

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

February 28, 2024

The Honorable Jerome Powell
Chair
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 Merrick B. Garland
Attorney General
The Honorable Jonathan Kanter
Assistant Attorney General, Antitrust
Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Mr. Michael Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

The Honorable Martin Gruenberg
Chair
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Attorney General Garland, Assistant Attorney General Kanter, Chair Powell, Vice Chair Barr, Acting Comptroller Hsu, and Chair Gruenberg:

We write to express our strong concerns about the lack of progress your agencies have made in updating your outdated bank merger review procedures. For far too long, these procedures have been equated by experts to be a rubber-stamping process, where virtually all applications are approved while industry consolidation continues.¹ More than two and a half years ago, President Biden issued Executive Order (EO) 14036 to promote competition in the American economy,² and encouraged your agencies to review and update your bank merger review procedures. Additionally, some of us along with consumers, small business, and worker advocates called on your agencies to put a moratorium on approving large bank mergers until you updated these procedures.³ No moratorium was imposed, and since then, more large bank mergers have been approved.⁴ Just a few days ago, we learned of another megamerger involving Capital One Financial Corporation (Capital One) trying to buy Discover Financial Services

¹ See Jeremy Kress, [Modernizing Bank Merger Review](#), Yale Journal on Regulation (Vol. 37, Issue 2, 2020); and House Financial Services Committee (FSC) hearing, [The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System](#) (Sep. 29, 2021).

² White House, [Executive Order on Promoting Competition in the American Economy](#) (Jul. 9, 2021); and White House, [FACT SHEET: Executive Order on Promoting Competition in the American Economy](#) (Jul. 9, 2021). Also see FSC, [Waters Applauds President Biden's Executive Order to Examine Bank Merger Practices, Urges Federal Reserve to Strengthen Merger Reviews](#) (Jul. 15, 2021).

³ FSC, [Waters Calls on Fed, FDIC, and OCC to Halt Mergers and Acquisitions Over \\$100 Billion](#) (Dec. 10, 2021); and AFR, [Federal Authorities Should Halt Bank Mergers Until Guidelines Are Strengthened](#) (Dec. 14, 2021).

⁴ For example, see U.S. Bank, [U.S. Bancorp receives U.S. regulatory approval for MUFG Union Bank acquisition](#) (Oct. 14, 2022); and BMO, [BMO Receives Regulatory Approval to Acquire Bank of the West](#) (Jan. 17, 2023).

(Discover), which would create the sixth largest U.S. commercial bank with a major role in the credit card market. Accordingly, we strongly encourage your agencies to put away the rubber stamp and promptly finalize robust merger review procedures before all we are left with is an oligopoly of megabanks to serve our constituents.

We've seen the harm that unbridled market consolidation poses to consumers and entrepreneurs when the biggest financial institutions get even bigger through mergers. Wells Fargo, for example, grew quickly through multiple mergers and eventually became too big to manage, repeatedly breaking the law by defrauding millions of consumers.⁵ We've also seen consolidation harm consumers in the credit card market, which the proposed merger between Capital One and Discover may contribute to.⁶ In 1994, the largest credit card issuers controlled 57% of the market, and as of 2022, they controlled more than 82%.⁷ Meanwhile, the largest credit card issuers charge consumers higher interest rates compared to smaller issuers, resulting in many consumers paying \$400 to \$500 more every year in additional financing costs for effectively the same service.⁸ Additionally, your agencies should consider other aspects of a proposed merger that may be anti-competitive, like the vertical integration concerns raised by the proposed merger of Capital One and Discover. In allowing one of our largest banks to control a credit card network, that would enable them to influence multiple points of the marketplace by setting prices for credit card customers as well as merchants that swipe their cards.⁹

Moreover, the Dodd-Frank Wall Street Reform and Consumer Protection Act requires banking regulators to consider financial stability when reviewing bank merger applications. According to the latest data, a merger of Capital One and Discover would result in a \$625 billion bank,¹⁰ which is nearly \$100 billion larger than the combined size of the three banks that failed last year – Silicon Valley Bank, Signature Bank and First Republic. The failure of those so-called mid-sized banks required our government to use its emergency tools to stabilize the banking system to prevent contagion.¹¹ This underscores the need to extensively consider the financial stability impact of any bank merger application, especially large ones like Capital One's proposed purchase of Discover.

Given the myriad issues we have identified with Capital One's proposed purchase of Discover, it is critical your agencies demonstrate that you will not revert to your old ways of rubber stamping their bank merger application or any other. We acknowledge some of your agencies have taken some steps at reform, but we encourage your agencies to pick up the pace and finalize robust merger review procedures soon. For example, the OCC recently proposed some reforms to its bank merger review process, which would give the agency more time to

⁵ FSC, [In Advance of Wells Fargo Hearings, Waters and Green Release Investigative Report Exposing Failures of Megabank's Management, Board, and Regulators](#) (Mar. 4, 2020)

⁶ AFR, [Regulators Should Block Proposed Capital One-Discover Merger](#) (Feb. 20, 2024); NCRC, [NCRC Opposes Capital One-Discover Merger](#) (Feb. 20, 2024).

⁷ CFPB, [The Consumer Credit Card Market](#) (Oct. 25, 2023).

⁸ CFPB, [CFPB Report Finds Large Banks Charge Higher Credit Card Interest Rates than Small Banks and Credit Unions](#) (Feb. 16, 2024); and CFPB, [Data spotlight - Credit card data: Small issuers offer lower rates](#) (Feb. 16, 2024).

⁹ See AFR, [Regulators Should Block Proposed Capital One-Discover Merger](#) (Feb. 20, 2024); NCRC, [NCRC Opposes Capital One-Discover Merger](#) (Feb. 20, 2024).

¹⁰ See Fed, [Large Commercial Banks](#) (Dec. 31, 2023).

¹¹ Treasury, [Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC](#) (Mar. 12, 2023).

carefully review a proposal.¹² However, consumer advocates have noted those reforms are too modest if the goal is to fulfill your statutory obligations to carefully review these merger applications,¹³ which is a concern we share.

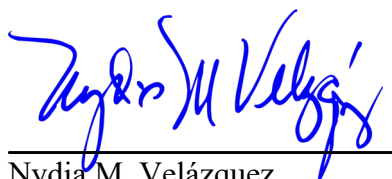
As you work to update your bank merger review procedures, your revised process should ensure your agencies collect all relevant evidence you need to make an informed decision that is in the public's interest, including consumer complaints, compliance track records, community reinvestment exams, supervisory findings, consent orders, settlements, and community benefit agreements. We encourage you to closely consult with other regulators when appropriate. For example, your agencies should consult closely with the Consumer Financial Protection Bureau (CFPB) and other members of the Financial Stability Oversight Council (FSOC) when reviewing Capital One's proposed purchase of Discover, given the significant consumer protection and financial stability implications the merger poses. We also encourage you to give consumers, small business owners, workers, and other affected individuals a meaningful opportunity to review these proposed mergers and share their perspectives, including by convening public hearings especially with respect to large bank mergers, as you have done on occasion in the past.¹⁴

In closing, we appreciate your attention to this matter to ensure the bank merger review process is meaningful and will promote competition for the benefit of consumers, among other objectives. We respectfully ask that you provide us with a response to our concerns, along with a timeline on when your agencies will update your bank merger review procedures. We look forward to your prompt response.

Sincerely,



Maxine Waters
Ranking Member, Committee
on Financial Services



Nydia M. Velázquez
Member of Congress



Brad Sherman
Member of Congress

¹² OCC, [OCC Requests Comments on Proposed Rulemaking and Policy Statement on Bank Mergers](#) (Jan. 29, 2024).

¹³ AFR, [OCC's Modest Merger Proposal Falls Far Short](#) (Jan. 31, 2024).

¹⁴ See Fed, [Public Meeting Transcripts](#) (accessed on Feb. 22, 2024).

Stephen F. Lynch
Member of Congress

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

Emanuel Cleaver, II
Member of Congress

Bill Foster
Member of Congress

Joyce Beatty
Member of Congress

Juan Vargas
Member of Congress

Sean Casten
Member of Congress

Ayanna Pressley
Member of Congress

Steven Horsford
Member of Congress

Rashida Tlaib
Member of Congress

Sylvia R. Garcia
Member of Congress

Nikema Williams
Member of Congress

A handwritten signature in black ink, reading "Brittany Pettersen". The signature is written in a cursive style with a large initial 'B' and 'P'. A horizontal line is drawn across the signature.

Brittany Pettersen
Member of Congress

Cc: The Honorable Patrick McHenry, Chairman, Committee on Financial Services