Dear Acting Comptroller Hsu and Vice Chair Barr:

We write with deep concern about Capital One’s plan to acquire Discover Financial Services (Discover), a deal that would combine two of the largest credit card issuers in the United States into a “colossus” that would “leav[e] the industry with fewer competitors overall and eas[e] pressure on companies to attract customers with favorable terms.”

Under federal law, the Office of the Comptroller of the Currency (OCC) and the Federal Reserve (Fed) are charged with reviewing and approving mergers and acquisitions among the banks they oversee, in conjunction with the Department of Justice (DOJ).

With nearly $500 billion in assets, Capital One is currently the nation’s ninth-largest bank. By acquiring Discover, Capital One would add a network of 305 million cardholders to its base of more than 100 million customers, consolidating the credit card market and limiting customer

---

This merger would make Capital One the nation’s sixth-largest bank, and largest credit card issuer, with over $200 billion in outstanding credit card loans.

This merger is bad for consumers. The banking and credit card industries are already highly concentrated: today, the six largest bank holding companies control more assets than all other bank holding companies combined. Consolidation in the banking sector causes “higher prices and more fees, lower deposit rates, less access to credit, bank branch closures, and job cuts.” In addition to harming consumers and small businesses, bank consolidation poses increased systemic risk in the financial system, “reducing the number of smaller banks and creating even more too-big-to-fail banks.”

This merger announcement comes less than a week after the Consumer Financial Protection Bureau (CFPB) issued a new report revealing the impact of credit card industry consolidation on consumers. According to the report, large banks charge higher interest rates than small credit card issuers, with “[n]early half of the largest credit card issuers” — including Capital One — “offering cards with a maximum purchase APR over 30%.” The CFPB also found that large credit card issuers charge average fees that are 70% higher than those charged by small institutions. These higher rates and fees can cost consumers hundreds of dollars annually.

Capital One has a concerning history of mistreating consumers. In 2012, the CFPB ordered the bank to refund $140 million to 2 million consumers with low credit scores and low credit limits who were misled into paying for costly add-on products. In 2019, Capital One’s shoddy risk-management practices resulted in a hacker gaining access to more than 100 million credit card accounts.

---

12 Id.
13 Id.
14 Id.
applications and customer accounts. Discover’s record of compliance failures also raises concerns. In October 2023, it reached a sweeping consent order with the FDIC that required further action to address “violations of, and consumer harm related to’ various consumer financial laws.”

Last month, the OCC issued a proposed policy statement “to provide transparency around the features of merger applications and indicators that are consistent with and inconsistent with approval.” Acting Comptroller Hsu indicated that “merger applications exist along a spectrum. Some have significant deficiencies. Others are straightforward because the acquiring bank is a model of safety and soundness and has earned the trust of the community and its supervisors. The majority lie somewhere in between and require varying degrees of scrutiny and multiple rounds of inquiry.” This merger, on its face, has significant deficiencies.

In a speech last year, moreover, Acting Comptroller Hsu warned that “I have seen up close what happens when large banks become unmanageable and need government support to avoid disorderly failure. The negative impacts of [too-big-to-manage] and too-big-to-fail on households and communities, on the banking system and economy, and on trust are immeasurable and can take years to mend.”

But OCC’s actions fly in the face of these concerns. The agency approved almost every merger application it received in the last three years: 43 mergers in 2021, 30 in 2022, and 23 in 2023. This included the approval of JP Morgan Chase’s purchase of First Republic, which increased the size of America’s largest bank by $200 billion. Troublingly, the OCC’s proposed policy statement essentially codifies the OCC’s current, permissive approach to bank mergers—the same standard operating procedure that for decades has failed to protect consumer and the

---

financial system. It is critical that the OCC strengthen its proposed policy statement to ensure that future mergers do not harm consumers and the broader economy.

President Biden has made fighting concentration in the banking sector and other industries a key priority of his administration. In his 2021 Executive Order on Competition, he specifically directed financial regulators and the Attorney General to “update guidelines on banking mergers to provide more robust scrutiny of mergers” and strengthen bank merger oversight “to ensure Americans have choices among financial institutions and to guard against excessive market power.”

This acquisition will be one of the most important tests of the efforts to prevent harmful bank consolidation since the release of President Biden’s Executive Order. To protect consumers and financial stability, we urge you to block this merger and strengthen your proposed policy statement to prevent harmful deals in the future.

cc:
Consumer Financial Protection Bureau
U.S. Department of Justice

Sincerely,

Elizabeth Warren
United States Senator

Alexandria Ocasio-Cortez
Member of Congress

Katie Porter
Member of Congress

James P. McGovern
Member of Congress

---

Ro Khanna
Member of Congress

Greg Casar
Member of Congress

Summer Lee
Member of Congress

Sylvia R. Garcia
Member of Congress

Rashida Tlaib
Member of Congress

Jamaal Bowman, Ed.D.
Member of Congress

Ayanna Pressley
Member of Congress

Jesús G. "Chuy" García
Member of Congress

Al Green
Member of Congress
Scion of the Enslaved Africans - Sacrificed to Make America Great