NCRC
National Community Reinvestment Coalition

July 24, 2024

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RE: Applications by Capital One, National Association to acquire Discover Bank, and for Capital One Financial Corporation, McLean, Virginia to acquire Discover Financial Services, Riverwoods, Illinois

Dear Directors Almonte and Hassell,

The National Community Reinvestment Coalition (NCRC) is submitting this letter in addition to the opposition letter we submitted on July 18th. This letter is in response to the Community Benefits Plan (CBP) submitted by Capital One just one week before the close of the public comment period.[1] Capital One's CBP is designed to mislead regulators and the public about the impact on convenience and needs this merger would have if approved. Based on information Capital One and Discover provided in their merger application, as well as the CBP's own references to pre-merger planned activities, 98% of the money the plan frames as merger-contingent is in fact already part of the two separate banks' existing baseline activities or plans. Just $4.9 billion of the $265.2 billion referenced in the CBP represents new spending, lending or philanthropy that would not happen without the merger.

Furthermore, the CBP does not address two of the main concerns with this merger - Capital One's high interest rates and their ability to raise debit interchange fees. The CBP was also negotiated with less community input and involvement than other plans negotiated in reference to mergers, including those negotiated by NCRC and its members with financial institutions. Finally, the involvement of congressionally chartered NeighborWorks America that has the OCC and Federal Reserve represented on their board creates a conflict of interest as these agencies review

[1] Capital One 2025-2029 Community Benefits Plan. Released July 17, 2024. Available online at https://www.capitalonediscover.com/media/p53nsb3p/capital_one_community_benefits_plan_overview.pdf

the merger. Considering this, we request that the OCC and the Federal Reserve give little weight to this plan when reviewing this merger, and that this merger be denied based on the many issues shared in our previous comment letter and testimonies.

Only $4.9 billion of the $265.2 billion merger-contingent CBP is new funding above the banks' current baselines and planned activities as separate firms.

The OCC, FDIC, and Federal Reserve evaluate how proposed mergers will meet the public's convenience and needs. This analysis focuses on how the combined bank will serve communities going forward if the merger were approved.[2] While not currently required, there is growing acceptance among regulators that a prospective and detailed commitment in the form of a community benefits plan is helpful for demonstrating how banks meet this merger review requirement. Recent examples of this include the OCC's approval of the US Bank-MUFG Union Bank merger and the FDIC's approval of the BB&T-SunTrust merger.[3] However, the value of a community benefits plan is in the additional resources that the banks commit to in lieu of the merger, not in crafting commitments that glorify what the banks were already expected to do based on previous baselines. This was acknowledged by Capital One in their testimony at the public hearing on the Capital One-Discover merger that their CBP was "premised on a very simple formula, that one plus one should equal more than two."[4] Capital One's CBP fails to live up to this.

[2] OCC Comptroller's Licensing Manual, Public Notice and Comments. April 2022. Page 11. Available online at https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-public-notice-and-comments.html.

[3] The OCC's approval of US Bank-MUFG Union mentions the community benefits plan negotiated with NCRC and its members several times as evidence of how the merger will serve the convenience and needs of the public going forward, as well as how the plan responds to concerns submitted by commentators. This can be found on pages 8-10, 14, and 17 of the merger approval available online at https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-128a.pdf Similar with the FDIC's approval of BB&T-Suntrust. This can be found on pages 9-10 and 15 of the merger approval available online at https://www.fdic.gov/sites/default/files/2024-03/pr19111a.pdf.

[4] Remarks of Andres Navarrette, Capital One's Executive Vice President and Head of External Affairs, at the public hearing held by the OCC and the Federal Reserve on July 19th, 2024.

Summary - *After excluding credit card and auto loan commitments that Capital One itself implies are not new spending, the remaining $65.2 billion comes from $44 billion in community development lending and investments (CDLI), $15 billion in small business lending, $5 billion for supplier-diversity, $600 million in funding to Community Development Financial Institutions (CDFIs) and $575 million in philanthropic giving. In each category, those dollar figures from the CBP are almost entirely accounted for by the banks' existing activities, plans and forecasts*.

Goal	Total Goal	Baseline/Planned	New Money
Credit Card and Auto	$200,000,000,000	Unavailable	$0
CDLI	$44,000,000,000	$43,856,061,363	$143,938,638
CDFI Financing	$600,000,000	$100,000,000	$500,000,000
SB Lending	$15,000,000,000	$12,937,597,000	$2,062,403,000
Philanthropy	$575,000,000	$442,307,692	$132,692,308
Supplier Diversity	$5,000,000,000	$2,941,176,471	$2,058,823,529
Totals	$265,175,000,000		$4,897,857,475

Credit Card and Auto Lending

The vast majority of the CBP – $200 billion – is in the form of credit card and auto lending to low-and-moderate income (LMI) borrowers and communities.[5] Lender-specific credit card and auto lending data is not currently publicly available, making comparisons to current baselines impossible, but even Capital One makes no claim that this is an increase despite taking pains to detail the purported increases in each of the other CBP categories. This suggests that Capital One has padded out the CBP topline dollar figure by lumping in its existing core business model.

Credit card lending is of dubious value in the wealth- and opportunity-building efforts that NCRC and our members prioritize when we convene CBA negotiations with our banking partners. As discussed in more detail in our comment letter submitted on July 18th, given Capital One's significantly higher interest rates than smaller issuers, Capital One's customers would be much better served taking their business elsewhere. Capital One's median APR is 43% higher than small issuers for customers in the lowest credit tier.[6] Capital One also has higher interest rates than Discover and if the merger is approved would be able to raise Discover's existing customers interest rates to match Capital One's higher rates for all new purchases.[7]

[5] Capital One 2025-2029 Community Benefits Plan. Pages 12-13. Available online at https://www.capitalonediscover.com/media/p53nsb3p/capital_one_community_benefits_plan_overview.pdf

[6] NCRC's Capital One-Discover Merger Opposition Letter. Page 4. Available online at https://ncrc.org/wp-content/uploads/2024/07/Capital-One-Discover-Bank-Merger-Comment-Letter-7.18.24-B.pdf.

[7] "A Capital One-Discover Merger Could Raise Credit Card Interest Rates." Forbes. March 16, 2024. https://www.forbes.com/sites/elenabotella/2024/03/16/a-capital-onediscover-merger-could-raise-card-interest-

Capital One argues that its credit card products bring significant improvement to the economic standing of marginalized communities by providing LMI borrowers an opportunity to build credit scores that will let them eventually access better, less expensive, financial products. While building credit for non-prime borrowers is enormously important, the price Capital One charges these borrowers for that privilege is exorbitant. And many of those customers end up seeing their financial futures worsened rather than improved.[8]

Capital One is aggressive in collections court, a strategy that is essential to its profitability. In 2019, Capital One reported $1.4 billion in revenue from collecting balances it had previously "charged off" as losses, roughly a quarter of its $5.5 billion total net income for that year.[9] Debt collection lawsuits are highly predatory, with customers sued rarely having legal representation and often not even being aware of the lawsuit: More than 70% of debt collection lawsuits result in default judgments because the defendant does not show up to court or respond to the suit.[10] These cases often result in heavy fines for defendants as courts routinely order customers to pay accrued interest as well as court fees that together often exceed the amount owed.[11] The litigious approach Capital One uses so aggressively as to generate more than a billion dollars of annual revenue can also result in a court garnishing the borrower's wages. Wage garnishments are most common in suits against customers earning less than $40,000 a year, and are particularly common in predominantly Black communities.[12] They often create financial emergencies where customers are forced to let other bills go unpaid, further trapping them in a vicious cycle of debt.

Community Development Loans and Investments (CDLI)

Capital One CBP Claim: $44 billion if merger approved

Reality: $144 million in new money

Capital One and Discover are already on track to lend or invest $43.9 billion of CDLI activity over a five-year window based on CDLI performance submitted in the merger application covering 2020 through 2023 of both banks. Capital One reported $34.5 billion in CDLI activity in

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rates/?sh=105599af1513

[8] "I Worked at Capital One for Five Years. This Is How We Justified Piling Debt on Poor Customers." The New Republic. October 2, 2019. https://newrepublic.com/article/155212/worked-capital-one-five-years-justified-piling-debt-poor-customers

[9] "Capital One and Other Debt Collectors Are Still Coming for Millions of Americans." ProPublica. June 8, 2020. https://www.propublica.org/article/capital-one-and-other-debt-collectors-are-still-coming-for-millions-of-americans

[10] "How Debt Collectors Are Transforming the Business of State Courts." Pew Charitable Trusts. May 6, 2020. https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts.

[11] Ibid.

[12] "Capital One and Other Debt Collectors Are Still Coming for Millions of Americans." ProPublica. June 8, 2020. https://www.propublica.org/article/capital-one-and-other-debt-collectors-are-still-coming-for-millions-of-americans.

those four years, with another $604.1 million provided by Discover.[13] Extrapolating that four-year total of $35.1 billion out to a five-year baseline forecasts that the two banks' current practices would generate $43.9 billion in these same activities without any merger being necessary. NCRC understands that the 2020-2023 figures include a nearly-unprecedented period of economic upheaval during the height of the COVID-19 pandemic. But the figures above do not include any Paycheck Protection Program (PPP) lending by Capital One.

Community benefits plans should always be transparent about which commitments represent new activity and which reflect the status quo. Capital One's CBP press kit takes pains to portray the $44 billion CDLI promise as a major increase from what it claims is a $35 billion baseline.[14] This misleads the public, the press, community organizations and regulators.

Small Business Lending

Capital One CBP Claim: $15 billion if merger approved

Reality: $2.1 billion in new money

From 2018 to 2022 – and excluding pandemic-tied PPP lending – Capital One reports making $12.9 billion in small business loans to businesses with $1 million or less in annual revenue or in LMI census tracts.[15] The $15 billion small business lending goal described in the CBP is therefore just a 16% increase above prior levels, even after removing the ahistorical blip of the PPP program.

The CBP's small business loan goal is also entirely dollar-based – which means that inflation rates, currently at 3%, might devour the nominal dollar increase pledged in the CBP.[16] The bank could fulfill this $15 billion five-year target without actually increasing the purchasing-power credit it provides to small businesses. To correct for this, all nine of the community benefits plans that NCRC has negotiated with retail lenders since 2020 include commitments to increase based on loan units, a commitment that is lacking in Capital One's CBP.[17]

[13] Capital One and Discover's 2020-2023 community development loans and investments can be found on pages 58, 66, and 76 of the Capital One – Discover OCC Merger Application. Preliminary Statement.

[14] Capital One 2025-2029 Community Benefits Plan. Page 8. Available online at https://www.capitalonediscover.com/media/p53nsb3p/capital_one_community_benefits_plan_overview.pdf

[15] NCRC Analysis of Capital One Bank (USA) N.A. and Capital One, NA's CRA reported commercial loans to businesses under $1 million revenue or in LMI census tracts from 2018-2022, and excluding Capital One's PPP loans reported in their merger application. CRA commercial loan data can be found on the FFIEC's Disclosure Report available online at https://www.ffiec.gov/craadweb/DisRptMain.aspx. Capital One's PPP loan info can be found on page 64 of the Preliminary Statement of their merger application.

[16] Consumer Price Index. 12-month percentage change. Available online at https://www.bls.gov/charts/consumer-price-index/consumer-price-index-by-category-line-chart.htm

[17] These include community benefits plans with BMO Harris Bank, Umpqua Bank, US Bank, Old National Bancorp, New York Community Bancorp, M&T Bank, PNC Bank, First-Citizens Bank & Trust Company, and First Merchants Bank.

Supplier Diversity

Capital One CBP Claim: $5 billion if merger approved

Reality: $2.1 billion in new money

Capital One's historic levels of supplier diversity spending amount to roughly $2.9 billion over a five-year timeline. According to information provided in the CBP, the $5 billion supplier diversity goal represents "an over 70% increase to historic levels."[18] You can use that increase percentage to determine that the baseline of supplier diversity spending was $2.9 billion. The CBP is also unclear over whether "historic levels" refers to Capital One and Discover combined, or just Capital One.

Capital for CDFIs

Capital One CBP Claim: $600 million if merger approved

Reality: $500 million in new money, possibly just $100 million

Capital One's CBP claims it will provide "an additional $500 million in capital to nonprofit CDFIs focused on affordable housing, small business and consumer lending, **totaling 6X our planned activities."**[19] However, the CBP also says that "In 2023, Capital One and Discover committed nearly $100 million in lending to CDFIs across the country."[20] This causes confusion over whether the goal is based on planned activities as reported, or is actually just an increase of $100 million over five years based on prior performance. Since it's unclear, we used the $500 million figure to calculate additional financing, but it could be as low as $100 million.

The CBP therefore represents a promise to raise CDFI support by $20-100 million per year over five years. CDFIs are a vital and innovative force-multiplier tool for building economic prosperity in marginalized communities. They can do much with this capital – but that is a vanishingly small figure in the context of this merger proposal. Capital One is offering $100-$500 million over five years in new CDFI funding as an inducement to let a bank with almost half a trillion dollars in total assets buy another with over $150 billion in assets.[21]

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[18] Capital One 2025-2029 Community Benefits Plan. Released July 17, 2024. Page 16. Available online at https://www.capitalonediscover.com/media/p53nsb3p/capital_one_communitybenefits_plan_overview.pdf

[19] Capital One 2025-2029 Community Benefits Plan. Released July 17, 2024. Page 9. Available online at https://www.capitalonediscover.com/media/p53nsb3p/capital_one_communitybenefits_plan_overview.pdf

[20] Ibid.

[21] Asset information as of 3.31.2024 found on the FDIC's BankFind Suite. Available online at https://banks.data.fdic.gov/bankfind-suite/financialreporting.

Philanthropy

Capital One CBP Claim: $575 million if merger approved

Reality: $133 million in new money

Capital One's existing, pre-merger plans include $442 million in philanthropic giving to organizations that serve marginalized communities. According to the CBP, the $575 million philanthropy goal represents "a nearly 30% increase over our planned activities."[22] You can use that increase percentage to determine that the previously planned philanthropic spend was $442 million.

Ratio of New Financing Compared to Asset Size Increase

Capital One has committed a mere 2% of its potential asset size increase from this merger towards small business lending, CDLI, CDFI financing, and philanthropy for underserved communities.[23] This amount pales in comparison to commitments made by its peers. NCRC analyzed the commitments made in CBAs that were announced in connection with a merger by a major retail bank (those with over $200 billion in assets) over the past five years. As you can see in the chart below, commitments ranged from 12% to 26% of the asset size increase resulting from the merger.

[22] "We are committing to a total of $575 million in philanthropy over the duration of the CBP, representing a nearly 30% increase over our planned activities." Capital One 2025-2029 Community Benefits Plan. Released July 17, 2024. Page 10. Available online at https://www.capitalonediscover.com/media/p53nsb3p/capital_one_communitybenefits_plan_overview.pdf

[23] Supplier diversity commitments were not included in this analysis because of the wide range in how banks measure supplier diversity and in how they establish goals.

CBA Bank	New Money Commitment (over 5 years)	Ratio of New Money to Increase in Asset Size
TD Bank	$22,349,422,587.00	26%
U.S Bank	$32,300,466,763.00	26%
BMO Harris Bank	$14,751,079,325.00	16%
PNC	$13,048,109,363.00	13%
M&T	$7,590,121,250.00	12%
Capital One	$2,839,033,945.00	2%

Capital One's press release announcing the proposed acquisition of Discover claims that the merger will "generate $2.7 billion in pre-tax synergies . . . in 2027."[24] The bank's CBP commitments of new money for small business lending, CDLI, CDFI financing, and philanthropy - $2.8 billion - is about equal to the "synergies" they will achieve in one calendar year (2027). So, while Capital One announces with glee to its shareholders the cost savings and synergies that will result from this potential merger, they have also made it clear through this CBP where this money is going – back into their own wallet, and not into communities.

[24] "Capital One To Acquire Discover." Capital One Press Release. Available online at https://investor.capitalone.com/news-releases/news-release-details/capital-one-acquire-discover.

CBP Does Not Address Two Major Concerns With Merger – Interest Rates and Debit Interchange Fees

Interest Rates

As discussed in more detail in our previous comment, Capital One and Discover both specialize in making credit card loans to borrowers that have lower credit scores. From 2019 to 2023, Capital One sent more direct mail offers to households with credit scores between 621 and 660 than any other issuer, and Discover was the only other mainstream credit card issuer to send a significant number of direct mail offers to this same market segment.[25] Borrowers with credit scores 660 or below accounted for 32% of Capital One's credit card portfolio in 2023 and 20% of Discover's.[26] These are borrowers that are less likely to be able to pay off their balances each month, creating more interest revenue.[27]

As discussed earlier, Capital One already charges some of the highest interest rates in the country - including higher than Discover's. Acquiring Discover could allow Capital One to raise interest rates even further as one of their top competitors for non-prime credit card customers will be gone, and non-prime customers face difficulties in finding alternatives. For example, over half of general purpose credit card applications from customers with credit scores ranging from 620 to 659 get rejected, as well as 83% of applications from customers with credit scores from 580 to 619.[28] The CBP is silent on Capital One's plans to maintain or increase interest rates, which would generate vast new revenue for Capital One if they chose to exercise the market power granted them by approving the merger.

Debit Interchange Fees

Owning Discover's payment network makes this merger appealing to Capital One since it would exempt them from the Durbin Amendment caps on debit interchange fees, the price that merchants pay to banks when customers use debit cards issued by their bank.[29] This loophole gives

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[25] "A Capital One-Discover Merger Could Raise Credit Card Interest Rates." Forbes. March 16, 2024. https://www.forbes.com/sites/elenabotella/2024/03/16/a-capital-onediscover-merger-could-raise-card-interest-rates/?sh=105599af1513

[26] Capital One 2023 10-K Filing. Page 94. cof-20231231 (sec.gov) and Discover 2023 10-K Filing. Page 102. dfs-20231231 (sec.gov)

[27] Balance carrying behavior by cardholders is highly correlated with credit score. 2023 Consumer Credit Card Market Report. CFPB. Page 44. https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf

[28] 2023 Consumer Credit Card Market Report. CFPB. Pages 12 and 81. https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf.

[29] “"Recall that the Durbin amendment eliminated the vast bulk of debit interchange for all banks above $10 billion in

Capital One the legal ability to raise debit interchange fees on businesses, who would be forced to accept its debit cards or lose access to customers. One of the most effective ways that Capital One would be able to convince other debit card issuing banks to move over to their network is by offering a higher share of interchange fees, which encourages Capital One to increase interchange fees overall.[30] The CBP makes no commitment to reduce, or at least maintain, debit interchange fees if they acquire Discover's payment network.

Opaque CBP Process Riddled with Conflicts of Interest

Capital One's CBP was formed through a deeply flawed process. By requiring community groups to sign a non-disclosure agreement prohibiting them from discussing the plan with other community groups or other stakeholders, Capital One ensured the process had reduced transparency and community accountability. A robust and verifiable plan, by contrast, gets reviewed by dozens of community groups prior to announcement. For example, NCRC's community benefits plan negotiated with PNC Bank in 2021 was reviewed and approved by over 80 community organizations.[31]

It is also problematic that congressionally chartered and funded NeighborWorks America was one of the four negotiating organizations, given that both the OCC and the Federal Reserve hold board seats at NeighborWorks. This creates a disconcerting endorsement of the merger and a serious conflict of interest just as the OCC and the Federal Reserve review this merger application. Furthermore, NeighborWorks affiliate Casa of Oregon went on record at the public hearing that NeighborWorks America does not represent CASA's position in this plan or their opposition to this merger.[32] Their input was not sought during the development of the CBP and it may, in the end, do a disservice to the communities they serve. Other NeighborWorks organizations including the Low Income Housing Institute in Seattle and Self-Help Enterprises in California are also

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assets, but in interpreting the legislation the Fed added an exemption for what are called 'three-party' networks where the issuer also acts as the card network," Graham said. Only American Express and Discover stood to benefit from this carve-out, he noted.
"By buying Discover and shifting its debit cards off of Visa and Mastercard to the Discover Network, Cap One can create for itself a Durbin exemption that its own investor deck says is worth $1.2 billion per year by 2027," Graham said." 5 key drivers of the Capital One-Discover merger. American Banker. February 20, 2024. Available online at https://www.americanbanker.com/payments/list/5-key-drivers-of-the-capital-one-discover-merger.

[30] "Will the Capital One, Discover merger impact the Credit Card Competition Act?" Bankrate. March 1, 2024. https://www.bankrate.com/finance/credit-cards/capital-one-discover-merger-ccca-impact/.

[31] PNC Bank, NCRC Announce $88 Billion Community Investment Commitment. Available online at https://ncrc.org/pnc-bank-ncrc-announce-88-billion-community-investment-commitment/?utm_source=rss&utm_medium=rss&utm_campaign=pnc-bank-ncrc-announce-88-billion-community-investment-commitment

[32] Remarks of Peter Hainley, Executive Director of Casa of Oregon, at the public hearing held by the OCC and the Federal Reserve on July 19th, 2024.

opposed to the merger.[33]

Conclusion

The OCC and the Federal Reserve must deny this merger. The multitude of issues associated with this merger, described in greater detail in our previous comment, are too severe to effectively address through a flawed community benefits plan or conditional approvals.

Thank you for considering our views on this important matter. If you have any questions, please contact Kevin Hill, Senior Policy Advisor, at khill@ncrc.org or myself at jvantol@ncrc.org.

Sincerely,

Jesse Van Tol
President and CEO

CC
Jonathan Kanter
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[33] Both the Low Income Housing Institute and Self-Help Enterprises gave NCRC permission to list them in this comment letter as opposing the merger.