

# Congress of the United States

Washington, DC 20515

May 1, 2025

Ms. Ann E. Misback  
Secretary of the Board  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Ave NW  
Washington, DC 20551

Dear Ms. Misback:

We write to request that the Federal Reserve Board (“Board”) stay and reconsider its recent approval of Capital One Financial Corporation’s (“Capital One”) acquisition of Discover Financial Services (“Discover”). This decision will inflict serious harm on consumers and merchants, especially low-income consumers and small businesses, and threaten the stability of the U.S. financial system. It was arbitrary and capricious, and inconsistent with the legal requirements of the Bank Holding Company Act. Among other defects, the decision did not include a prospective assessment of the impact on the convenience and needs of the community or a reasoned affirmative determination that the transaction would “produce benefits to the public...that outweigh possible adverse effects;”<sup>1</sup> did not include an appropriate assessment of the competitive effects on the credit card market or impact on U.S. financial stability; and did not appear to have considered relevant information provided by the Consumer Financial Protection Bureau (“CFPB”), Federal Deposit Insurance Corporation (“FDIC”), and Department of Justice (“DOJ”). There are also new relevant facts that have not been previously presented to the Board. The Board’s Rules of Procedure, and requirements to adhere to the law, demand a stay and reconsideration of the decision.

## Summary

On April 18, 2025, the Board approved Order No. 2025-10 (“Order”) permitting Capital One to acquire Discover under Sections 3 and 4 of the Bank Holding Company Act.<sup>2</sup> We request that the Board stay and reconsider the Order on two grounds: (i) The Order was arbitrary, capricious, or otherwise contrary to law in violation of the Administrative Procedure Act; and (ii) there are “relevant facts...not previously presented to the Board” that warrant reconsideration pursuant to the Board’s Rules of Procedure under 12 C.F.R. 262.3(k).<sup>3</sup>

Capital One’s application to acquire Discover clearly violated the statutory factors prescribed by Congress in the Bank Holding Company Act. If the Board had appropriately applied the law, it would have denied the application. The analysis, or lack thereof, in its Order meets the arbitrary, capricious, or otherwise contrary to law standard previously set by the Supreme Court, as it

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<sup>1</sup> 12 U.S.C. 1843(j)(2)(A).

<sup>2</sup> Federal Reserve Board, “Federal Reserve Board announces approval of application by Capital One Financial Corporation to merge with Discover Financial Services and issues a consent order with Discover,” press release, April 18, 2025, <https://www.federalreserve.gov/newsevents/pressreleases/orders20250418a.htm>.

<sup>3</sup> 12 C.F.R. 262.3(k).

“entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”<sup>4</sup>

In addition, under the Board’s Rules of Procedure, it may reconsider an application “upon receipt by the Secretary of the Board of a written request for reconsideration from any party to such application, on or before the 15th day after the effective date of the Board’s action.”<sup>5</sup> Having submitted comments on the application, We are parties to the application and are submitting this request for reconsideration prior to the relevant deadline. Reconsideration under 12 C.F.R. 262.3(k) is appropriate where there are “relevant facts...not previously presented to the Board” that warrant reconsideration of the Order.<sup>6</sup> There are certain relevant facts that were not previously presented to the Board.

Under the Board’s regulations, the decision to grant or deny reconsideration is delegated to the Board’s General Counsel, though the Board may itself grant or deny reconsideration if it elects to do so.<sup>7</sup> Given the public significance of this Order, however, we further request that a copy of this letter be provided to each Governor and that our request for reconsideration be decided by a vote of the Board of Governors.

**The Board’s approval of the application was arbitrary, capricious, or otherwise contrary to law, in violation of the Administrative Procedure Act.**

To comply with the Administrative Procedure Act, agency actions must not be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”<sup>8</sup> In this case, the Board failed to consider many relevant facts that were presented to it. As a result, the Order displayed a troubling lack of rigor with unsupported conclusions that ran counter to the factual record. The Board received approximately 6,132 comments from individuals and organizations and 5,580 of those comments, or roughly 91%, opposed or raised concerns with the proposed merger.<sup>9</sup> The Board, however, repeatedly parroted assertions made by Capital One in its application, instead of substantively grappling with commenters’ analyses and the market realities of the transaction.

*Competitive Effects*

In its consideration of the competitive effects of the transaction, the Board concluded that “the cluster of banking products and services represents the appropriate product market for analyzing the competitive effects of the proposal,” which means it primarily evaluated deposit market concentration.<sup>10</sup> Treating the transaction as a traditional bank merger was deeply misguided. These are not two traditional banks – they are credit card giants. Discover does not even have

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<sup>4</sup> Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

<sup>5</sup> 12 C.F.R. 262.3(k).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. 706.

<sup>9</sup> Federal Reserve Board, Order No. 2025-10, pp. 3-4, April 18, 2025, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

<sup>10</sup> Federal Reserve Board, Order No. 2025-10, pp. 9-10 and 12, April 18, 2025, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

bank branches. The transaction involves a merger of two large credit card competitors that would create the largest credit card issuer in the country, and it includes the acquisition of a major card network. Given commenters’ overwhelming concerns, the Board did perform supplementary competitive effects analyses related to the credit card market. In fact, the Board found that for the millions<sup>11</sup> of “new-to-credit” customers—people with no or limited credit history—that “the post-merger [Herfindahl-Hirschman Index (“HHI”)] would increase by 766 points to 1971, as measured by number of accounts... Capital One would control 40 percent of this segment of general-purpose-credit-card issuance.”<sup>12</sup> Even under the outdated 1995 Bank Merger Guidelines, withdrawn by the DOJ in 2024, regulators expressed serious concern with mergers that increased HHI, a common market concentration metric, by 200 points and left the market highly concentrated with an HHI above 1,800.<sup>13</sup> The DOJ, based on the Supreme Court precedent in *Philadelphia National Bank*, has also reiterated it is presumptively unlawful for a merger to leave the combined entity with a greater than 30% market share.<sup>14</sup>

The Board explained away this damning data by claiming that there are “over 2,000 other card issuers,”<sup>15</sup> conveniently ignoring that the top 10 credit card issuers control more than 80% of the overall market.<sup>16</sup> The Board also claimed that customers can transition out of this category if their credit history improves, which “may encourage Capital One to maintain relatively attractive credit-card terms to new-to-credit customers.”<sup>17</sup> No evidence whatsoever was offered to support this speculative and wishful claim. The Board’s lack of concern for the well-being of some of the most economically vulnerable credit card consumers is deeply troubling and its conclusions run counter to the hard data in the factual record.

In addition, the Board claims it conducted a high-level analysis of the transaction’s impact on credit card consumers with subprime credit scores and found limited concerns.<sup>18</sup> But the Board failed to publish its quantitative analysis, and its conclusion conflicts with data provided by certain commenters regarding subprime consumers.<sup>19</sup> This conclusion also conflicts with the

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<sup>11</sup> TransUnion, “New TransUnion Study Finds Millions of New-to-Credit Consumers Across the Globe Prove to be Similar, if Not Better, Risks Than Established Credit Users,” press release, January 25, 2023, <https://newsroom.transunion.com/new-transunion-study-finds-millions-of-new-to-credit-consumers-across-the-globe-prove-to-be-similar-if-not-better-risks-than-established-credit-users/#:~:text=In%20the%20United%20States%2C%205.8,the%20first%20half%20of%202022.>

<sup>12</sup> Federal Reserve Board, Order No. 2025-10, April 18, 2025, pp. 14,

<https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

<sup>13</sup> Department of Justice, “Bank Merger Competitive Review -- Introduction and Overview”, 1995, Withdrawn September 17, 2024, <https://www.justice.gov/sites/default/files/atr/legacy/2007/08/14/6472.pdf>.

<sup>14</sup> United States v. Phila. Nat’l Bank, 374 U.S. 321, 364 (1963); Department of Justice and Federal Trade Commission, “Merger Guidelines,” December 18, 2023, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

<sup>15</sup> FRB Order No. 2025-10, April 18, 2025, pp.14,

<https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

<sup>16</sup> Consumer Financial Protection Bureau, The Consumer Credit Card Market, October 2023,

[https://files.consumerfinance.gov/f/documents/cfbp\\_consumer-credit-card-market-report\\_2023.pdf](https://files.consumerfinance.gov/f/documents/cfbp_consumer-credit-card-market-report_2023.pdf).

<sup>17</sup> FRB Order No. 2025-10, April 18, 2025, pp.14,

<https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

<sup>18</sup> *Id.*

<sup>19</sup> Comment Letter from the National Community Reinvestment Coalition submitted in response to the Federal Reserve and Office of the Comptroller of the Currency’s review of Capital One’s proposed acquisition of Discover, July 18, 2024, <https://ncrc.org/wp-content/uploads/2024/07/Capital-One-Discover-Bank-Merger-Comment-Letter-7.18.24.pdf>.

DOJ's reported conclusion during the Biden administration.<sup>20</sup> Moreover, it does not appear that the Board looked at the impact on customers in the deep subprime credit tier (e.g. FICO score of 579 or less<sup>21</sup>) as a distinct segment of the market, even though more than 6 million people fall into this category. Nor did the Board evaluate the market based on distinct product features. For example, credit card companies compete for customers in different rewards card categories, such as cashback, miles, and points. CEO Richard Fairbank admitted that the Capital One QuickSilver card was a direct competitive response to the Discover It card in the "cashback" category.<sup>22</sup>

Most notably, the Board failed to analyze the competitive effects of attaching a major card network to the largest credit card issuer in the country. The Board argued that given "the significant, larger competitors that would remain," and that Capital One doesn't currently own a network, there aren't any competitive concerns.<sup>23</sup> The Board completely missed the fact that the merger would provide Capital One with significant market power to increase interchange fees charged to merchants and reduce rewards and other benefits for consumers.<sup>24</sup> It didn't grapple with the implications of vertical integration and network effects. The two largest card network "competitors" don't have credit card issuers attached to them. Merchants would have no choice but to accept the terms dictated by Capital One's network, since they need to access the customers of the largest credit card issuer in the country. The market power created by combining Capital One's card base with Discover's network explains why Capital One CEO Richard Fairbank described the acquisition of the network as a "holy grail."<sup>25</sup> The Board instead repeated Capital One's assertion that the transaction would somehow increase competition with Visa and Mastercard without substantiating that claim with any facts or evidence.

Nowhere in any of the competitive effects analyses did the Board even attempt to evaluate whether fees, credit availability, interest rates, or non-price harms like customer service would be impacted by the deal. The Order reads like the Board had predetermined it was going to approve the transaction and either ignored relevant facts or explained them away with baseless assertions copied and pasted from Capital One's application.

### *Financial and Managerial Resources*

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<sup>20</sup> The New York Times, "Capital One Deal for Discover Clears Justice Dept. Hurdle," Lauren Hirsch and Danielle Kaye, April 3, 2025, <https://www.nytimes.com/2025/04/03/business/dealbook/capital-one-discover-merger.html>.

<sup>21</sup> Consumer Financial Protection Bureau, The Consumer Credit Card Market, October 2023, pp. 12, [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-credit-card-market-report\\_2023.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf).

<sup>22</sup> Capital One Financial Corporation, "Transcript of the conference call held by Capital One Financial Corporation and Discover Financial Services on February 20, 2024," February 20, 2024, pp. 10 <https://investor.capitalone.com/static-files/d7b64c07-9663-4b0a-b382-48792a04c148>.

<sup>23</sup> FRB Order No. 2025-10, April 18, 2025, pp. 17, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

<sup>24</sup> American Economic Liberties Project, "Capital One-Discover: A Competition Policy and Regulatory Deep Dive" Shahid Naeem, March 21, 2024, <https://www.economicliberties.us/our-work/capital-one-discover-a-competition-policy-and-regulatory-deep-dive/>; Tyler Baker and Lora Grodnick et al. v. Capital One Financial Corporation and Discovery Financial Services, Inc. (2024), <https://www.classaction.org/media/baker-et-al-v-capital-one-financial-corporation-et-al.pdf>.

<sup>25</sup> The Wall Street Journal, "Capital One Calls Discover's Credit Card Network a 'Holy Grail'," Kailyn Rhone, February 20, 2024, <https://www.wsj.com/livecoverage/stock-market-today-dow-jones-earnings-02-20-2024/card/capital-one-calls-discover-s-credit-card-network-a-holy-grail--FAEERZoazyB6PVOgplbK>.

In its consideration of financial and managerial resources, the Board failed to appropriately weigh Capital One’s history of operational issues. In 2019, the bank had a severe data breach that exposed the data of 106 million customers.<sup>26</sup> It was subject to an enforcement action by the Board that was terminated less than two years ago.<sup>27</sup> In its Order, the Board stated, “Capital One represents that it has committed significant investments to strengthen its risk management and compliance functions to address past compliance issues.”<sup>28</sup> It is highly questionable to rely on Capital One’s own assertion, especially since the firm had a multi-day outage just a few months ago.<sup>29</sup> Thousands of its customers were locked out of their accounts or otherwise could not complete transactions or execute other banking functions.<sup>30</sup>

In addition, it is doubtful that Capital One could fix the myriad issues it is inheriting by acquiring Discover. For roughly 17 years, Discover “misclassified millions of consumer credit cards as commercial, resulting in higher interchange fees for transactions processed on the Discover network.”<sup>31</sup> Merchants were charged higher interchange fees as a result and Discover must provide more than \$1 billion in restitution.<sup>32</sup> Discover has also been subject to other enforcement actions related to consumer compliance risk management and has cycled through four CEOs in less than two years.<sup>33</sup>

#### *Convenience and Needs of the Community*

In its consideration of the conveniences and needs of the community, the Board asserted that it would evaluate the impact the transaction “will or is likely to have on the communities served by the combined organization.”<sup>34</sup> Instead of performing the prospective analysis required by law, the Board primarily focused on each bank’s past performance under the Community Reinvestment Act (“CRA”). The convenience and needs of the community is a distinct legal factor, separate and apart from banks’ past performance under the CRA. The Board neglected to evaluate how the combined institution would serve communities on a going forward basis. It did not evaluate the impact of the transaction on fees, interest rates, credit availability, customer service, or other impacts relevant to the community. When the Board mentioned those issues in passing, it relied on representations and claims made by Capital One. Among other “representations,” “assertions,” and “contentions” made by Capital One, the Board cited that “Capital One asserts

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<sup>26</sup> Cybersecurity Dive, “Fed ends Capital One breach-related enforcement action,” Dan Ennis, July 13, 2023, <https://www.cybersecuritydive.com/news/fed-ends-capital-one-breach-action/686970/>.

<sup>27</sup> Federal Reserve Board, “Federal Reserve Board announces termination of enforcement action with Capital One Financial Corporation,” press release, July 11, 2023, <https://www.federalreserve.gov/newsevents/pressreleases/enforcement20230711a.htm>.

<sup>28</sup> FRB Order No. 2025-10, April 18, 2025, pp. 20, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

<sup>29</sup> The New York Times, “Thousands of Capital One Customers Are Locked Out of Accounts for Days,” Lauren McCarthy, January 18, 2025, <https://www.nytimes.com/2025/01/18/business/capital-one-outage-direct-deposits.html>.

<sup>30</sup> *Id.*

<sup>31</sup> Federal Deposit Insurance Corporation, “FDIC Announces Three Orders Against Discover Bank, Greenwood, Delaware,” press release, April 18, 2025, <https://www.fdic.gov/news/press-releases/2025/fdic-announces-three-orders-against-discover-bank-greenwood-delaware>.

<sup>32</sup> *Id.*

<sup>33</sup> Payments Dive, “Discover CEO may reap \$4.2M bonus,” Lynne Marek, March 31, 2025, <https://www.paymentsdive.com/news/discover-financial-credit-card-capital-one-sale-ceo-bonus/743975/>.

<sup>34</sup> FRB Order No. 2025-10, April 18, 2025, pp. 23, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>



that it is committed to providing benefits to the constituents served by Capital One and Discover and to continue helping to meet the financial needs of underserved populations and communities,” and that “Capital One contends that many of its products have lower fees than those of other issuers.”<sup>35</sup>

In addition, the Board ignored the facts outlined in the CFPB’s 2025 lawsuit against Capital One for allegedly cheating millions of consumers out of more than \$2 billion in interest.<sup>36</sup> The CFPB dropped the case amidst Acting Director Vought’s attempted dismantling of the Bureau.<sup>37</sup> Instead of evaluating the facts outlined in the CFPB’s legitimate complaint, the Board buried in a footnote that the CFPB voluntarily dismissed the case (like it tried to dismiss 1,483 of its 1,690 staff).<sup>38</sup>

### *Public Benefits*

Given that the transaction involved the acquisition of certain nonbank companies, the Board was required to make an affirmative determination that the transaction would “produce benefits to the public...that outweigh possible adverse effects.”<sup>39</sup> The Board concluded that, “there are public benefits to be derived from permitting bank holding companies to make potentially profitable investments in financial companies and to allocate their resources in the manner they consider to be most efficient.”<sup>40</sup> It is staggering that the Board effectively defined the “public” as the banks’ shareholders and the “benefit” as potentially higher profits. In terms of adverse effects, the Board concluded that “the performance of the proposed nonbanking activities... is not likely to result in significant adverse effects.”<sup>41</sup> The Board made no attempt to quantify either the public benefits or the adverse effects of the transaction and provided no basis to support the conclusion that public benefits outweigh adverse effects. The Board provided no other factual support for this conclusion.

### *U.S. Banking and Financial Stability*

In its consideration of U.S. financial stability, the Board concluded that the creation of a \$637 billion bank, the eighth largest in the country, “would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system.”<sup>42</sup> Capital One would be larger than Silicon Valley Bank (“SVB”), Signature Bank, and First Republic Bank combined. Their individual failures constituted the second, third, and fourth largest failures in U.S. history in Spring 2023.

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<sup>35</sup> *Id.*, pp 31-32.

<sup>36</sup> Consumer Financial Protection Bureau, “CFPB Sues Capital One for Cheating Consumers Out of More Than \$2 Billion in Interest Payments on Savings Accounts,” press release, January 14, 2025, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-capital-one-for-cheating-consumers-out-of-more-than-2-billion-in-interest-payments-on-savings-accounts/>.

<sup>37</sup> Associated Press, “The CFPB drops its enforcement lawsuits against Capital One, Rocket Homes and more,” Wyatt Grantham-Philips, February 27, 2025, <https://apnews.com/article/cfpb-drops-capital-one-rocket-lawsuits-e3a4a18ccd9ddd97610ef23fd6b843b2>.

<sup>38</sup> FRB Order No. 2025-10, April 18, 2025, pp. 28, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

<sup>39</sup> 12 U.S.C. 1843(j)(2)(A).

<sup>40</sup> FRB Order No. 2025-10, April 18, 2025, pp. 63, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*, pp. 62.

When SVB acquired Boston Private two years before its failure triggered a banking crisis, the Board similarly concluded that “this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system.”<sup>43</sup> The Board’s analysis relied heavily on “global” metrics of systemic risk. This approach fails to meet the statutory standard, which explicitly references the stability of the *U.S.* banking or financial system—not the *global* banking or financial system.<sup>44</sup> Under this misapplied analytical approach, SVB had a systemic risk score that was well below the threshold that would qualify a bank as globally systemically important. The Board came to the same conclusion relying on the same methodology for the Capital One-Discover transaction, which would have a systemic risk score double SVB’s, but still well below the globally systematically important threshold.<sup>45</sup>

In the Board’s 2012 Order approving a previous major acquisition by Capital One, it stated that “[a] relatively small institution that operates in a critical market for which there is no substitute provider, or that could transmit its financial distress to other financial organizations through multiple channels, could present significant risks to the stability of the [U.S. financial system].”<sup>46</sup> It appears that the Board, without a basis in the factual record, has deviated from that analysis. The Board has also failed to finalize a rule that would improve regulators’ ability to safely resolve failed banks of this size, which would at least mitigate some of these risks.<sup>47</sup>

In addition, the Board failed to sufficiently consider how attaching a large payments network to the eighth largest bank in the country could increase risks to financial stability. It dismissed concerns raised by commenters regarding the failure of the firm, concluding that consumers and merchants could instead use “cash and other payment cards,” without any supporting analysis of the potential impact of the failure of the payments network.<sup>48</sup> The Board also dismissed, without any argument or analysis, commenters’ concerns that that the resolution of Capital One would be significantly more complex in the wake of the transaction due to the network.

#### *CFPB, FDIC, and DOJ Analyses*

The Order references the Board’s consultation with the FDIC and CFPB, but does not characterize the agencies’ views. It is our understanding that both the FDIC and CFPB communicated substantive views on the transaction to the Board in the form of letters and/or presentations. These views may have included serious concerns with the transaction based on

<sup>43</sup> Federal Reserve Board, “Federal Reserve Board announces approval of the application by SVB Financial Group,” press release, June 10, 2021, <https://www.federalreserve.gov/newsevents/pressreleases/orders20210610a.htm>.

<sup>44</sup> Department of the Treasury, “Remarks By Assistant Secretary for Financial Institutions Graham Steele at the Americans for Financial Reform Education Fund,” July 25, 2023, <https://home.treasury.gov/news/press-releases/jy1648>.

<sup>45</sup> Letter from Capital One Financial Corporation to the Federal Reserve Bank of Richmond re: Additional Information Regarding Application by Capital One Financial Corporation to Acquire Discover Financial Services, May 8, 2024, <https://www.federalreserve.gov/foia/files/capone-response-second-request-for-information-20240508.pdf>.

<sup>46</sup> Federal Reserve Board, Order No. 2012-2, February 14, 2012, pp. 32, <https://www.federalreserve.gov/newsevents/pressreleases/files/order20120214.pdf>.

<sup>47</sup> Federal Reserve Board, “Agencies request comment on proposed rule to require large banks to maintain long-term debt to improve financial stability and resolution,” press release, August 29, 2023, <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230829a.htm>.

<sup>48</sup> FRB Order No. 2025-10, April 18, 2025, pp. 59, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

quantitative analyses, supervisory experience, and other relevant information. It is not clear from the Order whether the information and analyses in these formal communications were part of the factual record and presented to the Governors in their review of the transaction. We ask that these communications be made public and provided to each Governor for review, if not previously circulated.

In addition, the DOJ reportedly “told regulators that it was concerned, in part, about the deal’s impact on potential credit card users who had no credit”<sup>49</sup> and that “DOJ staff has determined that Capital One’s (COF) proposed \$35.3 billion acquisition of Discover Financial (DFS) would harm competition in the subprime sector.”<sup>50</sup> It is unclear if the DOJ’s views under the Biden administration were entered into the factual record and considered by the Board. The only reference in the Order is to a communication made by the DOJ during the Trump administration that it would not submit an adverse comment.<sup>51</sup> We ask that the DOJ’s communication to the Board during the Biden administration be made public and provided to each Governor for review, if not previously circulated.

**There are facts relevant to the application that have not previously been presented to the Board.**

As noted above, reconsideration under 12 C.F.R. 262.3(k) is appropriate where there are “relevant facts...not previously presented to the Board” that warrant reconsideration of the Order.<sup>52</sup> There are several relevant facts that have not previously been presented to the Board, primarily due to their recency.

First, in evaluating the competitive effects of the transaction, the Board based certain of its analyses on data as of December 2023 and other of its analyses on data as of June 2024.<sup>53</sup> At the time of the Order, that data is 10-16 months out of date. We request that the Board re-evaluate the competitive effects of the transaction using data as of Q1 2025. It would be deeply inappropriate to approve a transaction using stale data, when more recent data is available and no exigent circumstance demands immediate disposition of the application.

Second, in evaluating the financial, managerial, and other supervisory considerations and future prospects, new relevant facts have emerged that have not previously been presented to the Board. On April 9, 2025, the Federal Reserve Bank of Philadelphia published its *Large Bank Credit Card and Mortgage Data* for 2024 Q4.<sup>54</sup> This data revealed that, “the percent of [credit card]

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<sup>49</sup> The New York Times, “Capital One Deal for Discover Clears Justice Dept. Hurdle,” Lauren Hirsch and Danielle Kaye, April 3, 2025, <https://www.nytimes.com/2025/04/03/business/dealbook/capital-one-discover-merger.html>.

<sup>50</sup> The Capitol Forum, “Capital One/Discover Financial: DOJ Staff Finds Deal Would Be Anticompetitive in Subprime Sector,” March 17, 2025, <https://thecapitolforum.com/capital-one-discover-financial-doj-staff-finds-deal-would-be-anticompetitive-in-subprime-sector/>.

<sup>51</sup> FRB Order No. 2025-10, April 18, 2025, pp. 17, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

<sup>52</sup> 12 C.F.R. 262.3(k).

<sup>53</sup> See for example, FRB No. 2025-10, footnotes 29, 42, and 43, <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>.

<sup>54</sup> Federal Reserve Bank of Philadelphia, “Large Bank Credit Card and Mortgage Data 2024 Q4 Narrative: Q4 2024 Insights Report,” Jeremy Cohn and Brandon Goldstein, April 9, 2025. <https://www.philadelphiafed.org/surveys-and-data/2024-q4-large-bank>.



accounts making the minimum payment hit a new 12-year high in our data, rising an additional 25 basis points from last quarter's previous series high. Account-based delinquency metrics remained near or set new series highs in the seasonally delinquency-heavy fourth quarter."<sup>55</sup> This new data is deeply troubling and directly implicates the asset quality and earnings prospects of the combined entity, which would be the largest credit card issuer in the country. The use of stale data is especially troubling given that, by the Board's own analysis, Capital One would have a dominant (40%) market share for consumers who are new-to-credit.<sup>56</sup>

In addition, the economic outlook has deteriorated significantly in recent weeks and is not reflected in the Board's analysis, which appears to have been conducted prior to the financial and economic stress sparked by President Trump's chaotic tariffs. Chair Powell recently stated, "the level of the tariff increases announced so far is significantly larger than anticipated" and that "the same is likely to be true of the economic effects, which will include higher inflation and slower growth."<sup>57</sup> New York Fed President Williams argued that "the economy entered the year on firm footing" but "given the combination of the slowdown in labor force growth due to reduced immigration and the combined effects of uncertainty and tariffs, I now expect real GDP growth will slow considerably from last year's pace."<sup>58</sup> In reconsidering the Order, the Board should re-evaluate the asset quality and earnings prospects of the combined entity in light of the changing economic landscape, especially with respect to credit card exposures.

Third, in evaluating the convenience and needs of the community, the Trump administration's attempted dismantling of the CFPB is a new relevant fact that was not previously presented to the Board. By approving the Order, the Board is creating the largest credit card issuer in the country at the very moment the Trump administration is attempting to shut down the only agency with legal authority to regulate, supervise, and enforce federal consumer financial laws against the combined entity. It appears highly doubtful that Acting Director Vought will permit a sufficient number of CFPB examiners to monitor Capital One's integration with Discover. For example, on April 17, Acting Director Vought sought to reduce the Supervision workforce from 487 to 50, the Enforcement workforce from 248 to 50, and the overall agency workforce from 1,690 to 207.<sup>59</sup>

Large bank merger integrations have been a serious source of consumer harm in the past, both over the short-and long-term. For example, in just the last 5 years, consumers suffered harms as a

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<sup>55</sup> *Id.*

<sup>56</sup> FRB Order No. 2025-10, April 18, 2025, pp. 14,

<https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a2.pdf>

<sup>57</sup> Federal Reserve Board, "Economic Outlook," Speech by Chair Jay Powell, April 16, 2025,

<https://www.federalreserve.gov/newsevents/speech/powell20250416a.htm>.

<sup>58</sup> Federal Reserve Bank of New York, "Uncertain Times," Speech by President John Williams, April 11, 2025,

<https://www.newyorkfed.org/newsevents/speeches/2025/wil250411>.

<sup>59</sup> National Treasury Union Employees et. al. v. Russell Vought, Declaration of Mark Paoletta, April 18, 2025,

[https://storage.courtlistener.com/recap/gov.uscourts.dcd.277287/gov.uscourts.dcd.277287.109.0\\_4.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.277287/gov.uscourts.dcd.277287.109.0_4.pdf); Reuters,

"US judge temporarily blocks mass firings at consumer bureau," Douglas Gillison, April 18, 2025,

<https://www.reuters.com/world/us/doge-cfpb-disregarded-court-orders-mass-firings-statement-says-2025-04-18/>.

result of the mergers between PNC and BBVA<sup>60</sup>; BB&T and SunTrust (Truist)<sup>61</sup>; M&T and People's<sup>62</sup>; and Huntington and TCF.<sup>63</sup> Wells Fargo grew rapidly through acquisitions before and during the financial crisis, and prioritized growth above all-else, which created a culture and strategy that set the stage for its fake accounts scandal and other systemic misconduct.<sup>64</sup> The Board should reconsider the Order given the serious uncertainty regarding the CFPB's ability to monitor the combined entity's merger integration for compliance with federal consumer financial law. Approving the Order without a consumer cop on the beat is a recipe for disaster, and these considerations directly implicate the convenience and needs of the community. The Board cannot force the CFPB's Acting Director to run the agency lawfully, but it certainly can refrain from creating the largest credit company in the country at a time of massive uncertainty regarding the CFPB.

Finally, in evaluating the transaction's impact on U.S. financial stability, the onboarding of the Department of Government Efficiency ("DOGE") at the FDIC on April 10 is a new relevant fact not previously presented to the Board. DOGE has eviscerated critical functions across government agencies. The FDIC has notified staff that it plans to cut 1,250 employees, a reduction of 20% of the total workforce.<sup>65</sup> These staff reductions could undermine the agency's ability to resolve a large and complex bank such as the combined entity. In addition, DOGE may have or gain access to the FDIC's systems, including those related to resolution and receiverships, which could further undermine the efficacy of the agency in resolving large and complex banks. Keeping Capital One and Discover separate makes them easier to resolve and somewhat mitigates the impact of the degradation of the FDIC's resolution capacity.

The Board's failure to adhere to the legal requirements of the Bank Holding Company Act and Administrative Procedure Act, as well as these relevant facts not previously presented to the Board, necessitate an immediate stay and reconsideration of the Order.

Sincerely,

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<sup>60</sup> Dallas Observer, "Withdrawal Denied: BBVA Bank Merger Left PNC Customers Unable to Access Their Money," Jacob Vaughn, October 14, 2021, <https://www.dallasobserver.com/news/pnc-bank-customers-couldnt-access-money-after-bbva-merger-12605933>.

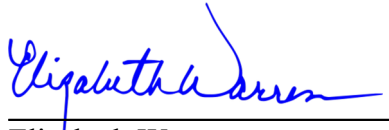
<sup>61</sup> American Banker, "Truist reckons with customer backlash after integration snags," Allison Kline, May 11, 2022, <https://www.americanbanker.com/news/truist-reckons-with-customer-backlash-after-integration-snags>.

<sup>62</sup> WCAX, "M&T Bank merger sparks complaints from customers," Kiana Burks, September 12, 2022, <https://www.wcax.com/2022/09/13/new-peoples-united-mt-bank-merger-spark-complaints-members/>.

<sup>63</sup> Detroit Free Press, "TCF-Huntington merger leads to debit card, online banking glitches for some," Susan Tompor, October 22, 2021, <https://www.freep.com/story/money/personal-finance/susan-tompor/2021/10/22/chaos-debit-online-banking-tcf-customer-dealt-huntington-woes/6116722001/>.

<sup>64</sup> Department of Justice, "Wells Fargo Agrees to Pay \$3 Billion to Resolve Criminal and Civil Investigations into Sales Practices Involving the Opening of Millions of Accounts without Customer Authorization," press release, February 21, 2020, <https://www.justice.gov/archives/opa/pr/wells-fargo-agrees-pay-3-billion-resolve-criminal-and-civil-investigations-sales-practices>.

<sup>65</sup> Bloomberg Law, "FDIC Aims to Cut 1,200 Jobs as Trump Worker Purge Continues," Evan Weinberger, April 21, 2025, <https://news.bloomberglaw.com/banking-law/fdic-aims-to-cut-1-200-jobs-as-trump-workforce-purge-continues>.



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Elizabeth Warren  
Ranking Member  
Committee on Banking,  
Housing, and Urban Affairs



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Maxine Waters  
Ranking Member  
Committee on Financial  
Services

cc: Chair Powell  
Vice Chair Jefferson  
Governor Barr  
Governor Bowman  
Governor Cook  
Governor Kugler  
Governor Waller