

Congress of the United States

Washington, DC 20515

November 20, 2024

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

The Honorable Michael Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Dear Acting Comptroller Hsu and Vice Chair Barr,

As you consider Capital One Financial Corporation's (Capital One) proposed acquisition of Discover Financial Services (Discover), we write to bring Capital One's corporate misconduct record to your attention, including a newly-revealed pattern of robo-signing affidavits in its aggressive credit card debt lawsuits. Since 2000, Capital One has accumulated nearly one billion dollars in fines for a range of illegal corporate behavior: ripping off consumers, discriminatory job postings, and "egregious" violations of anti-money laundering requirements,¹ not to mention its history of collecting debts through illegal harassment. This pattern of consumer abuses is particularly concerning given that if this acquisition is approved, Capital One would inherit more than 300 million new customers—three times the size of its current customer base of 100 million.²

Capital One has a troubling history with acquisitions. In 2011, when Capital One acquired ING Direct, the company promised a \$180 billion community investment commitment over the next decade, including \$28.5 billion for low and moderate income (LMI) home mortgages and home equity lending.³ But Capital One did not fulfill this promise. Halfway through the commitment period, the company exited the home mortgage lending market and ultimately "len[t] only \$11.3 billion in mortgages to LMI borrowers or in LMI census tracts from 2012 to 2022," less than half of the [original] mortgage commitment.⁴

¹ Forbes, "Capital One Should Not Rush to Acquire Discover," Mayra Rodriguez Valladares, February 22, 2024, <https://www.forbes.com/sites/mayrarodriguezvalladares/2024/02/22/capital-one-should-not-rush-to-acquire-discover/?sh=7249a6cb5a91>.

² New York Times, "Capital One to acquire Discover, creating a consumer lending colossus," Lauren Hirsch and Emma Goldberg, February 19, 2024, <https://www.nytimes.com/2024/02/19/business/capital-one-discover-merger.html>.

³ Bloomberg Business, "Capital One's \$9 Billion ING Direct Deal Is Approved by Fed," Dakin Campbell, February 15, 2012, <http://www.bloomberg.com/news/articles/2012-02-14/capital-one-s-9-billion-acquisition-of-ing-direct-usa-wins-fed-s-approval>.

⁴ Capital One, "Home Loans," <https://www.capitalone.com/help-center/contact-us/home-loans/>; Letter from National Community Reinvestment Coalition to Director for Large Bank Licensing Jason Almonte, April 22, 2024, p. 13, <https://ncrc.org/wp-content/uploads/2024/04/NCRC-Capital-One-Discover-Bank-Merger-Comment-Letter-to-OCC-4.22.24.pdf>.

In addition to its failure to meet its commitments after the ING acquisition, Capital One continued to harm consumers through deceptive practices and shoddy risk management. In 2012, the Consumer Financial Protection Bureau (CFPB) ordered Capital One to refund \$140 million to two million consumers with low credit scores and low credit limits who were deceived into paying for expensive add-on products.⁵ In 2019, a hacker gained access to more than 100 million credit card applications and customer accounts due to Capital One's poor risk management practices.⁶ And in 2022, the Department of Justice fined Capital One for posting discriminatory job advertisements on college recruiting platforms.⁷ These postings listed unlawful citizenship status restrictions.⁸

Capital One has also been found liable for violating federal anti-money laundering laws by the Treasury and OCC, paying nearly half a billion dollars in fines in the last six years.⁹ In 2018, the OCC imposed a \$100 million civil penalty on Capital One for "deficiencies in the Bank Secrecy Act/Anti-Money Laundering [BSA/AML] program."¹⁰ Notably, Capital One was a repeat offender, after failing to comply with a 2015 order from the OCC regarding its BSA/AML program. In 2021, Capital One was fined \$390 million by the Financial Crimes Enforcement Network (FinCEN) for "willful and negligent" violations of the BSA.¹¹ FinCEN Director Kenneth Blanco stated: "Capital One's egregious failures allowed known criminals to use and abuse our nation's financial system unchecked, fostering criminal activity and allowing it to continue and flourish at the expense of victims and other citizens."¹²

Furthermore, Capital One has a record of aggressive debt collection.¹³ In 2020, Senators Warren and Brown highlighted reports of Capital One's predatory debt collection during the COVID-19 pandemic: "Capital One ... collect[ed] on consumer debt through wage garnishment during the pandemic and ... filed thousands of suits against customers."¹⁴ The bank was also the subject of

⁵ Consumer Financial Protection Bureau, "CFPB Probe into Capital One Credit Card Marketing Results in \$140 Million Consumer Refund," July 18, 2012, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-capital-one-probe/>.

⁶ CNN, "A hacker gained access to 100 million Capital One credit card applications and accounts," Rob McLean, July 30, 2019, <https://www.cnn.com/2019/07/29/business/capital-one-data-breach/index.html>.

⁷ Department of Justice, "Justice Department Secures Settlements with CarMax, Axis Analytics, Capital One Bank and Walmart for Posting Discriminatory Job Advertisements on College Recruiting Platforms," press release, September 21, 2022, <https://www.justice.gov/opa/pr/justice-department-secures-settlements-carmax-axis-analytics-capital-one-bank-and-walmart>.

⁸ *Id.*

⁹ Office of the Comptroller of the Currency, "OCC Assesses \$100 Million Civil Money Penalty Against Capital One," October 23, 2018, news release, <https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-112.html>; Financial Crimes Enforcement Network, "FinCEN Announces \$390,000,000 Enforcement Action Against Capital One, National Association for Violations of the Bank Secrecy Act," January 15, 2021, <https://www.fincen.gov/news/news-releases/fincen-announces-390000000-enforcement-action-against-capital-one-national>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ ProPublica, "Capital One and Other Debt Collectors Are Still Coming for Millions of Americans," Paul Kiel and Jeff Ernsthausen, June 8, 2020, <https://www.propublica.org/article/capital-one-and-other-debt-collectors-are-still-coming-for-millions-of-americans>.

¹⁴ Letter from Senators Warren and Brown to Capital One, June 25, 2020, <https://www.warren.senate.gov/oversight/letters/senators-warren-and-brown-call-for-capital-one-and-major-debt->

thousands of Consumer Financial Credit Bureau complaints for its aggressive debt collection practices following the 2008 financial crisis.¹⁵ In 2022, the Los Angeles County District Attorney fined Capital One \$2 million for harassing debt collection calls in violation of California’s Rosenthal Act and the Federal Debt Collection Practices Act.¹⁶

On top of this parade of consumer abuses, Capitol Forum reported in July that Capital One employees engaged in a practice known as “robo-signing” legal statements representing consumer debt amounts, spending “less than two minutes reviewing each affidavit” in lawsuits against credit card customers.¹⁷ According to the report, a team of four clerical workers “was sometimes asked to review 1,000 affidavits a day.”¹⁸ Though the facts of each affidavit are legally required to be thoroughly reviewed and confirmed by the signer, former employees admitted that “workers could get overwhelmed by the sheer volume and sign some affidavits with wrong debt amounts.”¹⁹ Critically, in most of these cases, the bank wins by default as many customers don’t hire a lawyer.²⁰

Capital One’s history of failures to meet its acquisition-related commitments, its consumer protection and BSA/AML violations, and its aggressive debt collection and robo-signing practices highlight a pattern of regulatory non-compliance and consumer harm. Capital One’s proposed acquisition of Discover poses significant additional risks to consumers. As you consider Capital One’s application to acquire Discover and its 300 million cardholders, we ask that you thoroughly review the facts of these abuses.

Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Alexandria Ocasio-Cortez
Member of Congress

[collectors-to-immediately-suspend-lawsuits-and-wage-garnishment-practices-during-the-covid-19-pandemic.](#)

¹⁵ *Id.*

¹⁶ Los Angeles County District Attorney’s Office, “Capital One to Pay \$2 Million to Settle Debt Collection Lawsuit,” December 15, 2022, news release, <http://da.lacounty.gov/media/news/capital-one-pay-2-million-settle-debt-collection-lawsuit>.

¹⁷ The Capitol Forum, “Capital One/Discover Financial: Bank Uses Robo-Signing to Prepare Lawsuits Against Credit-Card Customers,” July 30, 2024, <https://t.co/hZbRbRllCD>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*



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