October 15, 2019

Kathy Kraninger, Director
Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

Jelena McWilliams, Chairman
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Jodie Harris, Director
U.S. Department of the Treasury
Community Development Financial Institutions Fund
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Manuel P. Alvarez, Commissioner
California Department of Business Oversight
1515 K Street, Suite 200
Sacramento, CA 95814-4052

Dear Director Kraninger, Chairman McWilliams, Director Harris, and Commissioner Alvarez,

We are concerned about predatory lending practices and inaccurate public disclosures made by Beneficial State Bank (“Beneficial”), a California chartered, FDIC-regulated depository institution certified by the United States Department of the Treasury (the “Treasury Department”) as a Community Development Financial Institution (“CDFI”). Beneficial appears to be making predatory loans targeting undocumented immigrants with credit scores below 580 and marketing these loans using language intended to mislead vulnerable populations.

In lieu of increasing access to capital to low income and other underserved communities, Beneficial appears to be inappropriately targeting and preying on the most vulnerable borrowers in our society and using its CDFI certification and FDIC insured deposits for political purposes and social causes that do not qualify as eligible activities under existing statutes and regulations. Further, Beneficial appears to be engaging in false and misleading consumer advertising to entice vulnerable minority, immigrant, and low-income consumers to fall prey to Beneficial’s predatory, no-documentation, no-credit review, sub-prime lending programs.
As a national advocacy organization, the National Diversity Coalition represents vulnerable, low income, and minority populations as well as the CDFIs who serve them. We fear that Beneficial’s activities are not only harming vulnerable consumers and putting the FDIC insurance fund, but they are also causing reputational risk to the CDFI program that is needed to serve the millions of underserved borrowers seeking non-predatory access to capital. It is a shame to divert much needed capital from worthy CDFIs and minority owned depositories to a political organization such as Beneficial that:

1. Only 26% of its loan portfolio consists of loans to low-to moderate income communities (see, e.g., http://beneficialstate.org/impact/mission-lending-products/impact-snapshot/),
2. has a Needs Improvement rating for CRA in Washington and Oregon (see e.g., pages 47-69, https://www5.fdic.gov/CRAPES/2016/58490_160606.PDF), and
3. prey on the approximately 10,000 consumers who can’t afford the high cost loans Beneficial makes them while claiming that the loans (i) “save” them money and (ii) that the borrowers with credit scores of 578 and no credit underwriting are “pre-prime” (see, e.g., “small dollar consumer lending”, “pre-prime”, and “low and moderate income (LMI) communities, http://beneficialstate.org/impact/definitions-and-methodology/).

Beneficial entered the sub-prime consumer lending business in 2017, and by the end of that year, over 13% of these loans were already delinquent (per Beneficial State Bank call report data). The bank falsely and misleadingly characterizes its program as “pre-prime,” without support based on actual payment histories. Beneficial appears to have no evidence that the borrowers ever become prime or to even have an expectation that the borrowers are on a path to becoming prime borrowers at the time of underwriting.

Beneficial’s false and misleading characterization of its loan program as “pre-prime” suggests to consumers that Beneficial conducts underwriting and diligence on behalf of its borrowers to qualify them as emerging prime borrowers. This appears to be, in fact, demonstrably false and misleading. Instead, Beneficial makes loans to borrowers with no credit score and credit scores designated as “very poor” by the rating agencies. Additionally, we are unaware of any information indicating that Beneficial underwrites the borrowers credit based on any quantitative factors that would justify an expectation that the borrower is on a path to becoming a prime credit.

Further, Beneficial requires no proof of legal residence or other documentation to compensate for a borrower’s lack of an adequate credit score to support ability to repay considerations. This targeting of the most vulnerable borrowers living in the shadows of society, is particularly troublesome. In fact, over 13% of loans were delinquent within a year of Beneficial’s entry into this business based on public Call Reports filed by Beneficial. This implies astronomical delinquencies and defaults over the life of the typical loan -- rates worse than many other
predatory hard money lenders. We are unaware of any special servicing procedures or adjustments to underwriting to improve such performance metrics before the economic cycle declines.

Per Beneficial’s own website, of the 9,105 sub-prime consumer loans Beneficial has made, over 1,200 of the borrowers have provided no credit score. Of the remaining loans, the average credit score is 578. Experian defines credit scores below 580 as falling with their lowest category of scores defines as VERY POOR which represents the lowest 16% of the population in terms of credit-worthiness. While the National Diversity Coalition supports banks and other financial institutions, including CDFIs, finding innovative ways to expand access to credit for borrowers with low scores or without score scores, it is essential such loans are not predatory. Therefore, it is critical that lending to these vulnerable populations be done based on honest and transparent marketing, alongside credit counseling, and on fair and responsible terms. Additionally, such loan programs should be tracked to ensure underwriting uses appropriate factors to compensate for the lack of a relevant credit score to access a whether there exists a reasonable expectation that the borrower can repay the loan. Beneficial’s program does not meet these minimum standards.

Beneficial’s false and misleading marketing is a sign of predatory lending which can result in deceiving borrowers into believing they are able to afford a loan that they are unlikely to have the ability to repay. In fact, over the past three quarters ending June 30, 2019, Beneficial’s has charged off approximately $8 million of its $80 million portfolio of these “pre-prime” consumer loans. Charging off over 10% of the entire portfolio in nine months while still reporting another 13% of loans outstanding remaining delinquent is strong evidence of predatory lending.

Beneficial’s false and misleading marketing is likely a violation of California Business Code Section 17200 and other consumer protection statutes such as Regulation Z. In fact, Beneficial has created highly misleading and predatory metrics that are inconsistent with generally accepted accounting principles and not used by any other financial institutional with which we are aware. These non-standard metrics mislead borrowers into believing their predatory loans are in fact saving these vulnerable, immigrant and low-income borrowers money. These metrics compare Beneficial’s high cost loans to potentially usurious pay-day lending rates and fees that sub-prime borrowers would only pay if they were truly desperate of financially unsavvy.

Beneficial does not appear to actually evaluate whether the borrower has less expensive options, whether their loan is the least expensive option, or to compare their rate to rates offered by other banks and mainstream lenders including non-predatory CDFIs. Beneficial markets to borrowers that the borrower will be saving money based solely on the hypothetical rates that they would pay to pay-day and hard money lenders (i.e., lenders of last resort), with no justification that such a lender would be the borrower’s best option. This is deceptive and constitutes an unfair business practice.
Meanwhile, Beneficial’s underwriting targets America’s most vulnerable, at-risk populations. These consumers must be protected from predatory lenders, however, Beneficial has designed its programs instead to target the most vulnerable borrowers instead of to protect them. For instance, Beneficial’s own website admits that its sub-prime auto program targets holders of AB-60 Driver’s Licenses in California which are issued to individuals unable to prove legal residence (and therefore uniquely vulnerable to predatory lending) and first-time borrowers. Both of these borrower types lack a history which Beneficial can use to evaluate the borrower’s ability to repay. Therefore, Beneficial’s willingness to lend to consumers who lack adequate credit scores results in underwriting loans primarily based on the ability of the bank to foreclose on the collateral itself if the borrower does not repay the loan. This is the epitome of predatory lending and exactly what the CFPB and bank regulators seek to prevent.

Beneficial justifies their practices to the community and prospective borrowers based on the fact that they don’t charge fees as high as some sub-prime pay-day and hard money lenders -- and has even created its own misleading metrics based on potential fees avoided to justify their program. Since Beneficial uses its lower cost of capital provided by the FDIC to undercut other non-bank predatory lenders, it is not a surprise their fees can be less while still making the same predatory margins. However, Beneficial is silent on the basic fact that giving a borrower a loan he can’t afford is predatory, no matter the fees. In fact, Beneficial’s borrowers experience unacceptable levels of delinquencies by design (incomparable to any program of which we are aware in the banking industry) in today’s benign lending environment. In fact, in 2018 Beneficial reported that its sub-prime, predatory sub-prime consumer loans had delinquencies of over $10.5 million on a portfolio of only $80 million. That is a delinquency rate exceeding 13%. This equates to at least 1,500 borrowers – mostly from minority, immigrant, and low-income communities – at risk of default and asset repossession who were preyed upon with loans that Beneficial, the credit rating agencies, and regulators all know to be unaffordable.

During normal credit cycles, we believe a majority of Beneficial’s sub-prime consumer loans are likely to become delinquent, default, or force borrowers to re-finance into new, more predatory, higher-rate loans that inevitably will lead borrowers into bankruptcy. Such high delinquencies and defaults are confirmation of Beneficial’s predatory practices that target immigrant, minority, and sub-prime borrowers. These programs are being deceptively marketed as a product for “pre-prime” borrowers looking to save money, instead of accurately labelling them sub-prime, hard money, high cost loans with an expectation of default and no true underwriting based on a consumer’s true ability to repay.

_The FDIC should not insure deposits in order to facilitate a bank’s ability to make predatory loans or allow a bank to expose the FDIC’s deposit fund to be exposed to such unsound and abusive lending practices. Likewise, the FDIC should not reward banks with positive CRA considerations for loans making predatory loans to vulnerable populations. Therefore, FDIC should immediately downgrade Beneficial State Bank’s CRA rating to Needs Improvement until its predatory practices cease._
Beneficial reports on its website that of the $551 million on loan commitments made in 2017, only $149 million were made to low to moderate income communities. This represents only 26% of Beneficial’s loans – well under the 60% required to be a CDFI. We have requested more details relating to Beneficial’s lending and for Beneficial to provide us with the calculations used to justify its CDFI certification based on its public disclosures. We also ask that the U.S. Department of Treasury review Beneficial’s lending practices to ensure it is properly and accurately reporting its lending to underserved communities.

We want to ensure that Beneficial is not receiving preferential treatment that is enabling it to violate Treasury Department rules for CDFI’s and conduct predatory practices due to the considerable political influence of the bank’s leadership including the Chairman’s recent announcement of his intent to run for President. We are also concerned that Beneficial continues to receive approvals to engage in accelerated bank mergers and acquisitions at the state and federal levels that are furthering the harmful consumer practices that we outline above due to its founders’ political influence.

In fact, it raises troubling questions and concerns that Beneficial has been allowed to continue to grow without any constraint while the bank has failed to address the needs of the new communities it has begun to serve (through acquisitions) over the past several years. Beneficial’s breach of trust with their new communities should cause regulators to require Beneficial to meet their obligations to their existing markets prior to allowing them to grow into any further markets through acquisitions. For instance, Beneficial recently entered the Washington and Oregon markets and thereafter received Not Satisfactory CRA ratings in both of these markets. This continues to be their rating in these markets as reflected on the FFIEC website. Not only does this call into question the sincerity with which the Bank takes its CDFI mission, but accentuates the fact that Banks should not be allowed to harm communities post acquisitions (as evidenced by receiving a Needs Improvement CRA ratings in its new markets of Oregon and Washington states) and still be allowed to acquire new banks to enter new communities without remediation. It is not only important that a Beneficial remediate this rating prior to engaging in further growth, but it is critical that it submit a plan to ensure that it will not subject the communities it serves to “needs improvement” CRA programs in the years following an acquisition.

Beneficial’s historical desire to acquiring other banks that serve minority and immigrant populations also highlights the risks associated with their predatory practices. The harm that its predatory lending programs can do as Beneficial brings such programs into new minority and underserved communities cannot be overstated. Beneficial’s growth has come with the promise of doing good, but instead its predatory lending has harmed many of the new communities that it has entered. It is shocking for a CDFI depository institution to receive a Needs Improvement CRA rating in any state which it conducts business, let alone two different states. Until Beneficial remediates unacceptable CRA and lending practices it should be prevented from growth activities that expose new communities to the risks associated with Beneficial’s conduct.
Beneficial must demonstrate it is able to meet the community requirements and obligations it owes to the communities it currently serves, prior to expanding into new communities.

The National Diversity Coalition calls on the FDIC, Treasury Department, and CFPB to immediately investigate Beneficial consumer lending practices and put a stop to Beneficial’s predatory lending and misleading consumer disclosures.

Sincerely,

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