



November 19, 2018

**RE: Docket ID OCC-2018-0008-0001 – Reforming Community Reinvestment Act Regulatory Framework**

We at Beneficial State Bank appreciate the opportunity to give comment to the OCC as we think deeply about how banks can best serve community needs and fulfill the promise of CRA.

Beneficial State Bank is a triple-bottom-line community development bank and benefit corporation with branches in California, Oregon, and Washington. We were established at the nadir of the financial crisis in 2008, recognizing the huge role banks play in driving outcomes in our economy and society, and the need for them to be truly aligned with the interests and financial wellbeing of their customers. For ten years, we have provided fair and transparent banking services to help people, businesses, and nonprofits align their money with their values. With partners, we participate in the building of a banking industry that is fair to the person with the least bargaining power, promotes financial system stability, and contributes to the resiliency of our natural environment.

In practice, we commit at least three quarters of our loan portfolio toward mission-driven loans, such as those to affordable housing, economic development, women-owned businesses, environmental sustainability, and employee-owned businesses. The remaining 25 percent of our loans have a neutral impact, such as non-harmful commercial real estate – those loans cannot work against our mission. Our bank is owned by a not-for-profit public charity called Beneficial State Foundation whose mission is to change the banking system for good. This ownership structure ensures we have no private shareholders seeking to maximize profits at the expense of our communities or our natural environment. We seek full transparency. We publish the impact of our lending so depositors can see what their deposits are funding, and we share detailed explanations of our financials so that a lay reader can understand them.

As a Community Development Financial Institution (CDFI), we are deeply committed to investing into low- and moderate-income communities, and we recognize CRA as a critical tool to ensure *all* banks do what is required of them to address local credit needs of the communities they serve. Despite some major concerns with suggestions made in the ANPR, we remain hopeful that CRA modernization efforts will bring the regulation up to date with changes in the financial marketplace. Given where we are ten years after the Great Recession that has now defined a generation, we underscore the need for regulations and protections not only for the stability of our financial system, but also to provide a level playing field for all Americans.

CRA was created as a direct response to redlining – which is not a relic of the past, but rather a reality of the present. We should all be well aware that there is still rampant and pernicious discrimination in lending, as detailed in a recent *Reveal* report.<sup>1</sup> Undermining CRA by reforming it in ways that weaken its ability to drive capital to underserved communities will be absolutely detrimental to so many of

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<sup>1</sup> Aaron Glantz and Emmanuel Martinez, “Kept Out: For people of color, banks are shutting the door to homeownership,” *Reveal*, February 15, 2018, <https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership>

our communities that are already struggling. Stagnant wages, discrimination, predatory financial services, and lack of access to capital to meet the basic tenets of the American dream of buying a home or starting a business are leading to alarming and untenable wealth inequality in the United States. Weakening CRA will be especially hard-felt by those communities who for centuries have been pushed to live on the economic margins.

Our economy will thrive when all who want to are able to fully participate and reach their potential. We look forward to working together with the OCC to ensure that financial institutions of all kinds operate for the benefit of the public good.

Below we outline our key recommendations for modernizing CRA.

### **CRA evaluations must center around a “Do No Harm” philosophy**

History and present-day realities tell us we cannot assume that lending activity targeted toward LMI communities will be in the best interest of those communities. When considering what types and categories of activities should receive CRA credit, we must evaluate lending based on what those products do for the borrower, that is, serve their needs appropriately and fairly. For instance, banks should only receive credit for consumer lending (ANPR Questions 21 and 22) if those activities are neither discriminatory, predatory, fraudulent, nor unfair. They must set the borrower up for success. We emphasize quality over quantity to achieve the stated purpose of CRA.

### **CRA must be strengthened around local context, not reduced to a single ratio, to ensure bank investments are made equitably into communities (ANPR Questions 7-12)**

We agree that changes are needed to make CRA more effective, but we do not believe a single ratio will achieve the purpose of the regulation. As the National Community Reinvestment Coalition (NCRC) notes, the “one ratio” will mostly likely decrease banks’ responsiveness to local needs. “One ratio,” an analyst at NCRC explains, “cannot tell an examiner, a bank, or a member of the public how responsive a bank is to its various service areas.”<sup>2</sup> Currently, the vast majority of banks (including those with poor track records of harming communities) receive a passing score on the CRA exam. This suggests not that banks need an easier metric with which to comply, but that bank activities should be more scrutinized to ensure that they are making beneficial investments into communities they serve.

### **CRA evaluation must explicitly include a racial equity lens (ANPR Question 16)**

CRA was established in 1977 to address redlining – the systemic denial of home mortgage loans to black people and families, creating a literal red line on maps around neighborhoods that banks deemed too risky to serve. Despite this, banks are not evaluated on their lending into communities of color. We need to right this wrong and establish an explicit racial equity lens. The aforementioned *Reveal* report plainly lays out persistent discrimination in lending. Likewise, take the example of Fresno, California, where a history of redlining has led to massive inequality. Redlining policies made it “virtually impossible for black Americans, who came to Fresno in greater numbers after World War II, to move in anywhere but the city’s southwest” where the city’s dirtiest factories and most under-resourced schools were situated.<sup>3</sup> As a Fresno State sociologist explains, “Once you have a

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<sup>2</sup> Josh Silver, “NCRC analysis of the advanced notice of proposed rulemaking,” National Community Reinvestment Coalition, September 6, 2018, <https://ncrc.org/ncrc-analysis-of-the-advanced-notice-of-proposed-rulemaking-anpr/>

<sup>3</sup> Reis Thebault, “Fresno’s Mason-Dixon Line,” *The Atlantic*, August 20, 2018, <https://www.theatlantic.com/politics/archive/2018/08/fresnos-segregation/567299/>

group of people segregated into a place you can take resources from that place. It creates a monster of social inequality that falls along racial lines, then it recreates itself. The boundaries are put in place and it automates itself from there.”<sup>4</sup> Banks not only need to acknowledge their role in perpetuating these inequities today, but also need work to address them by naming the problem. CRA as a mechanism to mitigate racial discrimination in lending is critical. Banks must be evaluated for community development activities using a racial equity lens.

### **Performance context should be established with significant input from communities (ANPR Question 9)**

Although community connections with local nonprofits are already a part of the CRA examination process, community groups and stakeholders should play a larger role in developing the performance context used in CRA examinations. As the Democracy Collaborative has noted, the performance context often lacks community input and “banks frequently submit their own performance context to examiners.”<sup>5</sup> Organizations working deeply in local communities must be consulted when determining the needs of those communities, especially if banks are going to lend and invest in areas where they don’t have a physical branch or local employees to provide local context. Examiners should not be tasked with developing the performance context during a CRA examination.

One centralized performance context should be developed for each market, independent of the examination process, that draws heavily from public demographic data, community groups, and local stakeholders. An independent performance context would not only streamline the exam process by reducing the time to create the performance evaluation, but would also create a much more robust foundation for banks and examiners to assess how well each bank is meeting the *true* needs of their communities. Banks and examiners could add additional insights on top of this foundation as needed. This will ensure the exam process is more efficient and responsive to local needs, while holding banks accountable to serving those needs.

### **Establish concrete measures for which activities qualify outside of the assessment area (ANPR Questions 13 and 14)**

Despite technology enabling increased online and branchless banking, branch-based assessment areas remain effective ways to evaluate a bank’s community development activities. Beneficial State Bank reaffirms the importance of physical branches in low-income communities and of serving the local community needs within a bank’s assessment area based on those physical branch locations. Changes to the CRA assessment area definitions should not incentivize banks to go after “easy credit” opportunities outside of their assessment areas. However, it is important to recognize that during the normal course of business most banks will have community development activities outside of their assessment areas. We believe banks deserve *some* credit for those activities and clear measures should be established for when these activities will receive credit. For example, community development activities outside of the assessment area could receive credit up to a maximum threshold, such as 5 percent, of a bank’s overall community development activities. This modest cap allows a bank to claim credit for strong community development projects outside of their assessment area without incentivizing them to do so to the detriment of their local communities.

We agree that the definition of CRA assessment areas may not reflect the realities of banks with minimal physical footprints and national lending markets. We suggest that any modernized approach

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<sup>4</sup> Ibid.

<sup>5</sup> Devin Case-Ruchala. *The Community Reinvestment Act and community wealth building: A guide*. The Next System Project: 2018. <https://thenextsystem.org/learn/stories/cra-reform#guide>

to address this discrepancy be used to drive additional capital to CDFIs. Given that these branchless banks may not have the local knowledge to effectively serve the capital needs of each market in their footprint, it will be essential for them to leverage the insights and proven efficacy of community-based financial partners, especially CDFIs.

### **Data must be transparent and easily accessible (ANPR Questions 1-3)**

We agree that CRA regulations are not consistently applied between examinations or among agencies. Banks and examiners must use the same underlying performance context data and clear examination standards to mitigate confusion and lack of clarity around the examination process and what qualifies for CRA credit. We echo the Community Development Bankers Association's (CDBA) recommendation to establish a public case study database that describes qualifying project examples so bankers can get a better sense of eligible CRA activities. Each bank already undergoes this process internally during an examination, and examples are already published in public performance evaluations. Regulatory agencies should take this process one step further to consolidate the learnings and unique examples from each examination to build out a collective database, which would benefit both banks and examiners. In addition, banks should have the ability to ask the regulatory agencies if a community development activity qualifies prior to an examination. Answers to these questions should be incorporated into this database as well.

### **Discriminatory or illegal practices that harm consumers should negatively impact a bank's CRA rating (ANPR Question 2)**

We need not just carrots but a real stick in the form of penalties when banks and other financial institutions neglect their responsibilities or engage in discriminatory or criminal activity – regardless of their relationship to CRA lending activities. It is counter-productive and counter-intuitive to silo these regulations and not acknowledge that bank actions that harm consumers will disproportionately impact the same people CRA was created to benefit: LMI individuals and families and people of color. This de-emphasis of consumer protections by the OCC is unfortunately indicative of a wider pattern championed by the current administration and further highlights the pressing need for the CRA to penalize banks for negative actions impacting their communities, not just praising them for positive ones.

### **Small business lending should prioritize the profile of the business, not the size of loan (ANPR Questions 23 and 24)**

We believe small business loans should receive greater consideration under CRA. The current small business loan definition is outdated and ineffective at describing the credit needs of small businesses. There are three main issues with the current definition: 1) A small business loan is currently defined by the *loan amount* instead of the *size of the business*; 2) Both the \$1 million loan amount threshold and \$1 million in gross annual revenues threshold have not been updated since the law was enacted in 1977. These amounts would be over \$4 million today if only adjusted for inflation, according to the Bureau of Labor Statistics' CPI Inflation Calculator. They are not supported by any research or analysis validating that they are the appropriate thresholds for small businesses; and 3) The definition of small business is not consistent across the lending and community development tests. For instance, the lending test limits the borrower profile definition to gross annual revenues less than or equal to \$1 million, whereas the economic development definition of the community development test also includes the SBIC and SBDC definitions, both of which have significantly higher revenue limits.

We recommend an updated definition of small business loans that prioritizes the profile of the business (revenues, number of employees, women or person of color ownership, etc.) instead of the size of the loan. The agencies should thoughtfully re-evaluate what this definition should be – potentially in the form of a taskforce that aggregates currently existing data – to ensure CRA dollars are effectively serving small businesses with the most pressing credit needs. In addition, we recommend that the definition be consistent across both the lending and community development tests.

### **Align CRA and CDFI reporting**

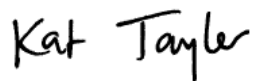
We underscore recommendations from the CDBA to align CRA reporting with CDFIs. To become certified as a CDFI, 60 percent of a bank’s lending activities must be in designated “Target Markets,” i.e. areas that have high poverty and/or high low-income rates, high unemployment, or targeted populations that have historically been denied adequate access to capital. CDFIs like Beneficial State Bank undergo rigorous reporting to demonstrate to Treasury that we are meeting these criteria. CRA and CDFI share the same goal of community development in underserved markets, but reporting requirements differ greatly. As CDBA suggests, CRA and CDFI could work together to create a CRA examination tailored to CDFIs, reducing the reporting burden of CDFIs and freeing resources to continue to invest in communities.

### **Conclusion**

Beneficial State Bank exists not only to improve the lives of our customers and our communities, but also to shape the banking system into one that is aligned in the public interest. It is the duty and responsibility of banks to do right by their depositors and make investments in an appropriate, equitable, and sound manner. We believe CRA is a critical tool to drive good investments into communities and we welcome the opportunity to work with the OCC to strengthen CRA. We know that when our most low-resourced communities prosper, we all thrive.

Thank you for considering our comments and recommendations above. If you have further questions, please contact me or Emma Guttman-Slater at [eguttman-slater@beneficialstate.org](mailto:eguttman-slater@beneficialstate.org).

Sincerely,



Kat Taylor  
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