation under the CRA and are examined under the community development test.

The Banks both received an "Outstanding" rating after their most recent CRA examinations for their lending, investment and grant activities in the communities in which they operate. We are affirmatively proud of our work and investments in our communities and are committed to an active and engaged partnership in CRA activities with our communities.

The Banks agree that the CRA regulation should be updated and commend the Agency on its effort. In general, we agree with the Agency that modifications need to be made to more effectively meet the needs of LMI communities and address inequities in credit access through changes that account for a banking system that has evolved and the provision of greater clarity regarding CRA-eligible activities. However, there are some aspects of the proposed regulation on which we have specific comment.

In general, the Banks support the comments submitted to the Federal Reserve by the American Bankers' Association and the Utah Bankers' Association and direct you to their letters for a deeper understanding of the impacts of the proposed regulations on limited purpose institution such as the Banks. Of the issues discussed in these letters, we would like to emphasize the following:

**1.) The limited purpose designation and the community development test need to be preserved**

We are pleased to see that the Limited Purpose designation and the Community Development Test have been preserved. Limited purpose business models are significantly different than traditional depository business models and serve their communities in different ways and thus should continue to be evaluated using a different set of tools and metrics. Because the Banks currently only offer one type of lending product (private label and co-branded credit cards offered through national and regional retail business partners), we have little to no choice over the geographies in which the product is offered. Further, while CCB does offer deposit accounts, it does not offer demand deposits. As such, the community development test remains the single best way to assess our CRA efforts; however, the metrics proposed in the financing subset which uses comparisons to national and local benchmarks could be problematic to the Banks. The Agency 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. For example, it would be inaccurate to compare the Banks with a retail bank (internet or brick and mortar), that offers a myriad of lending and deposit products.

Additionally, the Banks would like to comment on Question 44 posed in the ANPR related to the best way to measure the capacity of limited purpose banks for CRA activities. We would suggest that deposits are not the best measure. Retail deposits usually reflect inversely on the economy at large. Deposits can fluctuate widely depending on the current state of the economy often swelling in a down economy when consumers pull money from the stock market and into bank deposits. This could trigger a large increase in a bank's required CRA activity at a time when it might not be prudent to invest due to limited opportunities. Further, because a limited purpose bank will generally have a larger portion of its retail deposits in time deposits, there will be a performance lag inherent in any measure that uses retail deposits as a denominator. Historically, assets have seem to work well across business models. For these reasons we would urge that retail deposits not be used as the measure of CRA capacity and that assets continued to be used for limited purpose banks.

**2.) Assessment areas should not be determined by where a bank gathers its deposits**

CCB offers retail deposits through online channels resulting in depositors nationwide. Deposit-based assessment areas would result in an additional 8-10 assessment areas for CCB, most of which would be the same deposit-based assessment areas that would be created by other large nationwide institutions resulting in "CRA hotspots" such as Los Angeles County, New York City and Miami to name a few. Moreover, CCB has no physical presence in or connection to these areas. The original purpose of the CRA was to incent banks to go out into communities where they gathered deposits in order to determine the best way to help those communities through lending and investment. That purpose, of course, was linked to the fact that at the time the CRA was conceived and enacted, the only way that deposits could be obtained was in person and predominantly from members of the community. However, in today's cyber-connected world banks are not limited to obtaining deposits through personal visits. While most banks still have that business model (perhaps augmented by online business), limited purpose banks without consumer branches do not. Nevertheless, limited purpose banks can obtain deposits without branches using the internet which is not locality-bound. Meaning that our "communities" are no longer defined by deposit taking activity. To continue to impose such definition would require CCB to go to a distant city in which we have no connection in order to do the intense work required to identify, decision and transact CRA qualified lending and investments. Moreover we would have to do that 8-10 times, presenting a significant burden on our operations.

Regardless of where our depositors reside, the Banks and other limited purpose banks do have communities. Those communities are where we and our affiliated servicing entities have business locations. The Banks and their corporate parent and affiliates maintain headquarters, operations, and service centers in various locations. While not all are appropriate for CRA activity, many are. Effective CRA programs depend on a thorough understanding of local LMI communities and needs which is best achieved through people residing in those communities. Therefore, while the Banks applaud the aspects of the ANPR that allow for nationwide expansion of assessment areas, we believe and propose that banks without branches be allowed to determine where such areas should be located based on their on-the-ground presence. Certainly such choices should be subject to approval by our examiners, but in terms of knowing the community, this is the best way to achieve the purposes of the CRA.

**3.) The Strategic Plan option should be preserved**

While the ANPR preserves the Strategic Plan option, it is vague regarding the specifics as to what criteria would be used to evaluate strategic plans. The Strategic Plan option should explicitly provide for flexibility with respect to evaluation measures and thresholds in order to recognize different business models and allow a bank to meet its CRA obligations through activities consistent with its existing business model.

We are encouraged that the proposal provides some options for streamlining the strategic plan approval process; however, it does not ensure that banks can receive feedback from their regulator prior to submission. Dialogue between the bank and their regulator are critical in determining strategic plan goals based on performance context. Not ensuring feedback would unnecessarily lengthen the time frame for approval, particularly when considering that each time a plan was rejected, the bank would have to engage in another public comment period. An unnecessary lengthy approval process could result in the approval of a plan that is no longer relevant.

We also propose putting parameters around public input when developing strategic plans, including being clear as to what activities comments can address and who can make them. We would not want to see the process to become a public forum for those outside a bank's community to negotiate goals. As such, we do not support the proposed requirement that strategic plans be placed on the Agency's website but do support that they be placed on a bank's website as newspapers are quickly becoming obsolete in many communities.

**4.) Expansion of CRA into additional consumer products**

We would encourage the Agency not to expand CRA into deposit and additional lending products. CRA was enacted to address systemic inequities in access to credit, not deposit products. Furthermore, it is not reasonable to expect customers opening a deposit account to provide income information as banks have not historically collected this information and it would not be available on existing accounts. In addition, we are not aware of issues with LMI individuals being able to access credit through auto loans, credit cards or students loans.

**5.) Additional recordkeeping and reporting requirements causes challenges**

We encourage the Agency to find ways to use existing reports to gather information. Any additional recordkeeping and reporting requirements that could be contemplated if demographic information is required on all loans would be highly burdensome, time consuming and expensive—both on a one-time and on-going basis. This is particularly true for limited purpose credit card banks like the Banks which together currently have over 45 million consumer loans, most with relatively small balances. Further, as mentioned above, these credit cards are issued through retailers who may not have the ability to collect all the required information. As a result, the Banks would have to conduct costly (and somewhat intrusive) outreach to consumers on simple credit card loans; this could prove to be an unpleasant customer experience.

For the foregoing reasons, we request that the Agencies maintain the same treatment of limited purpose institutions under any amendment to their CRA regulations, including with respect to the community development test as is in place today. Further, we advocate that assessment area designation not be deposit based, but rather at the bank's choice based on extended presence. We sincerely appreciate the Federal Reserve's request for public comment and thank you for your consideration of the items discussed in this letter. We look forward to a modernized CRA regulation that will help the entire financial industry work together to advance the common good and create a better tomorrow.

Sincerely yours,

Ron Ostler

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