United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

July 24, 2024

The Honorable Michael S. Barr
Vice Chair for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Mr. Michael J. Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Dear Vice Chair Barr and Acting Comptroller Hsu:

I write regarding the proposed merger between Capital One Financial Corporation (Capital One) and Discover Financial Services (Discover). If approved, this merger would create a bank with significant influence in the markets for credit cards, debit cards, and payments network services. I urge your agencies to review this transaction to ensure that it benefits consumers, workers, small businesses, communities, and the broader economy.

The proposed merger would create the sixth largest bank in the country, with nearly $630 billion in assets.[1] Capital One would acquire Discover's payments networks, through which Discover facilitates credit and debit payments between 70 million merchants and more than 300 million cardholders.[2] The combined firm would become the largest credit card issuer in the U.S.[3] Within the subprime[4] credit card market specifically, where consumers face restricted choices and higher prices, the data indicate that Capital One would grow its already large market share.[5] Capital One argues that the newly acquired payments networks and expanded credit card market share would deliver competition against network giants Visa and Mastercard and create newfound benefits for

[1] Board of Governors of the Federal Reserve System (Federal Reserve), "Statistical Release: Large Commercial Banks," as of Mar. 31, 2024.
[2] Capital One Investor Presentation, Feb. 20, 2024.
[3] *Id.*
[4] This letter generally uses the following breakdown of credit scores: super-prime (720 or above); prime (660-719), near-prime (620-659), subprime (580-619), deep subprime (below 580). *See* Consumer Financial Protection Bureau (CFPB), "Borrower Risk Profiles".
[5] American Economic Liberties Project (AELP), "Capital One-Discover: A Competition Policy and Regulatory Deep Dive," Mar. 21, 2024, at 16. This brief refers to "subprime" as credit scores of 660 and below.

cardholders and merchants. However, Capital One must be clear with regulators and the public on how it would fulfill its promises and how widespread and meaningful these benefits would be, with specific data and details. Your agencies, in turn, must conduct the necessary due diligence to confirm these statements are accurate and ensure that Capital One intends to and is able to meet these promises.

I. Public input is critical to understanding the proposed merger's impact on workers, consumers, and communities.

The Bank Merger Act (BMA) and the Bank Holding Company Act (BHCA) require the Office of the Comptroller of the Currency (OCC) and the Federal Reserve to consider how a merger will address the "convenience and needs of the communities to be served."[6] Of course, in order to understand the needs of communities, banks and their regulators must listen to what those communities have to say. Last week, various community stakeholders attended a public meeting hosted by your agencies and raised various issues regarding this merger's potential impact, including concerns about financial stability, Capital One's potential for dominance in the non-prime credit card market, and Capital One's debt collection practices. It is important that you take these issues seriously and assess their impact on consumers and the banking system before approving the merger. Just as you allow bankers to make their case, it is imperative that you seriously consider the issues raised at last week's public meeting as you evaluate the potential harms and benefits posed by this new financial institution.

II. Without proper guardrails, this merger could impact workers' jobs, pay and benefits.

I urge your agencies to critically assess this merger's potential to lead to job losses and other impacts on employees, one of the most direct and harmful ways that bank mergers affect communities. In Ohio, Discover employs more than 2,000 workers, including many who operate a data center in New Albany, and Discover broke ground on a customer care center in Whitehall last year.[7] These Ohioans and other workers across the country—bank tellers, IT specialists, customer service representatives, and many others—keep their companies running day to day but too often get the short end of the stick in mergers like this one. After the Federal Reserve approved the creation of Truist in 2019, for example, the new bank's workforce declined by 14 percent in less than five years.[8] Capital One's application states that "workforce planning will be done to evaluate the combined organization as synergies and efficiencies are identified while retaining and investing in key destination talent."[9] Your agencies must ask for explanations of statements like this one to fully understand how "workforce planning," the identification of "synergies and efficiencies," and other processes might affect workers in Ohio and across the country.

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[6] *See* 12 U.S.C. § 1828(c)(5)(B); 12 U.S.C § 1842(c)(2).
[7] Gabe Hauari, "Capital One is acquiring Discover: What to know about the $35 billion, all-stock deal," *Columbus Dispatch*, Feb. 20, 2024.
[8] *Compare* Truist Financial Corporation 2019 Form 10-K, at 17, with Truist Financial Corporation 2023 Form 10-K, at 16, Table 3.
[9] Application by Capital One Financial Corporation to Acquire Discover Financial Services, Mar. 20, 2024, at 19-20.

I urge you to do everything within your power to ensure that workers keep their jobs, pay, and benefits. Furthermore, when announcing the final decision—whether for or against the proposal—your agencies should publicly disclose a thorough explanation of how your agencies understand this merger's prospective impact regarding jobs as well as all other issues, discussed below and elsewhere, that could reach consumers and communities.

III. The potential benefits for consumers and merchants stemming from Capital One's proposed ownership of the Discover networks deserve careful analysis.

In assessing Capital One's treatment of its communities, your agencies must also examine another major aspect of this merger: Capital One's acquisition of the Discover payments networks. Capital One CEO Richard Fairbank has called these networks the "holy grail" of this transaction.[10] By acquiring Discover, Capital One would not only offer retail banking products and services, such as issuing credit cards and holding deposits—it would also own a significant asset within the payments infrastructure that processes transactions when consumers swipe their credit and debit cards at businesses. The market for this business is highly concentrated, with a high barrier to entry and the vast majority of market share held by Visa and Mastercard. If approved, the proposed merger would make Capital One into one of only two bank holding companies to own a payments network.

Your agencies must demand that Capital One provide details on how it would use its new position to deliver reduced costs, greater fraud protections, and other benefits to the full range of consumers and small businesses it would serve. Capital One argues that it will be able to increase competition among payments networks, but the payments network market is highly complex, and competition may not function as it does in other markets. You must assess how likely it is that Capital One can challenge the current dominant firms and how much of the benefits will go to small businesses, such as through cost savings. Additionally, Capital One states that owning Discover's networks will allow it to "[expand] and [make] more attractive its consumer-friendly checking and credit card portfolios."[11] I urge you to seek detailed explanations that expand on statements like this one and identify specific costs to be lowered, product and service improvements that respond to consumers' needs, and other changes. These improvements to products and services should not just come on the margins, but in meaningful adjustments where it matters most to consumers, such as interest costs and fees. Your agencies should also seek concrete commitments from Capital One to ensure representations about benefits to the public materialize and are not merely talking points.

IV. This merger could further concentrate the credit card market, which affects hundreds of millions of Americans.

Under the BMA and BHCA, the OCC and the Fed must generally prohibit mergers "whose effect…may be substantially to lessen competition, or to tend to create a monopoly."[12] This

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[10] Polo Rocha, "Capital One's Fairbank, eyeing 'holy grail,' takes a calculated risk," *American Banker*, Feb. 22, 2024.
[11] Public Exhibits to Application by Capital One Financial Corporation to Acquire Discover Financial Services, Mar. 20, 2024, Exhibit 21, at 28.
[12] *See* 12 U.S.C. § 1828(c)(5)(B); 12 U.S.C. § 1842(c)(1)(B).

guardrail is key, as competition keeps markets fair, accessible, and affordable. In the credit card market, despite there being approximately 4,000 card issuers, the top 10 hold 83 percent of outstanding loans, up from 57 percent about 30 years ago.[13] No issuer outside of the top 15 currently represents more than 1 percent.[14] This merger would make Capital One the largest credit card lender, with approximately 20 percent of outstanding loans.[15] Further consolidation will reduce competition in the credit card market and could leave consumers with fewer choices and higher prices.

In reviewing the competitive effects of this acquisition, your agencies must comprehensively assess the state of competition in the credit card market. Research suggests that Capital One is the largest subprime credit card lender among the largest banks and that its influence in this market segment would grow upon acquiring Discover.[16] Given this, I especially urge your agencies to examine whether cardholders with subprime credit scores and below would have fewer choices of affordable products after this merger, as the consequences of this transaction could have an outsized impact on these consumers. Subprime consumers already pay higher interest rates and more late fees, and receive far fewer benefits, like cash back and rewards programs.[17] Further, subprime cardholders cannot just jump up to better credit scores, and many of these consumers cannot simply, or quickly, open a new credit card. In 2022, for example, consumers with subprime scores or below were rejected for a general-purpose credit card 80 percent of the time.[18] Your agencies must study this merger's potential impact on all market segments, but in particular the risk for further credit card market concentration, to ensure that any approval is consistent with the goal of bringing affordable, accessible, and safe credit within the reach of *all* American families and households.

V. This merger could continue the trend of creating financial institutions whose failure could threaten the financial system.

The Federal Reserve and the OCC have a statutory obligation to consider a merger's impact on financial stability.[19] Over the last several decades, as the number of banks has decreased, the largest have ballooned into financial behemoths: fewer than one percent of banks and savings associations, including Capital One and Discover, now hold about 70 percent of total assets.[20] Nearly 30 banks in the U.S. have reached a size similar to Silicon Valley Bank and First

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[13] CFPB, "The Consumer Credit Card Market," Oct. 25, 2023, at 18; Government Accountability Office, "U.S. Credit Card Industry: Competitive Developments Need to be Closely Monitored," Apr. 1994, at 27.
[14] CFPB, "The Consumer Credit Card Market," at 18.
[15] Polo Rocha, "Will the Capital One-Discover merger be approved? A guide to the issues," *American Banker,* Apr. 2, 2024.
[16] AELP, "Capital One-Discover: A Competition Policy and Regulatory Deep Dive," at 16; *see also*, Americans for Financial Reform, "The Anticompetitive Effects of the Proposed Capital One-Discover Merger," Apr. 2024, at 41.
[17] CFPB, "The Consumer Credit Card Market," at 54, 66, and 99.
[18] CFPB, "The Consumer Credit Card Market," at 81; *see also,* CFPB, "Credit score transitions during the COVID-19 pandemic," Jan. 25, 2023 (showing varied mobility between credit score tiers, although improved by temporary pandemic-era support).
[19] *See* 12 U.S.C. § 1828(c)(5); 12 U.S.C. § 1842(c)(7).
[20] Federal Deposit Insurance Corporation, "Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions," Mar. 2022, at 18740.

Republic Bank, whose failures sent shockwaves through the financial system.[21] Accordingly, the potential creation of the nation's sixth largest bank, which would carry a significant concentration in credit card lending, merits careful analysis. I urge the Federal Reserve and the OCC to carefully review the impact this transaction would have on the stability of the financial system.

VI. Conclusion

The proposed merger between Capital One and Discover could create a new financial conglomerate while potentially limiting consumer choice for credit products and delivering unclear outcomes for small businesses. Regulators and the public must understand those implications before any potential approval. This transaction could have crucial consequences—not only for the firms' direct customers but also for the hundreds of millions of Americans who rely on credit and debit cards to live their daily lives. I urge the Federal Reserve and the OCC to thoroughly consider all aspects of this merger and ensure that this proposed transaction is in the best interests of the countless families, households, and businesses who deserve a fair and just financial system.

Sincerely,

Sherrod Brown

Sherrod Brown
Chairman
Senate Committee on Banking,
Housing, and Urban Affairs

[21] Federal Reserve, "Statistical Release: Large Commercial Banks," as of Mar. 31, 2024.