beneficial state bank
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January 4, 2021

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

Submitted electronically via the Federal eRulemaking Portal

RE: Fair Access to Financial Services; Docket ID OCC-2020-0042

Dear Acting Comptroller Brian Brooks and the Chief Counsel's Office,

We are dismayed to see the Office of the Comptroller put out a proposal purportedly around the issue of "fair access" that is both misguided and rushed. During a time of increased economic instability and insecurity heightened by the COVID-19 pandemic, we believe regulators should be focused on how to protect people interacting in the financial marketplace through strengthened regulations and clear guidance. Instead, we see a rush to defend corporations. Financial institutions, bank industry associations, and advocates for economic wellbeing alike are scrambling to respond to these confusing reinterpretations of fundamental concepts like fair access and discrimination in lending – all while trying to address immediate crises our customers and stakeholders are dealing with. Let's work together to advance fair lending and access to credit for people who need it most.

About Beneficial State Bank

Beneficial State Bank is a triple-bottom-line, values-based community development bank with branches in California, Oregon, and Washington. As a B Corporation, we operate with a triple-bottom-line, which means we equally prioritize people, planet, and profit. Our goal is to optimize positive outcomes for people (customers, employees, and communities in which we operate) and our shared planet, instead of maximizing profits at their expense.

We were established at the nadir of the financial crisis in 2008, recognizing the outsized role banks play in determining outcomes in our economy and society, and the need for financial institutions to be truly aligned with the interests and financial wellbeing of their customers. For over a decade, we have provided fair and transparent banking services to help people, businesses, and nonprofits align their money with their values. We believe that the banking industry should work for everyone, regardless of wealth, income, race, gender, nationality, age, religion, or marital status. Alongside partners, we advocate for a fair, inclusive, and just banking system. We believe community banks and community development financial institutions (CDFIs) are an essential part of this picture, and we work in concert with other CDFI banks and values-based banks to ever-strengthen our impact measurement and evaluation so that we can help hold the entire industry to higher standards.

Beneficial State Bank commits at least 75% of our loan portfolio to those that have a positive social or environmental impact, such as affordable housing, economic development, women-owned businesses, social justice nonprofits, environmental sustainability, and employee-owned businesses. The remaining 25% of our loans cannot work against our mission and includes projects like non-harmful commercial real estate loans. We aspire to 'do no harm,' and we ask for the same (in words and in action) from other banks. Beneficial State Bank is wholly owned by not-for-profit organizations. Its primary owner is Beneficial State Foundation whose mission is to change the banking system for good. Our ownership structure ensures we have no private shareholders seeking to maximize profits at the expense of our communities or our natural environment. We believe banks must be transparent about our social and environmental impact. 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.

We, like many others including the American Bankers' Association, are concerned about the rushed timeline on this proposal. We do not feel we have been given adequate time to respond. Nevertheless, our assumption is that by asking for feedback, the OCC will be taking our comments into account and so below we respond to aspects of the proposal.

The proposal gravely misrepresents fair lending

Fair lending laws to address discrimination in lending were established to ensure that protected classes, that is, human beings who have been and continue to be denied access to credit based upon prohibited discriminatory reasons, are provided with legal protections. These laws were never intended to protect corporations. Corporations, which typically enjoy a disproportionate amount of power in our society, are not protected classes in any fair lending laws or regulations, such as the Equal Credit Opportunity Act and Regulation B. Fair lending laws and regulations are intended to protect individual consumers, not corporations.

Given how unequally banks have offered their services – for instance, we can look at the high percentages of underbanked Black households as compared to white households, or most recently, we can witness in real-time that Paycheck Protection Program loans went mostly to businesses in wealthy, white communities – it is contradictory and quite frankly confusing that banks should be forced to make certain loans based on industry, instead of loans that would actually provide "fair access" to capital to individuals who are continually denied it.

If the OCC is attempting to establish a prohibited basis, that of the commercial sector, doing so through a hurried request-for-comment process, in which the proposal includes very limited information and data on risk assessments in particular, is an inappropriate route to take.

The proposal is an unworkable regulatory framework and presents a dramatic reinterpretation of safety and soundness

Banks are responsible for ensuring the safety and soundness of their institutions, and this proposal contradicts those standards. To ensure safety and soundness, banks need to make decisions based on risk and reputation, as long as those decisions do not contradict with anti-discrimination laws. Crucial to safety and soundness is a bank's ability to assess risk on a holistic basis: banks must have the operational ability to weigh various risks in the decision-making process to steward deposit dollars responsibly. Those risks are real and tangible, and they can vary significantly based on an entire industry, an individual company, or an individual deal. As financial experts from Forbes to Bloomberg warn of the dropping demand and shareholder value of fossil fuel investments, and materiality assessments of banks such as Bank of America illustrate that financing the transition to a low-carbon economy is significantly important both for stakeholder and business success, banks must be allowed choose to reduce and/or discontinue lending to this declining sector in order to mitigate their risks. Real examples of this importance to stakeholders already exists, as banks that financed the Keystone Pipeline suffered a material loss of deposit customers due to the reputational harm caused by their decision.

Furthermore, banks will encounter risk by engaging with industries in which they have no expertise. By forcing banks to make loans to certain industries by forbidding them to refuse loans based on a sector, the OCC puts financial institutions in a precarious position. The OCC's proposal suggests the banking industry is discriminating against certain companies without acknowledging the (justified) regulatory pressure that banks face when engaging with high-risk businesses. These industries do not need protection because if the overall risk-weighted financial benefits are sufficient and the lender has the expertise in that industry, a lender will do the deal. There will always be financial institutions willing to finance industries with higher reputational risk – this is the case already for many "sin" industries currently (pornography, gambling, etc.) – but those industries must rightly pay higher costs to access capital due to being higher risk.

Banks that finance harmful industries, such as private prisons, are already losing public trust. This proposal inappropriately gives license to lenders to set aside judgment about unethical, predatory, or exploitative business practices, potentially requiring lenders to exclusively consider profits made from such illicit or inappropriate activities. Disregarding these reputational risks will only further erode trust in the banking industry.

The proposal distracts from real problems of discrimination

When we talk about fairness and access in the financial industry, we have to be cleareyed that we're talking about people who face marginalization, exclusion, and discrimination. Fair lending laws are intended to remedy these societal problems. The Equal Credit Opportunity Act states "it shall be unlawful for any creditor to discriminate against any applicant... (1) on the basis of race, color, religion, national origin, sex or marital status, or age...; (2) because all or part of the applicant's income derives from any public assistance program." We know racism, bias, sexism, and other forms of discrimination are rampant in the financial industry, as in all aspects of our economy and society. Rules to ensure that people – not corporations – have access to banking services should be centered around racial and economic inequities.

Sadly, we are seeing a gross distortion of "fair access" and "fair treatment" – both of which were intended for excluded, or disadvantaged, populations to build credit and build wealth. When it comes to access to credit, corporations have nearly unlimited access to financing that the vast majority of individuals do not enjoy. Corporations do not suffer for lack of options to acquire financing. The real problem that regulators and financial institutions should direct resources toward solving is the huge swath of our population that is excluded from the banking system.

The proposal undermines banks' ability to strategically compete for deposits

The OCC's proposal further belies the purported concept of a market economy in which enterprises have freedom of choice to offer goods and services, as long as they are not denying those services to people based on protected characteristics, that is, unlawfully discriminating. Businesses, including financial institutions and banks, can compete on a number of strategic fronts for consumer dollars. This includes establishing a niche and brand to compete in the marketplace. Financial institutions like ours respond to their most important stakeholders – our depositors – when designing and building products and services based on market demands.

Customers and other stakeholders should be allowed to advocate for how they believe a company, in this case financial institutions, should act and they can vote with their wallets and go to their competitors if they aren't being listened to. This isn't "politically controversial"; it's just business. By choosing to not finance those industries, financial institutions are making a calculated decision to avoid reputational risk and ultimately to maximize the long-term value of their company. If the financial benefits of continuing to finance those markets was high enough, companies wouldn't be leaving the market.

There is a growing global movement toward purpose-driven, also known as values-based, banking. Regulators should recognize this shift in the market and lead the way on guidance and supervision that is relevant, modern, and future-forward. Responding to the market is not a partisan issue; in fact, the OCC itself is making a political statement by saying the corporations are entitled to protection under the law, thereby infusing politics via the concept of "corporate personhood" into lending rather than removing it. On this point, we also note that the rushed nature of the comment timeline appears to be politically motivated so that the agency can approve a final rule before the change in administration.

In conclusion, banks must be able to make loans according to a risk-based assessment, which includes their area of expertise, their reputation, their market, and their ability to manage high-risk businesses, as long as it doesn't disparately impact a protected class of people. Discrimination in lending occurs when financial institutions deny people loans based on race, gender, and/or other protected status. The comparison of redlining (denying homeownership based on race and/or other protected class) to that of banks halting Artic drilling finance displays a lack of awareness about the role banks must play in our society to address economic development. Conflating these issues not only neglects banks' role to steward the public's dollars with which we are entrusted, but it is also confusing from a compliance perspective.

We look forward to further engagement on the matter of "fair access" in the context of protected classes.

Sincerely,

Randell Leach
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Beneficial State Bank

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