FRB Order No. 2025-10
April 18, 2025

FEDERAL RESERVE SYSTEM

Capital One Financial Corporation
McLean, Virginia

Order Approving the Acquisition of a Bank Holding Company, the Merger of Bank Holding Companies, and the Acquisition of Nonbanking Subsidiaries

Capital One Financial Corporation ("Capital One"), McLean, Virginia, a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to acquire Discover Financial Services ("Discover"), Riverwoods, Illinois, and thereby indirectly acquire its state nonmember bank subsidiary, Discover Bank ("Discover Bank"), Greenwood, Delaware. Following the proposed acquisition, Discover Bank would be merged with and into Capital One's national bank subsidiary, Capital One, National Association ("CONA"), McLean, Virginia, with CONA as the surviving entity.[3] Capital One also has filed a notice under sections 4(c)(8) and (j) of the BHC Act[4] to indirectly acquire Discover's ownership interests in certain nonbank companies engaged in extending credit and servicing loans, activities related to extending credit, and data processing.[5]

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1 12 U.S.C. § 1841 et seq.

2 12 U.S.C. § 1842.

3 The merger of Discover Bank with and into CONA is subject to the approval of the Office of the Comptroller of the Currency ("OCC") under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). 12 U.S.C. § 1828(c). The OCC approved the Bank Merger Act application on April 18, 2025.

4 12 U.S.C. §§ 1843(c)(8) and (j).

5 These nonbank companies are DFS Services LLC, Riverwoods, Illinois; PULSE Network LLC, Houston, Texas; Diners Club International Ltd., Riverwoods, Illinois; and

Capital One, with consolidated assets of $490.1 billion, is the 11th largest insured depository organization in the United States. Capital One controls approximately $362.7 billion in consolidated deposits, which represent 2.0 percent of the total amount of deposits of insured depository institutions in the United States.[6] Capital One controls CONA, which operates in Connecticut, Delaware, Louisiana, Maryland, New Jersey, New York, Texas, Virginia, and the District of Columbia.

Discover, with consolidated assets of approximately $147.6 billion, is the 32nd largest insured depository organization in the United States. Discover controls approximately $107.2 billion in consolidated deposits, which represent less than 1.0 percent of the total amount of deposits of insured depository institutions in the United States. Discover controls Discover Bank, which has operations in Delaware. Discover Bank solicits deposits nationwide through an internet-based deposit-taking platform.

On consummation of the proposal, Capital One would become the eighth largest insured depository organization in the United States, with consolidated assets of approximately $637.8 billion, which would represent 2.2 percent of the total assets of insured depository organizations in the United States. Capital One would control total consolidated deposits of approximately $469.9 billion, which would represent 2.6 percent of the total amount of deposits of insured depository institutions in the United States.

Public Comments on the Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (89 Federal Register 21253 (March 27, 2024)), in accordance with the Board's Rules of Procedure.[7] The Board extended the initial period

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Discover Financial Services (Canada), Inc., Vancouver, British Columbia, Canada (together, the "Discover Nonbanking Companies").

[6] Consolidated asset, national deposit, ranking, and market share data are as of December 31, 2024. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

[7] 12 CFR 262.3(b).

for public comment to accommodate public interest in this proposal and provided interested persons until July 24, 2024, a total of more than 119 days, to submit written comments (89 Federal Register 33346 (April 29, 2024); 89 Federal Register 43852 (May 20, 2024)). The time for submitting comments has expired, and the Board has considered the proposal and all comments[8] received in light of the factors set forth in the BHC Act.

In addition, the Board held a virtual public meeting to provide interested persons with an opportunity to present oral testimony on the factors that the Board is required to consider under the BHC Act.[9] At the public meeting, 147 individuals provided oral comments, and many of those individuals also submitted written comments. In total, the Board received approximately 6,132 comments from individuals and organizations on the proposal through oral comments, written comments, or both. Commenters included members of Congress, state legislators, community groups, nonprofit organizations, customers of the two banking organizations, and other interested organizations and individuals.

A significant number of commenters supported the proposal.[10] Many of these commenters contended that the proposal would benefit communities and community organizations throughout the footprints of CONA and Discover Bank as a result of increased resources and services provided by the combined organization. Commenters commended both CONA and Discover Bank for their commitment to local communities and described favorable experiences related to small business, community development, affordable housing, and community investment programs. Commenters

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[8] Where applicable, the Board considers any timely substantive comments on the proposal and, in its discretion, may consider any untimely substantive comments on the proposal.

[9] The virtual public meeting was held jointly with the OCC on July 19, 2024.

[10] The Board received approximately 552 comments in support of the proposal (orally, in writing, or both). Of these commenters, approximately 115 commenters provided oral comments in support of the proposal at the public meeting.

also asserted that the proposal would increase competition among card payment networks. Commenters, including the banks' customers, also stated that officers and employees of both banks frequently provide high-quality customer service and support for individuals and small businesses. In addition, many commenters praised both CONA's and Discover Bank's charitable contributions and stated that officers and employees of these institutions frequently provide valuable resources and services to community organizations.

A significant number of commenters opposed the proposal, requested that the Board approve the proposal subject to certain conditions, or otherwise expressed concerns about the proposal.[11] Many commenters expressed concern that the proposal would significantly reduce competition in the financial services industry, particularly with respect to credit-card issuance, the banking market nationally, and card payment networks. Many commenters also asserted that the combined organization would pose a risk to U.S. financial stability, with the resulting organization being "too big to fail." Some commenters criticized Capital One's record of performance in meeting the credit needs of minority and low- and moderate-income ("LMI") individuals and communities. In addition, some commenters expressed concern with Capital One's ability to manage a larger and more complex institution given public enforcement actions and lawsuits involving Capital One or Discover.

In evaluating the statutory factors under the BHC Act, the Board considered the information and views presented by all commenters, including information presented at the public meeting and in written submissions. The Board also considered all of the information presented in the application and supplemental filings by Capital One, various

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[11] The Board received approximately 5,580 comments that opposed or raised other concerns regarding the proposal (orally, in writing, or both). Of these commenters, approximately 32 commenters provided oral comments in opposition to the proposal or raised other concerns in their oral comments at the public meeting. Of the approximately 5,548 adverse written comments, approximately 5,152 were substantially identical form letters that raised concerns related to competition and financial stability generally.

reports filed by the relevant companies, and publicly available information. In addition, the Board consulted with the OCC, the Department of Justice ("DOJ"), the Federal Deposit Insurance Corporation ("FDIC"), and the Consumer Financial Protection Bureau ("CFPB") and reviewed confidential supervisory information, including examination reports on the depository institution holding companies and the depository institutions involved. After a review of all the facts of record, and for the reasons discussed in this order, the Board concludes that the statutory factors it is required to consider under the BHC Act are consistent with approval of the proposal.

Factors Governing Board Review of the Transaction

The BHC Act sets forth the factors that the Board is required to consider when reviewing the merger of bank holding companies or the acquisition of banks.[12] These factors include the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the effectiveness of the involved institutions in combatting money-laundering activities; the convenience and needs of the communities to be served, including the records of performance under the Community Reinvestment Act of 1977 ("CRA")[13] of the insured depository institutions involved in the transaction; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the U.S. banking or financial system. For proposals involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits as a percentage of the total deposits controlled by insured depository institutions in the United States and in relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act.[14]

The Board previously has determined by regulation that extending credit and servicing loans, activities related to extending credit, and data processing are

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[12] See 12 U.S.C. § 1842.

[13] 12 U.S.C. § 2901 et seq.

[14] 12 U.S.C. § 1842(d).

activities closely related to banking for purposes of section 4(c)(8) of the BHC Act.[15] Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Discover's ownership interests in certain nonbanking companies "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[16] As part of its evaluation, the Board reviews the financial and managerial resources and the future prospects of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the U.S. banking or financial system, and the public benefits of the proposal.[17]

Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction would be prohibited under state law.[18] The Board may not approve under this provision an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the target bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[19] When determining whether to approve an

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15 12 CFR 225.28(b)(1), (2), (14).

16 12 U.S.C. § 1843(j)(2)(A).

17 See 12 CFR 225.26; see, e.g., Morgan Stanley, FRB Order No. 2020-05 (Sept. 30, 2020); Texas Independent Bancshares, Inc., FRB Order No. 2019-10 (June 27, 2019); M&T Bank Corporation, FRB Order No. 2015-27 (Sept. 30, 2015); Southside Bancshares, Inc., FRB Order No. 2014-21 (Dec. 10, 2014); Capital One Financial Corporation, FRB Order No. 2012-2 (Feb. 14, 2012); Bank of America Corporation, 94 Federal Reserve Bulletin C81 (2008).

18 12 U.S.C. § 1842(d)(1)(A).

19 12 U.S.C. § 1842(d)(1)(B).

application under this provision, the Board must take into account the record of the applicant's depository institution under the CRA and the applicant's record of compliance with applicable state community reinvestment laws.[20] In addition, the Board may not approve an interstate application under this provision if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[21]

For purposes of this provision, the home state of Capital One is Virginia.[22] Discover Bank is located in Delaware. Capital One is well capitalized and well managed under applicable law. CONA has an "Outstanding" rating under the CRA.[23] Discover Bank has been in existence for more than five years.

On consummation of the proposed transaction, Capital One would control 2.6 percent of the total amount of consolidated deposits of insured depository institutions

[20] 12 U.S.C. § 1842(d)(3).

[21] 12 U.S.C. § 1842(d)(2)(A) and (B). Under section 3(d) of the BHC Act, the acquiring and target organizations have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. § 1841(o)(4)–(7).

[22] 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

[23] Three of the jurisdictions in which Capital One operates branches—Connecticut, New York, and the District of Columbia—have community reinvestment laws. See Conn. Gen. Stat. § 36a-30; N.Y. Banking Law § 28-b; N.Y. Comp. Codes R. & Regs. tit. 3, part 76; D.C. Code § 26-431.01 et seq. CONA has not received a community reinvestment rating from the Connecticut Department of Banking to date. The state community reinvestment laws of New York and the District of Columbia do not apply to Capital One or CONA.

in the United States. Capital One and Discover Bank do not have overlapping banking operations in any state for purposes of section 3(d).[24] Accordingly, in light of all the facts of record, the Board is not precluded from approving the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[25] Section 3 of the BHC Act also prohibits the Board from approving a proposal whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[26] In addition, under section 4 of the BHC Act, the Board must consider the competitive effects of a proposal to acquire a nonbank company under the balancing test of section 4(j) of the BHC Act.[27]

Several commenters supported the proposal and asserted that the proposal would promote competition. Some commenters contended that the proposal would promote competition among card payment networks and provide lower costs for individuals and merchants, including small businesses. In addition, some commenters asserted that the national credit-card issuance industry would continue to be highly

[24] CONA maintains an operational facility in Delaware. The location provides back-office services to support CONA's web-based banking products and services. This office is not a branch. Accordingly, Capital One does not control any insured depository institution, or any branch of an insured depository institution, in Delaware for purposes of section 3(d) of the BHC Act. Delaware law does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

[25] 12 U.S.C. § 1842(c)(1)(A).

[26] 12 U.S.C. § 1842(c)(1)(B).

[27] 12 U.S.C. § 1843(j)(2)(A).

competitive upon consummation of the proposed merger. Other commenters opposed the proposal, contending that it would reduce competition. Many commenters asserted that the proposal would result in consolidated market power among only a few large banks, increase concentration in firms providing lending products, and decrease competition in the credit-card issuance and card-payment-networks industries, resulting in reduced options and less favorable outcomes for consumers.

Acquisition of Discover Bank

Under section 3 of the BHC Act, to determine the effect of a proposed transaction on competition, it is necessary to designate the area of effective competition between the parties, which the courts have held is decided by reference to the relevant "line of commerce," or product market, and a geographic market. The Board and the courts have consistently recognized that the appropriate product market for analyzing the competitive effects of bank mergers and acquisitions is the cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) offered by banking institutions.[28] Consistent with these precedents, and on the basis of the facts of record in this case, the Board concludes that the cluster of banking products and

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[28] See, e.g., Bank of America Corporation, 92 Federal Reserve Bulletin C5 (2006). The Supreme Court has emphasized that it is the cluster of commercial banking products and services that, as a matter of trade reality, makes banking a distinct line of commerce. See United States v. Philadelphia National Bank, 374 U.S. 321 (1963) (hereinafter "Philadelphia National"); accord United States v. Connecticut National Bank, 418 U.S. 656 (1974); United States v. Phillipsburg National Bank, 399 U.S. 350 (1970). The Board has previously identified studies that support the conclusion that businesses and households continue to seek this cluster of services. See Bank of America Corporation, 92 Federal Reserve Bulletin C5 (2006) (citing Rebel A. Cole and John D. Wolken, Financial Services Used by Small Businesses: Evidence from the 1993 National Survey of Small Business Finances, 81 Federal Reserve Bulletin 629 (1995); Gregory E. Elliehausen and John D. Wolken, Banking Markets and the Use of Financial Services by Households, 78 Federal Reserve Bulletin 169 (1992); Gregory E. Elliehausen and John D. Wolken, Study Summary, Banking Markets and the Use of Financial Services by Small- and Medium-Sized Businesses, 76 Federal Reserve Bulletin 726 (1990)). The Board has not identified any studies indicating that businesses and households no longer seek this cluster of services.

services represents the appropriate product market for analyzing the competitive effects of the proposal under section 3 of the BHC Act. In defining the relevant geographic market, the Board and the courts have consistently held that the geographic market for the cluster of banking products and services is local in nature.

The Board has considered the effect of the proposal in the market for the cluster of commercial banking products and services. In particular, the Board has considered the relative share of total deposits in insured depository institutions in the markets ("market deposits") that Capital One would control;[29] the concentration level of market deposits and the increase in this level, as measured by the Herfindahl-Hirschman Index ("HHI") under the 1995 Bank Merger Competitive Review guidelines ("1995 Bank Merger Guidelines");[30] the number of competitors that would remain in each market; and

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[29] The Board considered local deposit and market share data as of June 30, 2024, based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in market share calculations on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

[30] Department of Justice, Bank Merger Competitive Review – Introduction and Overview, https://www.justice.gov/sites/default/files/atr/legacy/2007/08/14/6472.pdf (1995). On September 17, 2024, the DOJ announced its withdrawal from the 1995 Bank Merger Guidelines and emphasized that the 2023 Merger Guidelines, issued on December 18, 2023, remain its sole and authoritative statement across all industries. Press Release, Department of Justice, "Justice Department Withdraws from 1995 Bank Merger Guidelines," https://www.justice.gov/opa/pr/justice-department-withdraws-1995-bank-merger-guidelines. The 1995 Bank Merger Guidelines had been adopted together with the federal banking agencies, and none of the federal banking agencies have withdrawn from the 1995 Bank Merger Guidelines. The Board continues to apply the 1995 Bank Merger Guidelines in evaluating bank merger proposals. The Board traditionally has considered a market unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. See, e.g., Chemical Banking Corporation, 78 Federal Reserve Bulletin 74 (1992).

other characteristics of the markets. The Board also sought comments from the DOJ, the FDIC, and the OCC on the competitive effects of the proposal.

Capital One and Discover have subsidiary banks that do not directly compete in any local banking market through branches. CONA offers banking products through its network of branches and through other channels, including the internet, and Discover Bank offers deposit products primarily as an online depository institution.[31] CONA and Discover Bank compete in local markets throughout the nation through their internet platforms; however, both institutions solicit deposits from across the country. Based on the size of the institutions, the large number of competitors, and the diffuse geographic nature of the internet deposits of CONA and Discover Bank, the proposed transaction would not result in a material increase in concentration in any single banking market, including any in which CONA has a physical location. Consummation of the proposal would be consistent with Board precedent and within the thresholds in the 1995 Bank Merger Guidelines.[32] In addition, analysis of available small business lending

[31] Discover Bank's main office is in Greenwood, Delaware. Discover Bank does not offer deposit products locally through this location but rather services the deposits it solicits through the internet from this location. For the purposes of evaluating the competitive effects in the relevant banking markets of a merger or other banking combination, the Board, when calculating the HHI for a particular banking market, has weighted the deposits of special-purpose banks, such as online depository institutions, at 0 percent. Discover Bank does not maintain any branch offices.

[32] The Board analyzed confidential deposit data from Capital One and Discover, as of June 30, 2023, categorized by the location of the depositor. The Board compared the pro forma organization's share of deposits in each local banking market in which customers of both firms are located, as compared to commercial banks and thrift institutions with branches in those markets using local deposit and market share data. The Board did not include deposits of other institutions that solicit deposits through the internet in these locations, so the Board's analysis provides a conservative estimate of the competitive impact of this proposal in local banking markets. In 2023, Capital One and Discover each held deposits for customers located in nearly all Federal Reserve banking markets. The proposed merger would not increase the HHI by more than 200 points in any market; the merger would increase the HHI by less than 20 points in nearly all of these markets.

data suggests the proposal is unlikely to have an adverse competitive impact on small business lending in any relevant banking market.

The Board has considered other aspects of the proposal related to competition under section 3 of the BHC Act and has considered the public comments on the competitive effects of this proposal.[33] Although the Board believes that the cluster of banking products and services appropriately defines the market for analyzing the competitive effects of bank acquisitions, the Board also has reviewed the competitive effects of the proposal under section 3 of the BHC Act with respect to certain subsets of banking products and services contained in the cluster that are of concern to commenters and recognizes that the businesses of both banking organizations are focused on issuing credit cards.[34] Commenters contended that the proposal would have an anticompetitive effect on credit-card issuance. Some commenters asserted that credit-card issuance is already concentrated and that the proposal would further increase issuer concentration.

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[33] Some commenters asserted that the proposal would reduce competition due to the combination of Capital One's and Discover's consumer and financial data analytics. The Board has not found evidence that the applicants' combined data and data analysis capabilities would have significant negative effects on competition. Other major competitors have access to substantial data through channels such as their customer banking relationships.

One commenter asserted that the proposal would allow Capital One to raise the cost of processing transactions on, or decrease access to, debit-card payment networks for banks that compete with Capital One for branch banking services. As noted supra, the Board believes that the cluster of banking products and services represents the appropriate product market for analyzing the competitive effects of the proposal under section 3 of the BHC Act.

Another commenter objected to the proposal, citing a lawsuit alleging that the proposal would violate U.S. antitrust law, Baker v. Capital One Financial Corporation, No. 1:24-cv-01265 (E.D. Va. filed July 22, 2024). This lawsuit is currently stayed pending regulatory action on the proposal.

[34] The Supreme Court recognized that the "cluster of products (various kinds of credit) and services" includes "various types of credit, for example . . . bank credit cards." Philadelphia National, 374 U.S. at 326 n.5, 356. Nonetheless, judicial precedent "[does] not require a court to blind itself to economic realities." United States v. Connecticut National Bank, 418 U.S. 656, 662 (1974).

Commenters expressed concerns that the merger would increase interest rates and fees for credit-card customers, with certain commenters asserting that interest rates and fees for credit-card customers are already excessively high.[35] Some commenters specifically expressed concerns that the proposal would increase interest rates or fees, or decrease access to credit, for certain types of borrowers, including those with less than prime credit scores ("subprime customers") and those with little to no credit history ("new-to-credit customers").[36] Some commenters asserted that the increase in HHI for the share of outstanding credit-card balances for subprime customers results in a presumption that the proposed transaction would violate antitrust laws.

Although the geographic market for the cluster of banking products and services is local in nature, the Board previously has considered the relevant geography for credit-card issuance to be national.[37] General-purpose-credit-card issuance[38] is only moderately concentrated and would remain so after consummation of the proposal (whether evaluated by number of accounts, dollar balances outstanding, dollar volume, or purchases). In addition, thousands of competitors would remain.

The Board also has analyzed the impact of the proposal on certain customer segments of general-purpose-credit-card issuance raised by commenters[39]: subprime

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[35] One commenter expressed the concern that it may be difficult for consumers to avoid credit-card price increases because of potential challenges in switching credit cards.

[36] One commenter asserted that the purported anticompetitive effect of the proposal in general-purpose-credit-card issuance could not be remedied by divestiture.

[37] See Bank of America Corporation, 92 Federal Reserve Bulletin C5 (2006); Banc One Corporation, 84 Federal Reserve Bulletin 961, 979 n.65 (1998); Banc One Corporation, 83 Federal Reserve Bulletin 602, 603 (1997).

[38] For these purposes, a general-purpose-credit-card product permits a cardholder to perform transactions at any merchant that accepts the product's affiliated payment network (rather than, for example, a credit-card product for which transactions can only be performed at a single merchant).

[39] The Board's analysis of these segments of credit-card issuance does not reflect a determination by the Board of the scope of any product market under applicable law.

customers[40] and new-to-credit customers.[41] With respect to subprime customers, the Board's analysis suggests that this segment of general-purpose-credit-card issuance would become moderately concentrated as measured by the HHI.[42] With respect to new-to-credit customers, the Board's analysis suggests that negative effects on competition in this segment of general-purpose-credit-card issuance would be mitigated by certain structural considerations.[43] For example, there are over 2,000 other card issuers offering cards to new-to-credit customers, including several significant competitors, and certain competitors have grown significantly in recent years. Moreover, customers regularly transition out of the new-to-credit segment as their credit history and credit bureau data expand, and credit-card issuers may seek to retain these customers after this transition. Such considerations may encourage Capital One to maintain relatively attractive credit-card terms to new-to-credit customers.

Acquisition of the Discover Nonbanking Companies

The Board also has considered, pursuant to section 4(c)(8) of the BHC Act, the impact of the proposal on competition in extending credit and servicing loans, activities related to extending credit, and data processing. As part of these

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[40] The Board's analysis identifies "subprime customers" as those with Fair Isaac Corporation ("FICO") scores of less than 660.

[41] The Board's analysis identifies "new-to-credit customers" as those without a credit score or with less than two years of credit history.

[42] The Board analyzed confidential data from December 2023, provided by Capital One. The post-merger HHI levels for credit-card issuance for this segment of general-purpose credit cards would remain well below 1800 across all card-volume measures analyzed (existing accounts, new accounts, balances, and purchases). The Board's analysis found comparable results when defining subprime customers as those with FICO scores of less than 620 or when analyzing even smaller groups within this segment.

[43] The Board analyzed confidential data from December 2023, provided by Capital One. The post-merger 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. The post-merger HHI levels for credit-card issuance for this segment of general-purpose credit cards would remain below 1800 for card-volume measures by balances or purchases.

considerations, the Board has analyzed the markets for card payment network services, which are markets of concern to some commenters.

As part of the transaction, Capital One would acquire and operate Discover's card payment networks (together, the "Discover Global Network").[44] The Discover Global Network processes transactions for Discover-branded credit and debit cards and provides payment transaction processing and settlement services. Capital One, which does not own competing card payment networks, proposes to move all of its debit-card transactions to Discover's card payment networks from other networks following consummation of the proposal, and proposes to move a portion of its credit-card-issuing volume to Discover's networks over time.

Several commenters, noting that Discover is an issuer of credit and debit cards and an owner of card payment networks, contended that the proposal would give Capital One the ability and incentive to raise payment card transaction fees and may decrease the ability of small businesses to negotiate favorable terms. Some commenters generally asserted that payment card transaction fees are already too high. A few commenters also expressed concern that Capital One debit cards could become exempt from the debit-card interchange fee cap imposed by section 920 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and implemented by the Board's Regulation II.[45] These commenters contended that, as a result, fees charged to merchants on Capital One debit-card transactions could increase, which would then be passed on to consumers. Some of these commenters asserted that the combined

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[44] Discover, through its subsidiaries, operates the Discover Network, the PULSE Network, and Diners Club International.

[45] 12 CFR part 235. The Board's Regulation II limits the amount of any interchange fee that a debit-card issuer may receive or charge for a debit-card transaction, subject to certain exceptions. See 12 CFR 235.3, 235.4, and 235.5. However, Regulation II does not apply to "three-party systems" in which the entity that processes transactions is also the issuer. See 12 CFR part 235 app. A, Section 235.2 Definitions, 2(m) Payment Card Network (2). Discover relies on this exemption from Regulation II for most debit-card transactions processed by the Discover debit-card payment network.

organization would significantly magnify Discover's current pricing power with respect to fees because Capital One will transition a large number of Capital One–issued cards onto Discover's card payment networks. Other commenters disagreed with Capital One's statements that Capital One's proposed efforts to scale up Discover's networks to better compete with larger card payment networks would have procompetitive effects. One commenter asserted that the proposed merger would not facilitate greater competition among payment networks because even without the merger, Capital One could still transition a large number of Capital One–issued cards onto Discover's card payment networks, and therefore, the proposal would not be necessary to achieve more robust competition among the card payment networks. Some commenters asserted that the proposed merger would not have a significant procompetitive effect because other card payment networks could pursue mergers themselves or because the combined organization would fail to compete effectively with other large card payment networks.

The Board has considered the impact of the proposed acquisition in the market for debit-card payment network services. Debit-card payment network operators compete nationally. Capital One does not currently own a debit-card payment network, and the Board considered the competitive effects of Capital One migrating its customers to the Discover Global Network and away from other networks. The Board's analysis finds that the transaction would not have a significant negative impact on competition for debit-card payment network services, due to the relatively small share of debit-card transactions that would be attributable to the combined organization. To the extent Capital One migrates debit-card customers to the Discover Global Network, doing so would slightly lower the HHI for debit-card payment network services.[46]

[46] The Board's analysis estimates that Capital One's post-merger share of debit-card payment network purchase volume would be no more than 6.9 percent. Additionally, changes to transaction fee schedules for Capital One's debit-card transactions would not substantially increase the combined organization's market power, due to the small share of debit-card transactions that would be attributable to the combined organization.

In addition, the Board has considered the impact of the proposed acquisition in the market for credit-card payment network services. Credit-card payment network operators also compete nationally. Capital One does not currently own a credit-card payment network, and the Board considered the competitive effects of Capital One migrating its customers to the Discover Global Network and away from other networks. The Board's analysis finds that the transaction would not have a significant negative impact on competition for credit-card payment network services, given the significant, larger competitors that would remain. Discover currently operates the fourth largest credit-card payment network, with 6.4 percent of all credit-card payments and approximately 10 percent of credit-card balances and customers. To the extent Capital One migrates credit-card customers to the Discover Global Network, doing so would have the effect of lowering the HHI for credit-card payment network services.

Conclusion on Competitive Considerations

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that it has concluded that the proposal does not warrant an adverse comment.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations and Future Prospects

In reviewing proposals under sections 3 and 4 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, the effectiveness of the institutions in combatting money laundering, and any public comments on the proposal.[47] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as

[47] 12 U.S.C. § 1842(c)(2), (5), and (6).

information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as any public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete the proposed integration of the operations of the institutions effectively. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Capital One, CONA, Discover, and Discover Bank are well capitalized, and the combined organization would remain so upon consummation of the proposal. Capital One would acquire Discover through a merger structured as an exchange of shares, with a subsequent merger of the bank holding companies and merger of Discover Bank with and into CONA.[48] The capital, asset quality, earnings, and liquidity of Capital One, CONA, Discover, and Discover Bank are consistent with approval, and Capital One appears to have adequate resources to absorb the related costs of the proposal and to complete the

[48] Capital One would effect the transaction by merging Vega Merger Sub, Inc., a wholly owned subsidiary of Capital One, with and into Discover (with Discover as the surviving entity). At the time of the first-step merger, each outstanding share of Discover common stock would be converted into a right to receive shares of Capital One common stock based on an exchange ratio, plus cash in lieu of any fractional shares. Immediately after this merger, Discover would merge with and into Capital One (with Capital One as the surviving entity). At the time of the second-step merger, each share of Discover preferred stock would be converted into a right to receive substantially similar, newly issued preferred Capital One stock. Immediately following the second-step merger, Discover Bank would merge with and into CONA (with CONA as the surviving entity). Capital One has the financial resources to effect the proposed transaction.

integration of the institutions' operations. In addition, the future prospects of the institutions are considered consistent with approval.[49]

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Capital One, CONA, Discover, and Discover Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Capital One; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and the public comments on the proposal.[50]

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[49] Some commenters expressed concern with Discover's financial condition and alleged that the combined organization would have an asset concentration in credit cards, including subprime credit, and other consumer lending products, such as automobile loans, that could affect Capital One's future prospects in the event of an economic downturn, and the commenters asserted that these concerns are heightened due to Capital One's and Discover's credit-card delinquency and charge-off rates and the share of customers that revolve monthly balances. Some commenters also expressed concern that the combined organization's operational complexity could make the firm more susceptible to economic stress and alleged that banks that grow through acquisitions may be more likely to fail. Capital One asserts that the proposal would decrease the proportion of subprime assets in CONA's credit-card portfolio, that CONA's credit-card and auto loan assets would remain diversified across geography and consumer segments, and that Capital One's and CONA's capital and liquidity ratios would remain above regulatory requirements. The Board, in considering the commenters' claims, reviewed information provided by Capital One and supervisory information.

[50] Some commenters expressed general concerns about safety-and-soundness risks related to the proposal. Certain commenters asserted Capital One has violated laws and therefore is "too big to manage." In support of this assertion, one commenter cited a 2022 settlement between Capital One and the DOJ regarding Capital One's posting of job recruiting advertisements with impermissible citizenship-status restrictions. See Settlement Agreement Between Capital One Financial Corporation and the Department of Justice Civil Rights Division, Immigrant and Employee Rights Section, DJ# 197-79-545 (Sept. 21, 2022). The parties agreed to settle without any admission of wrongdoing by Capital One. This commenter also cited a settlement between the Federal Trade

Capital One and CONA are each considered to be well managed. The combined organization's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and Capital One's risk-management program appears consistent with approval.[51]

The Board also has considered Capital One's plans for implementing the proposal. Capital One has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address all aspects of the post-acquisition integration process for this proposal.[52] In addition, Capital One's management has the

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Commission and Capital One's CEO related to an alleged violation of the notice and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 for failure to file before acquiring Capital One stock in excess of the statutory filing threshold. United States v. Fairbank, No. 1:21-cv-02325 (D.D.C. dismissed Dec. 20, 2021). The parties agreed to a settlement without any admission of fault by Capital One.

[51] Some commenters expressed concern regarding a Capital One data breach in 2019 and the related consent orders that CONA and Capital One entered into with the OCC and the Board, respectively, in August 2020, related to deficiencies in their technology risk governance and controls. The OCC's and Board's consent orders were terminated in August 2022 and July 2023, respectively. Capital One represents that it has committed significant investments to strengthen its risk management and compliance functions to address past compliance issues. Another commenter objected to the proposal, citing Capital One's service interruption, which began on January 16, 2025. Publicly available information reflects that account functionality was restored for all customers by January 19, 2025, and that Capital One was one of several banks that experienced service interruptions due to technical issues with a third-party service provider. The Board has considered information provided by Capital One, has reviewed confidential supervisory information, and has consulted with the OCC with respect to Capital One's incident response practices.

[52] Capital One is currently a "Category III banking organization" for purposes of the Board's enhanced prudential standards rule, 12 CFR part 252. Capital One is projected to remain a Category III banking organization upon consummation of the proposal.

One commenter expressed concerns that Capital One currently exercises a controlling influence over the management and policies of Discover in violation of the BHC Act, alleging premerger communications between the firms. Consistent with its standard processes, the Board has reviewed whether the Agreement and Plan of Merger by and among Discover, Capital One, and Vega Merger Sub, Inc., dated February 19, 2024 ("Merger Agreement"), or other understandings between the parties provide experience and resources to operate the resulting organization in a safe and sound manner.[53] Capital One plans to apply its risk-management policies, procedures, and controls at the combined organization following the transaction.

Capital One, as acquirer, with the ability to exercise a controlling influence over Discover, as target, under section 2 of the BHC Act, 12 U.S.C. § 1841, and subpart D of the Board's Regulation Y, 12 CFR part 225, subpart D. The Board notes that the Merger Agreement states that it (together with certain supporting agreements, documents, and instruments) constitutes the entire agreement of the parties with respect to the proposal. See Capital One Financial Corporation, Form 8-K (Feb. 22, 2024), Ex. 2.1. The Board has not concluded that Capital One currently controls Discover in violation of the BHC Act.

[53] Commenters raised concerns about the proposal, stating that Capital One and Discover have been engaged in litigation related to allegations regarding their compliance programs and oversight management programs. One commenter referred to a lawsuit alleging that Capital One improperly disclosed nonpublic personal information to third parties without consent. Shah v. Capital One Financial Corporation, No. 3:24-cv-05985 (N.D. Cal. filed Aug. 24, 2024). This litigation is ongoing, and there has not been any adjudication of fault by Capital One. Commenters also referenced a settlement between a class of individuals and Capital One regarding tort and statutory consumer protection claims due to a cyberattack resulting in the breach of individuals' personal data held by Capital One. In Re Capital One Consumer Data Security Breach Litigation, MDL No. 1:19-md-2915 (E.D. Va. dismissed Sept. 13, 2022). The parties agreed to settle the matter without any admission of wrongdoing by Capital One. Commenters also generally raised concerns with Capital One's privacy protections relating to the collection and sharing of customers' personal data. Capital One asserts that it maintains a written information privacy and security program that includes measures designed to protect the privacy, confidentiality, and security of all personal data processed or otherwise handled by or on behalf of Capital One.

Commenters also urged the Board not to approve the proposal because of Discover's alleged deficiencies in corporate governance and risk management and cited as an example a lawsuit by Discover investors alleging that Discover's management misled investors about Discover's compliance programs, see In Re Discover Financial Services Derivative Litigation, No. 1:23-cv-01102-MN (D. Del. filed Oct. 5, 2023), as well as lawsuits alleging harm to merchants and other affected parties relating to card-product misclassification. The Board has considered its supervisory experience with Discover and has consulted with the FDIC regarding the risk-management policies and procedures of Discover Bank.

Recent Enforcement Action

The Board recently completed an investigation involving card payment network fee practices at Discover. The investigation found that, from 2007 until at least 2023, Discover improperly classified millions of credit cards as "commercial" rather than "consumer" for the purpose of charging interchange fees, and as a result, many merchants were charged higher interchange fees that were contrary to the merchants' contracts with Discover. By separate action, the Board has issued a cease-and-desist order and assessed a $100 million civil money penalty against Discover and its nonbank subsidiary, DFS Services LLC, under section 8 of the Federal Deposit Insurance Act[54] ("Consent Order"). Among other things, the Consent Order would require Discover to strengthen its risk-management practices and internal controls related to the classification of interchange fees.

The FDIC also has completed a parallel investigation of Discover Bank in this matter and has reached a settlement that includes remedial measures to be undertaken by Discover Bank, a $150 million civil money penalty, and restitution for merchants that paid excess fees. The FDIC estimates the restitution could exceed $1 billion, which Discover Bank, having received the vast majority of the revenue from the improper fees, has agreed to pay.

A commenter expressed concern regarding the amount of loan commitments that Capital One provided to the fossil-fuel industry compared to the size of the bank and asserted that such financing presents climate-related financial risk. The Board has considered its supervisory experience with Capital One and has consulted with the OCC regarding the risk-management policies and procedures of CONA.

This commenter also requested that CONA cease its financing of companies engaged in fossil-fuel projects. Banking organizations are neither prohibited nor discouraged from providing banking services to customers of any specific class or type, as permitted by law or regulation. Another commenter asserted Capital One's business practices exacerbate the racial wealth gap. These comments concern matters that are outside the scope of the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

[54] 12 U.S.C. § 1818.

Capital One has committed to comply with the obligations of the Consent Order and to cause any relevant subsidiary to comply with the requirements imposed by the Consent Order.

Conclusion on Financial, Managerial, and Other Supervisory Considerations and Future Prospects

Based on all the facts of record, including Capital One's and CONA's supervisory records, their managerial and operational resources, their plans for operating the combined organization after consummation, and public comments received on the proposal, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Capital One and CONA in combatting money-laundering activities,[55] are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under sections 3 and 4 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[56] In evaluating whether the proposal satisfies the convenience and needs statutory factor, the Board considers the impact that the proposal will or is likely to have on the communities served by the combined organization. The Board reviews a variety

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[55] Some commenters expressed concerns regarding compliance by Capital One and CONA with the Bank Secrecy Act ("BSA") and anti-money-laundering ("AML") regulations. Commenters referred to a consent order between CONA and the OCC in July 2015 and a civil money penalty imposed by the OCC in October 2018. The OCC orders were resolved by November 2019. Commenters requested that the Board consider a Financial Crimes Enforcement Network ("FinCEN") civil money penalty against CONA in January 2021 for violations of the BSA and AML regulations. Capital One represents that the BSA/AML issues that were the subject of the OCC and FinCEN orders involved conduct from approximately 2008 until 2014 and that Capital One has devoted significant resources to risk and compliance management, particularly with respect to its BSA/AML program. The Board has considered its supervisory experience with Capital One and consulted with the OCC regarding the risk-management policies and procedures of CONA.

[56] 12 U.S.C. § 1842(c)(2).

of information to determine whether the relevant institutions' records demonstrate a history of helping to meet the needs of their customers and communities. The Board also reviews the combined institution's post-consummation plans and the expected impact of those plans on the communities served by the combined institution, including on LMI individuals and communities. The Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and are providing access to banking products and services that meet the needs of customers and communities, including the potential impact of branch closures, consolidations, and relocations on that access. In addition, the Board reviews the records of the relevant depository institutions under the CRA.[57] The Board strongly encourages insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation and their obligations under the CRA.[58]

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, gender, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and public comments on the proposal. The Board also may consider the acquiring institution's business model and intended marketing and outreach, the combined organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of CONA and Discover Bank; the fair lending and compliance records of both banks; the supervisory views of the OCC, FDIC, and CFPB; confidential

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[57] 12 U.S.C. § 2901 et seq.

[58] See 12 U.S.C. § 2901(b).

supervisory information; information provided by Capital One; and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

As noted above, in total, the Board received approximately 6,132 comments on the proposal from community groups, nonprofit organizations, customers of the two banking organizations, and other interested organizations and individuals. The Board held a public meeting to facilitate receipt of comments on the proposal from interested members of the public. A significant number of comments were submitted, both orally and in writing, through this process.

A large number of commenters supported the proposal and asserted that the combined organization would provide valuable services to the communities to be served.[59] Many of the commenters in support of the proposal commended Capital One for its activities in local communities, describing favorable experiences with Capital One's small business programs and community development investments and donations. Commenters also praised Capital One for its community outreach efforts and support for various community development programs and initiatives, including for programs that support affordable housing and economic development in LMI areas and that provide LMI individuals with access to educational and career-building programs. In addition, commenters praised Capital One's support for community development finance institutions, its charitable contributions, and its willingness to provide credit to individuals who had previously been turned down for credit cards by other issuers. Many commenters, including bank customers, stated that CONA offers high-quality customer service and innovative financial products, and that it offered credit cards at lower rates and lower fees to customers with subprime credit scores.

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[59] One commenter alleged that Capital One solicited supportive comments from individuals and organizations that have received support from the banking organization. The Board invited comments from all members of the public and considered all timely, substantive comments on the application.

A significant number of commenters opposed the proposal and expressed concerns about the proposal's impact on the communities served by CONA and Discover Bank. Some commenters alleged that the merger would not meet the convenience and needs of the LMI and minority communities,[60] including American Indian or Alaska Native communities. One commenter asserted that Capital One has not been a serious investor in community development in the state of Florida. In addition, while several commenters commended Discover Bank's customer service, product offerings, competitive rates, and community development loans, grants, and investments, including in affordable housing, they also expressed concern about potentially losing these services, products, investments, grants, and banking relationships due to the merger.[61] One commenter alleged Discover Bank denied mortgage loans to African American applicants at higher rates than white applicants in 2022 and 2023. Some commenters alleged that Capital One has a business strategy of closing branches, resulting in decreased access to banking services by LMI persons and minorities. Certain commenters asserted that Capital One closed branches in Connecticut, Louisiana, New Jersey, New York, and Texas following prior mergers. Commenters also expressed concern that the proposed merger could result in job losses in certain areas.[62]

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[60] One commenter expressed concerns that Capital One's CRA assessment areas ("AAs") post-merger, nationally and also specifically in Delaware, would not appropriately reflect its activities. Under the CRA, depository institutions delineate their own AAs, subject to certain criteria, and examiners review the examined institution's AA delineations for compliance with these criteria. See, e.g., 12 CFR 228.41 (2023).

[61] As discussed supra, some commenters asserted that the proposal would reduce access to products and services for individuals with little to no credit history, including one commenter who specifically expressed concern that the proposal may harm students' access to banking products and credit cards.

[62] Capital One states that it plans to retain two Discover customer care centers. The potential for job losses resulting from a merger is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973); see also U.S. Bancorp, FRB Order No. 2022-22 (Oct. 14, 2022); BB&T Corporation, FRB Order No. 2019-16 (Nov. 19, 2019); KeyCorp, FRB Order No. 2016-

Commenters also alleged that CONA charged subprime customers excessively high credit-card late fees and interest rates on their credit-card balances, that CONA and Discover engage in aggressive debt collection practices, which have a particularly harmful impact on LMI and African American communities, and that CONA engages in a practice of raising credit limits on subprime customers as they approach their credit limit. One commenter expressed concerns that the merger would harm LMI consumers in New Mexico and asserted Capital One failed to promote access to credit and financial services in certain formerly redlined communities in New Mexico. One commenter expressed concern that fees and interest rates would increase due to the proposal, which may harm consumers in Colorado, and asserted the proposal could increase homelessness and financial insecurity in that state. Another commenter expressed concerns regarding Capital One's mortgage lending practices in California and questioned how Discover's Hispanic borrowers would be impacted by the merger. Some commenters alleged that Capital One and Discover engage in unfair, deceptive, and abusive marketing practices.

Commenters also expressed concerns that LMI and minority communities have less opportunity to benefit from credit-card rewards and that credit-card rewards may encourage subprime consumers to overborrow, potentially further harming LMI individuals. Some commenters expressed the view that Discover offered better customer service, including having 24-hour customer call centers that are based in the United States, and that they are concerned that such customer service and call centers may not be maintained following the merger. Commenters also asserted that there was a high number of complaints regarding Capital One's and Discover's consumer credit cards in California and nationally, as reported to the CFPB. Several commenters stated that the proposal would harm the convenience and needs of consumers and referred to consumer-

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12 (July 12, 2016); Community Bank System, Inc., FRB Order No. 2015-34 (Nov. 18, 2015); and Wells Fargo & Co., 82 Federal Reserve Bulletin 445 (1996).

credit-underwriting,[63] deposit-marketing,[64] credit-card-marketing,[65] and collection practices.[66] Several commenters asserted that enforcement actions and other recent

[63] One commenter requested the Board consider Discover Bank's settlement of a private-party lawsuit alleging that Discover Bank denied consumers student, personal, and home equity loans due to their immigration status in violation of California law. Perez v. Discover Bank, No. 3:20-cv-06896 (N.D. Cal. dismissed Sept. 23, 2024). The parties agreed to a settlement without any admission of wrongdoing by Discover Bank.

[64] One commenter alleged that consolidation in the banking industry, including this proposal, would lead to lower deposit rates for customers. In addition, this commenter and other commenters expressed concerns regarding a lawsuit filed by the CFPB against Capital One and CONA for allegedly misleading consumers on the rates of certain savings account products. See CFPB v. Capital One, National Association, No. 1:2025-cv-00061 (E.D. Va. filed Jan. 14, 2025). The CFPB voluntarily dismissed the case with prejudice on February 27, 2025.

[65] Some commenters objected to the proposal, alleging that both Capital One and Discover have a history of deceptive and abusive credit-card practices. Some commenters referred to consent orders that CONA entered into with the OCC and the CFPB in July 2012 related to deceptive marketing tactics for credit-card add-on products. The OCC's and CFPB's consent orders were terminated in November 2020 and September 2016, respectively. These commenters also noted settlements between Capital One and the attorneys general of Minnesota, Missouri, and West Virginia related to credit-card marketing practices. The Board previously considered the matters involving Minnesota and West Virginia. See Capital One Financial Corporation, 91 Federal Reserve Bulletin 513 (2005); Capital One Financial Corporation, 93 Federal Reserve Bulletin C2 (2007); Capital One Financial Corporation, FRB Order No. 2012-2 (Feb. 14, 2012). Capital One and the Attorney General of Missouri resolved an inquiry relating to the marketing of payment protection products, and a court in Missouri entered a joint final judgment order in October 2014. See Capital One Financial Corporation, Form 10-K (Dec. 31, 2014). The Board has considered information provided by Capital One, has reviewed confidential supervisory information, and has consulted with the OCC and CFPB with respect to Capital One's record of compliance.

A commenter expressed concerns regarding consent orders between Discover Bank and each of the FDIC and the CFPB in September 2012, related to deceptive telemarketing tactics in relation to the sale of credit-card add-on products. The FDIC's and CFPB's consent orders were both terminated in July 2015.

[66] Commenters expressed concerns regarding Capital One's debt collection practices. A commenter objected to the proposal, citing a lawsuit alleging that Capital One used automated telephone dialers to attempt to collect debts without consumers' prior consent

compliance matters suggest Capital One failed to satisfy commitments made in connection with its acquisition of ING Bank, fsb, to improve its consumer compliance functions.

Commenters also requested that the Board condition its approval on implementation of Capital One's recently announced community benefits plan. Some commenters asserted that Capital One did not fully meet the provisions of a prior community benefits plan related to a previous acquisition, alleged that Capital One's recently announced community benefits plan does not represent a significant increase in activity beyond what Capital One and Discover would undertake on a standalone basis,

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in violation of the Telephone Consumer Protection Act. In Re Capital One Telephone Consumer Protection Act Litigation, No. 1:2012-cv-10064 (N.D. Ill. dismissed Aug. 12, 2015). The parties agreed to settle the lawsuit without any admission of wrongdoing by CONA. Commenters also referred to a civil suit brought by the Santa Clara County District Attorney against CONA, alleging that the bank made telephone calls in California in violation of California's Rosenthal Act and the Federal Debt Collection Practices Act. California v. Capital One, N.A., No. 22ST-cv-36914 (Cal. L.A. Cnty. Super. Ct. dismissed Dec. 14, 2022). The parties agreed to settle the matter without any admission of wrongdoing by CONA. Commenters also cited a suit between CONA and the DOJ concerning alleged violations of the Servicemembers Civil Relief Act, United States v. Capital One, N.A., No. 1:12-cv-828 (E.D. Va. dismissed July 27, 2012). The parties agreed to settle the matter, and Capital One agreed to pay $12 million in damages and make contributions to a compensation fund. See Order, United States v. Capital One, N.A., No. 1:12 cv-828 (E.D. Va. issued July 26, 2012). One commenter cited a settlement between CONA and the DOJ's U.S. Trustee Program regarding the collection of debts previously discharged in bankruptcy in contravention of bankruptcy law. United States Trustee v. Capital One Bank (USA), N.A., Adversary Proceeding No. 08-01272 (Bankr. D. Mass. dismissed July 16, 2013). The Board considered this matter previously, see Capital One Financial Corporation, FRB Order No. 2012-2 (Feb. 14, 2012), and the settlement with the U.S. Trustee concluded in 2013. See Press Release, Department of Justice, U.S. Trustee Program Announces Successful Conclusion of Nationwide Settlement with Capital One Bank (June 5, 2013), https://www.justice.gov/archives/ust/press-releases/us-trustee-program-announces-successful-conclusion-nationwide-settlement-capital-one-bank.

and expressed concern with the amount of lending in the community benefits plan that would go towards subprime customers.[67]

Businesses of the Involved Institutions and Information Provided in Response to Public Comments

Capital One and CONA offer an array of financial products and services to consumers, small businesses, and commercial clients through digital channels, branch locations across seven states and the District of Columbia, nonbranch retail facilities, and other distribution channels. Capital One's principal operations are that of CONA, which offers financial products and services directly to consumers, small businesses, and commercial clients, including retail and commercial deposits, credit cards, automobile loans, small business and other commercial loans, and cash management services. CONA's consumer banking products include deposit accounts with no monthly fees or

[67] On July 17, 2024, Capital One announced a community benefits plan under which it would lend, invest, or donate funds over a five-year period. Some commenters requested that the Board require Capital One to make the terms of the community benefits agreement public and, together with the OCC, monitor and, if necessary, enforce Capital One's compliance with the terms of the agreement. The Board consistently has found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any private party. See, e.g., Bank of Montreal, FRB Order No. 2023-01 at 20 n.50 (Jan. 17, 2023); U.S. Bancorp, FRB Order No. 2022-22 at 19 n.47 (Oct. 14, 2022); Huntington Bancshares Inc., FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002); Fifth Third Bancorp, 80 Federal Reserve Bulletin 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA AAs. As part of each federal banking agency's performance evaluation of the depository institution under the CRA, the federal banking agencies make public a description of the depository institution's activities to serve the credit needs of its AAs.

Additionally, some commenters submitted comments relating to individualized credit-card applications and banking transactions. Complaints based on an individual customer transaction generally are not considered to be substantive comments and, thus, generally are not considered by the Board in its evaluation of the statutory factors governing the transaction. See 12 CFR 225.16(c)(3); SR Letter 97-10 (Apr. 24, 1997), https://www.federalreserve.gov/boarddocs/srletters/1997/sr9710.htm.

minimum-balance requirements. CONA's primary business is consumer credit-card lending. Discover and Discover Bank provide digital banking and payment services. Discover Bank is primarily a marketer and originator of credit cards to individuals and small businesses. Discover Bank focuses on consumer products, offering, in addition to its credit cards, home and personal loans, related add-on products, and deposit accounts to customers directly or through affinity relationships. Discover Bank's primary strategy is to provide financial services through a nationwide direct banking strategy using internet, mobile devices, and mail. Discover Bank also maintains a single office located in Greenwood, Delaware. Discover owns nonbank subsidiaries that operate the Discover Global Network.

Capital One asserts 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, particularly LMI persons. Capital One states that, following the proposed merger, CONA will continue its existing CRA performance record, expand its community development lending and investments in LMI communities, and continue to provide checking accounts with no monthly fees and no minimum-balance requirements. Capital One states that the proposed merger will allow Capital One to provide more lending, more investments, and more services to underserved individuals and communities than CONA and Discover Bank would have undertaken on a standalone basis, and that Capital One plans to evaluate and retain certain customer service products used by Discover Bank for use by the combined bank's customers. Capital One also represents that it has made significant investments in affordable housing lending and has financed over 170,000 affordable housing units, and it expects to apply its community reinvestment program strategies to Discover's products and services.

In addition, Capital One represents that it receives high marks for customer satisfaction and that it intends to incorporate aspects of Discover's customer service approach into Capital One's customer service program. Capital One represents that it is one of the largest consumer lenders in the country and that it will build on CONA's and

Discover's existing programs to address the needs of LMI and underserved communities and small businesses. Capital One contends that many of its products have lower fees than those of other issuers, and that Capital One has helped to improve financial literacy by providing free financial resources to customers and financial literacy courses to consumers generally. Capital One also states that credit cards with rewards are offered across the income and credit spectrum, particularly among LMI persons, and that rewards programs do not exclusively serve upper-income persons.

Capital One represents that, in order to assist subprime customers and new-to-credit customers in managing their finances and debt, Capital One incorporates stringent upfront underwriting practices to assess how much credit to extend to the customer and whether to make a credit offer. With respect to debt collection actions, Capital One states that it has undertaken a number of initiatives to help customers repay their debt, including providing digital ways for customers to enter into payment plans, providing loan adjustments and modifications to prevent automobile repossessions, and making significant investments in credit counseling agencies. Capital One states that legal action is a last resort that takes into account the customer's financial situation and the bank's ability to mitigate its losses consistent with safe and sound banking practices. Capital One represents that it has taken steps over the past several years to reduce the number of debt collection judgments that it pursues by over 50 percent. Capital One contends that the number of CFPB complaints received reflects that Capital One provides loans to a broader customer base in popular consumer-asset classes, such as credit-card and automobile loans. In addition, Capital One asserts that a meaningful portion of the complaints received are requests to remove accurate, but negative, marks from consumers' credit reports. Capital One states that it takes all complaints seriously, works to address all complaints, and uses feedback received to improve products and services offered.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation and the supervisory views of relevant federal supervisors, which in this case are the OCC with respect to CONA and the FDIC with respect to Discover Bank.[68] In addition, the Board considers information provided by the applicant and by public commenters.[69]

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[70] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), an investment test ("Investment Test"), and a service test ("Service Test") to evaluate the performance of large banks, such as CONA, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported

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[68] See Interagency Questions and Answers Regarding Community Reinvestment, 81 Federal Register 48506, 48548 (July 25, 2016).

[69] One commenter requested that the Board require a commitment that Capital One make a proportional reinvestment in the LMI areas of any Metropolitan Statistical Area ("MSA") sourcing 5 percent or more of Capital One's deposits, including Miami, Florida. As discussed previously, the Board consistently has found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any private party. See, e.g., Bank of Montreal, FRB Order No. 2023-01 at 20 n.50 (Jan. 17, 2023); U.S. Bancorp, FRB Order No. 2022-22 at 19 n.47 (Oct. 14, 2022); Huntington Bancshares Inc., FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002); Fifth Third Bancorp, 80 Federal Reserve Bulletin 838, 841 (1994).

[70] 12 U.S.C. § 2906.

under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[71] in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is evaluated based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[72] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.[73] The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs. The Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.[74]

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[71] 12 U.S.C. § 2801 et seq.

[72] Examiners also consider the number and amounts of small business and small farm loans made to businesses and farms with gross annual revenues of $1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3) (2023).

[73] See 12 CFR 228.22(b) (2023).

[74] See 12 CFR 228.23 and 228.24 (2023).

The CRA permits an insured depository institution to apply to its primary federal financial supervisor to be evaluated under a strategic plan.[75] The CRA performance of such an institution is assessed by evaluating the institution's record of meeting the credit needs of its AAs under its strategic plan.[76] This evaluation involves an assessment of the institution's performance under the lending, investment, and service goals outlined in its strategic plan.[77] As discussed below, the FDIC's CRA performance evaluation of Discover Bank was based on its review of two FDIC-approved strategic plans.[78]

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial, ethnic, or gender groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions may not be available from public HMDA data.[79] Consequently, the Board requests additional information not available to the public that may be needed from the institution and evaluates disparities in the context of the additional information obtained regarding the lending and compliance record of an institution.

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[75] See, e.g., 12 CFR 228.21(a)(4) and 228.27 (2023). Under the federal financial supervisory agencies' CRA regulations, the appropriate federal financial supervisory agency will assess an institution's CRA performance under a strategic plan if, among other things, the institution invites public comment on the plan and the plan is approved by the relevant supervisor. See, e.g., 12 CFR 228.27 (2023).

[76] See, e.g., 12 CFR 228.27 (2023).

[77] Id.

[78] The FDIC approved Discover Bank's strategic plans under 12 CFR 345.27 (2020).

[79] For example, credit scores are not available in the public HMDA data. Accordingly, when conducting fair lending examinations, examiners analyze additional information not available to the public, such as credit scores, before reaching a determination regarding an institution's compliance with fair lending laws.

CRA Performance of CONA

CONA was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of August 28, 2023 ("CONA Evaluation").[80] The bank received "Outstanding" ratings for the Lending, Investment, and Service Tests.

Lending Test

Examiners found that CONA's overall lending performance was outstanding. Examiners found that CONA's lending performance was outstanding in

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[80] The CONA Evaluation was conducted using large institution Lending, Investment, and Service Tests. Examiners reviewed home mortgage loan data, small loans to businesses data, small loans to farms data, consumer loan data, community development loans, retail banking services, qualified investments, and community development services from January 1, 2020, through December 31, 2022. Examiners also considered data pertaining to Capital One Bank (USA), National Association, Glen Allen, Virginia, a bank subsidiary of Capital One that merged with CONA in October 2022 with CONA as the surviving entity. The CONA Evaluation was published by the OCC on February 11, 2025.

The CONA Evaluation covered 40 AAs located in 23 states and the District of Columbia, including one Multistate Metropolitan Statistical Area ("MMSA") and two Combined Statistical Areas ("CSAs"): Arizona; California; Colorado; Florida; Georgia; Illinois; Louisiana; Massachusetts; Michigan; Minnesota; Nevada; Ohio; Oregon; Texas; Virginia; Washington; the New York–Newark, New York–New Jersey–Connecticut–Pennsylvania, CSA ("New York CSA"); the Philadelphia–Camden–Wilmington, Pennsylvania–New Jersey–Delaware–Maryland, MMSA ("Philadelphia MMSA"); and the Washington–Baltimore–Arlington, District of Columbia–Maryland–Virginia–West Virginia–Pennsylvania, CSA. Although CONA initially identified 70 AAs, the number of AAs analyzed was reduced to 40 AAs for purposes of the CONA Evaluation. In part, this was because nonmetropolitan AAs in the same state were combined and evaluated as a single nonmetropolitan AA, and because certain AAs in the same MSA, MMSA, or CSA were also combined and evaluated as a single AA. In addition, certain AAs were not reviewed because CONA did not operate in the AA for the entirety of the performance evaluation period. The CONA Evaluation included a full-scope review of 23 of the 40 AAs, including the two CSAs and the MMSA, covering all 23 states and the District of Columbia ("full-scope AAs"). A limited-scope review was conducted of the remaining 17 AAs ("limited-scope AAs"). In assigning state performance ratings, examiners afforded primary weight to the bank's performance in the full-scope AAs in each state.

each AA examined. Examiners found that an adequate percentage of CONA's loans are in its AAs. Examiners noted that CONA's strategic focus is on consumer credit-card loans, and loan volumes for home mortgage loans and small loans to farms were minimal for most of CONA's AAs. Examiners noted that CONA is a nationwide consumer credit-card lender that relies on digital delivery systems for deposits and consumer lending, which lowered CONA's proportion of lending within the AAs. Examiners identified CONA as a provider of two flexible secured consumer credit-card products that provided access to credit to individuals who do not meet CONA's traditional underwriting guidelines. Examiners also found that CONA offered flexible loans to small businesses that served AA credit needs through Small Business Administration loans and loans made pursuant to the Paycheck Protection Program, with the vast majority of such loans made inside its AAs.

Areas of Concern to Commenters

As noted above, commenters expressed concerns regarding CONA's performance in helping to meet the credit needs in certain geographies. The Board has reviewed CONA's performance under the CRA in relevant AAs, as evaluated by OCC examiners in the CONA Evaluation.

In the New York CSA AA, CONA received an "Outstanding" rating for the Lending Test.[81] Examiners found that CONA's lending levels reflected an excellent responsiveness to AA credit needs and that CONA exhibited an excellent geographic distribution of loans in this AA. Examiners also found that CONA exhibited an excellent distribution of loans among individuals of different income levels and businesses and farms of different sizes. Examiners noted that CONA was a leader in making community

[81] Examiners conducted a full-scope review of the New York CSA AA, which consists of the entirety of the Bridgeport–Stamford–Norwalk, Connecticut, MSA; the Nassau County–Suffolk County, New York, Metropolitan Division ("MD"); and the New Brunswick–Lakewood, New Jersey, MD; as well as portions of the New York–Jersey City–White Plains, New York–New Jersey, MD and the Newark, New Jersey–Pennsylvania, MD where CONA had branch locations.

development loans and that the level of community development lending was excellent. Examiners stated that CONA used flexible lending practices to serve the credit needs of this AA.

CONA's activities in New Jersey were evaluated as part of the New York CSA AA, as discussed in the preceding paragraph, and as part of the Philadelphia MMSA AA.[82] In the Philadelphia MMSA AA, CONA received an "Outstanding" rating for the Lending Test. Examiners found that CONA's lending levels reflected an excellent responsiveness to AA credit needs and that CONA exhibited an excellent geographic distribution of loans in its AA. Examiners also found CONA exhibited an excellent distribution of loans among individuals of different income levels and businesses and farms of different sizes. Examiners noted that CONA was a leader in making community development loans and that the level of community development lending was excellent. Examiners noted that CONA used flexible lending practices to serve AA credit needs.

In California, CONA received an "Outstanding" rating for the Lending Test.[83] Examiners found that CONA's lending levels reflected excellent responsiveness to AA credit needs and that CONA exhibited an excellent geographic distribution of loans in its AAs. Examiners also found CONA exhibited an excellent distribution of loans among individuals of different income levels and businesses and farms of different sizes. Examiners found that CONA's level of community development lending was excellent, noting that CONA utilized complex community development loans, often in a leadership position, and that community development loans were impactful as they were

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[82] Examiners conducted a full-scope review of the Philadelphia MMSA AA, which consists of the entirety of the Camden, New Jersey, MD; the Montgomery County–Bucks County–Chester County, Pennsylvania, MD; the Philadelphia, Pennsylvania, MD; and a portion of the Wilmington, Delaware–Maryland–New Jersey, MD.

[83] In California, examiners conducted full-scope reviews in the Los Angeles–Long Beach, California, CSA ("Los Angeles CSA") and the San Diego–Chula Vista–Carlsbad, California, MSA ("San Diego MSA") AAs. Examiners conducted limited-scope reviews in California in the San Jose–San Francisco–Oakland, California, CSA ("San Jose CSA AA") and the Sacramento–Roseville–Folsom, California, MSA ("Sacramento MSA AA") AAs.

responsive to identified community needs. Examiners noted that CONA used flexible lending practices to serve AA credit needs in the Los Angeles CSA AA and the San Diego MSA AA. CONA's performance under the Lending Test for its AAs subject to limited-scope review was consistent with its overall performance under the Lending Test in the full-scope areas.

In Colorado, CONA received an "Outstanding" rating for the Lending Test.[84] Examiners found that CONA's lending levels reflected an excellent responsiveness to credit needs in the Denver CSA AA and that CONA exhibited an excellent geographic distribution of loans in this AA. Examiners also found CONA exhibited an excellent distribution of loans among individuals of different income levels and businesses and farms of different sizes in the AA. Examiners stated that CONA was a leader in making community development loans and that the level of community development lending was excellent. Examiners found that CONA used flexible lending practices to serve the credit needs of the Denver CSA AA.

In Florida, CONA received an "Outstanding" rating for the Lending Test.[85] Examiners found that CONA's lending levels reflected an excellent responsiveness to AA credit needs and that CONA exhibited an excellent geographic distribution of loans in its AAs. Examiners identified a good distribution of loans among individuals of different income levels and businesses and farms of different sizes. Examiners noted that CONA was a leader in making community development loans and that the level of

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[84] In Colorado, examiners conducted a full-scope review in the Denver–Aurora, Colorado, CSA ("Denver CSA") AA, which consists of the entire Boulder, Colorado, MSA and the portions of Denver–Aurora–Lakewood, Colorado, MSA where CONA had deposit-taking ATMs.

[85] In Florida, examiners conducted full-scope reviews of the Miami–Fort Lauderdale–Pompano Beach, Florida, MSA ("Miami MSA") AA—which consists of the Fort Lauderdale–Pompano Beach–Sunrise, Florida, MD; the Miami–Miami Beach–Kendall, Florida, MD; and the West Palm Beach–Boca Raton–Boynton Beach, Florida, MD—and portions of the Tampa–St. Petersburg–Clearwater, Florida, MSA ("Tampa MSA") AA where CONA had deposit-taking ATMs.

community development lending was excellent. Examiners noted CONA used flexible lending practices to serve AA credit needs in the Miami MSA and Tampa MSA AAs.

In Louisiana, CONA received an "Outstanding" rating for the Lending Test.[86] Examiners found that CONA's lending levels reflected an adequate responsiveness to AA credit needs and that CONA exhibited an excellent geographic distribution of loans in its AAs. Examiners also found CONA exhibited an excellent distribution of loans among individuals of different income levels and businesses and farms of different sizes. Examiners noted that CONA was a leader in making community development loans and that the level of community development lending was excellent. Examiners noted that CONA used flexible lending practices to serve AA credit needs in the New Orleans CSA and Shreveport CSA AAs. CONA's performance in the limited-scope AAs was largely consistent with its performance under the Lending Test in the full-scope AAs. CONA's performance in the Louisiana nonmetropolitan AA was weaker than its overall performance under the Lending Test in full-scope AAs, primarily due to weaker lending to households in low-income geographies and weaker community development lending performance. This had a minimal impact on the bank's overall Lending Test rating in Louisiana.

In Texas, CONA received an "Outstanding" rating for the Lending Test.[87] Examiners found that CONA's lending levels reflected an excellent responsiveness to

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[86] In Louisiana, examiners conducted full-scope reviews of the New Orleans–Metairie–Hammond, Louisiana–Mississippi, CSA ("New Orleans CSA") and Shreveport–Bossier City–Minden, Louisiana, CSA ("Shreveport CSA") AAs, as well as limited-scope reviews of the Alexandria, Louisiana, MSA; Baton Rouge, Louisiana, MSA; Houma–Thibodaux, Louisiana, MSA; Lafayette–Opelousas–Morgan City, Louisiana, CSA; Lake Charles–Jennings, Louisiana, CSA; and Monroe, Louisiana, MSA AAs, as well as the Louisiana non-MSA counties that were combined into one AA ("Louisiana nonmetropolitan AA").

[87] In Texas, examiners conducted full-scope reviews of portions of the Austin–Round Rock–Georgetown, Texas, MSA ("Austin MSA") and the Dallas–Fort Worth–Arlington, Texas, MSA ("Dallas MSA") AAs, as well as limited-scope reviews of portions of the Beaumont–Port Arthur, Texas, MSA ("Beaumont MSA"); the Houston–The Woodlands–

AA credit needs and that CONA exhibited good geographic distribution of loans in its AAs. Examiners also found CONA exhibited an excellent distribution of loans among individuals of different income levels and businesses and farms of different sizes. Examiners noted that CONA was a leader in making community development loans and that the level of community development lending was excellent. Examiners noted CONA used flexible lending practices to serve AA credit needs in the Austin MSA and Dallas MSA AAs. CONA's performance under the Lending Test in the Houston MSA and Texarkana MSA AAs was consistent with its overall performance in full-scope AAs. CONA's performance in the Beaumont MSA and Tyler MSA AAs was weaker than its overall performance due to a lower volume of lending to households in low-income geographies and a lower level of community development lending, respectively. This weaker performance had a minimal impact on CONA's overall Lending Test rating.

Investment Test

CONA received an overall "Outstanding" rating for the Investment Test and an "Outstanding" rating in each AA examined. Examiners noted that CONA's investment strategy focused on affordable housing, primarily using low-income housing tax credits. Examiners found that CONA had an excellent level of qualified community development investments and grants that were complex or responsive to AA needs.

Areas of Concern to Commenters

In the New York CSA AA, CONA received an "Outstanding" rating for the Investment Test. Examiners found that CONA's performance in the New York CSA AA was excellent. Examiners noted that CONA had an excellent level of qualified community development investments and grants, often in a leadership position, particularly those that are not routinely provided by private investors. Examiners noted that CONA exhibited excellent responsiveness to credit and community development needs and made extensive use of innovative or complex investments to support

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Sugar Land, Texas, MSA ("Houston MSA"); and the Texarkana, Texas–Arkansas, MSA ("Texarkana MSA"); and the entirety of the Tyler, Texas, MSA AAs.

community development initiatives. Examiners stated that CONA's investments in the broader statewide and regional area further supported its "Outstanding" rating.

In the Philadelphia MMSA AA, CONA received an "Outstanding" rating for the Investment Test. Examiners found that CONA's performance in the Philadelphia MMSA AA was excellent. Examiners noted that CONA had an excellent level of qualified community development investments and grants, often in a leadership position, particularly those that are not routinely provided by private investors. Examiners noted that CONA exhibited excellent responsiveness to credit and community development needs and made extensive use of innovative or complex investments to support community development initiatives. Examiners stated that CONA's investments in the broader statewide and regional area further supported its "Outstanding" rating.

In California, CONA received an "Outstanding" rating for the Investment Test. Examiners found that the bank's performance in the Los Angeles CSA and San Diego MSA AAs was excellent. In both AAs, examiners noted that CONA had an excellent level of qualified community development investments and grants, often in a leadership position, particularly those that are not routinely provided by private investors. In both AAs, examiners noted that CONA exhibited excellent responsiveness to credit and community development needs and made extensive use of innovative or complex investments to support community development initiatives. Examiners stated that CONA's investments in the broader statewide and regional area further supported its "Outstanding" rating. CONA's performance under the Investment Test in the San Jose CSA AA was consistent with its overall performance in full-scope AAs. CONA's performance under the Investment Test in the Sacramento MSA AA was weaker than its overall performance in full-scope AAs due to a lower level of investment activity, but its performance in limited-scope AAs had a minimal impact on its overall Investment Test rating in California.

In Colorado, CONA received an "Outstanding" rating for the Investment Test. Examiners found that CONA's performance in the Denver CSA AA was excellent. Examiners stated that in the Denver CSA AA, CONA had an excellent level of qualified community development investments and grants, often in a leadership position, particularly those that are not routinely provided by private investors. Examiners noted that CONA exhibited excellent responsiveness to credit and community development needs and made use of innovative or complex investments to support community development initiatives. Examiners stated that CONA's investments in the broader statewide and regional area further supported its "Outstanding" rating for the Investment Test in Colorado.

In Florida, CONA received an "Outstanding" rating for the Investment Test. Examiners found that CONA's performance in the Miami MSA and Tampa MSA AAs was excellent. In the Miami MSA AA, examiners stated that CONA had an excellent level of qualified community development investments and grants, often in a leadership position, particularly those that are not routinely provided by private investors. Examiners noted CONA exhibited excellent responsiveness to credit and community development needs and made extensive use of innovative or complex investments to support community development initiatives in the Miami MSA AA. In the Tampa MSA AA, examiners stated that CONA had an excellent level of qualified community development investments and grants, occasionally in a leadership position, particularly those that are not routinely provided by investors. Examiners noted that CONA exhibited excellent responsiveness to credit and community development needs and made occasional use of innovative or complex investments to support community development initiatives in the Tampa MSA AA. Examiners stated that CONA's investments in the broader statewide and regional area further supported its "Outstanding" rating.

In Louisiana, CONA received an "Outstanding" rating for the Investment Test. Examiners found that CONA's performance in the New Orleans CSA and Shreveport CSA AAs was excellent. In both AAs, examiners stated CONA had an excellent level of qualified community development investments and grants, often in a leadership position, particularly those that are not routinely provided by private investors. In these AAs, examiners noted that CONA exhibited excellent responsiveness to credit and community development needs and made extensive use of innovative or complex investments to support community development initiatives. Examiners stated that CONA's investments in the broader statewide and regional area further supported its "Outstanding" rating. Examiners found that CONA's performance under the Investment Test in limited-scope AAs was consistent with its overall performance in full-scope AAs.

In Texas, CONA received an "Outstanding" rating for the Investment Test. Examiners found that CONA's performance in the Austin MSA and Dallas MSA AAs was excellent. In both AAs, examiners stated that CONA had an excellent level of qualified community development investments and grants, often in a leadership position, particularly those that are not routinely provided by private investors. In these AAs, examiners noted that CONA exhibited excellent responsiveness to credit and community development needs and made extensive use of innovative or complex investments to support community development initiatives. Examiners stated that CONA's investments in the broader statewide and regional area further supported its "Outstanding" rating.

Service Test

CONA received an overall "Outstanding" rating for the Service Test. Examiners noted that CONA operated "cafés," which were nonbranch retail locations that provide access to retail banking services exclusively through alternative delivery systems ("ADS"), including deposit-taking ATMs, online banking, and mobile banking, in most AAs. In several areas, examiners found that CONA's ADS had a positive impact on the Service Test rating. Examiners stated that CONA's branch services were consistent with its ADS. Other services, such as wire transfers, ordering checks, making transfers between deposit accounts, and making loan payments, were offered through CONA's branches and online platforms. Examiners did not identify material or significant differences in CONA's services and hours of operation for its branches, cafés, and deposit-taking ATMs in the full-scope AAs. Examiners found that, in most AAs, services and business hours did not vary in a way that inconveniences its AAs, particularly LMI geographies or individuals. Examiners found that community development services were responsive to community needs in most AAs. Examiners stated that the COVID-19 public health crisis resulted in fewer opportunities for in-person community development services during a portion of the evaluation period.

Areas of Concern to Commenters

In the New York CSA AA, CONA received an "Outstanding" rating for the Service Test. Examiners found that CONA's performance in the New York CSA AA was excellent. Examiners found that CONA's service delivery systems were readily accessible to geographies and individuals of different income levels in this AA. In addition to its branches, CONA's ADS provided additional accessibility to retail banking services for the various portions of this AA, including LMI geographies or individuals. Examiners found that CONA was a leader in providing community development services, which were responsive to the community needs CONA identified through community contacts.

In the Philadelphia MMSA AA, CONA received a "High Satisfactory" rating for the Service Test. Examiners found that CONA's performance in the Philadelphia MMSA AA was good. Examiners found that CONA's service delivery systems were accessible to geographies and individuals of different income levels in this AA. Examiners found that CONA was a leader in providing community development services, which were responsive to the community needs CONA identified through community contacts.

In California, CONA received a "High Satisfactory" rating for the Service Test. Examiners found that CONA's performance in the Los Angeles CSA and San Diego CSA AAs was good. Examiners stated that these were digital markets for CONA, so it delivered retail banking services exclusively through ADS, including deposit-taking ATMs, online banking, and mobile banking. In the Los Angeles CSA AA, examiners found that CONA's service delivery systems were accessible to geographies and individuals of different income levels in its AAs. In the San Diego CSA AA, examiners found that CONA's service delivery systems were reasonably accessible to geographies and individuals of different income levels in its AAs. In both AAs, examiners found that CONA was a leader in providing community development services, which were responsive to the community needs CONA identified through community contacts. Examiners stated that CONA's performance was weaker than its overall performance under the Service Test in one limited-scope AA, the Sacramento MSA AA, due to lower numbers of deposit-taking ATMs in LMI geographies. Examiners also stated that CONA's performance was stronger than its overall performance under the Service Test in another limited-scope AA, the San Jose CSA AA.

In Colorado, CONA received a "High Satisfactory" rating for the Service Test. Examiners found that CONA's performance in the Denver CSA AA was good. Examiners stated that this area was a digital market for CONA, so it delivered retail banking services exclusively through ADS, including deposit-taking ATMs, online banking, and mobile banking. Examiners found that CONA's service delivery systems were accessible to geographies and individuals of different income levels in the Denver CSA AA. Examiners found that CONA provided a relatively high level of community development services, which were responsive to the community needs CONA identified through community contacts.

In Florida, CONA received a "High Satisfactory" rating for the Service Test. Examiners found that CONA's performance in the Miami MSA AA was good and in the Tampa MSA AA was adequate. CONA did not operate a licensed branch in its AAs in Florida; examiners noted that this was a digital market for CONA, which delivered retail banking services exclusively through ADS, including deposit-taking ATMs, online banking, and mobile banking. In the Miami MSA AA, examiners found that service delivery systems were accessible to geographies and individuals of different income levels. In the Tampa MSA AA, examiners found that service delivery systems were reasonably accessible to geographies and individuals of different income levels. Examiners found that CONA was a leader in providing community development services in the Miami MSA AA and that CONA provided a relatively high level of community development services in the Tampa MSA AA. Examiners found that these community development services were responsive to the community needs CONA identified through community contacts.

In Louisiana, CONA received an "Outstanding" rating for the Service Test. Examiners found that CONA's performance in the New Orleans CSA AA was excellent and in the Shreveport CSA AA was good. In both AAs, examiners found that CONA's service delivery systems were accessible to geographies and individuals of different income levels in its AAs. In addition to its branches, CONA had several ADS that provided additional access to retail banking services to LMI geographies or individuals. In these two AAs, examiners found that CONA was a leader in providing community development services, which were responsive to the community needs CONA identified through community contacts. CONA's performance in three limited-scope AAs was consistent with its overall performance under the Service Test, and its performance in four limited-scope AAs was weaker than its overall performance.

In Texas, CONA received a "High Satisfactory" rating for the Service Test. Examiners found that CONA's performance in the Austin MSA AA was good and its performance in the Dallas MSA AA was excellent. In the Austin MSA AA, examiners found that service delivery systems were accessible to geographies and individuals of different income levels. In the Dallas MSA AA, examiners found that service delivery systems were readily accessible. In addition to its branches, CONA's ADS provided additional accessibility to retail banking services for the various portions of its AA, including LMI geographies or individuals. Examiners found that CONA provided a relatively high level of community development services in the Austin MSA AA and that CONA was a leader in providing community development services, which were responsive to community needs identified through community contacts. Examiners stated that CONA's performance under the Service Test in limited-scope AAs was weaker than its overall performance under the Service Test, primarily due to a lower branch distribution in LMI geographies. This weaker performance in the limited-scope AAs had a negative impact on the overall Service Test rating for Texas.

CONA's Efforts since the CONA Evaluation

Capital One represents that, since the CONA Evaluation, which covered the period of January 1, 2020, through December 31, 2022, CONA has remained engaged with the communities within its AAs, and asserts that CONA has demonstrated strong CRA performance and positive impacts on its communities, particularly in LMI areas. For instance, Capital One represents that, in 2023, customers in LMI geographies opened more than 437,000 new checking accounts and indicated that these checking accounts have no monthly fees, no minimum-balance requirements, and no overdraft or nonsufficient fund fees. Capital One further represents that customers in LMI geographies opened over 393,000 new savings accounts in Capital One's AAs in 2023. Capital One states that CONA has worked to ensure it is a provider of small business banking products and services across all communities it services. Capital One states that it has continued to develop a diversified delivery network to meet a range of continually evolving customer needs, including by investing in digital banking capabilities to increase access to banking services and to bridge the gap for underserved communities. In this regard, Capital One represents that it operated cashier-check kiosks on a pilot basis in February 2023, which enabled customers to access certified funds at the kiosks using their mobile devices. Capital One represents that CONA continues to provide community development loans and investments to support economically disadvantaged communities within its footprint. For example, Capital One represents that, in 2023, Capital One began a partnership with Khan Academy to offer a free online financial literacy course, covering topics such as digital banking, budgeting, savings, credit, investments, insurance, taxes, scams, and fraud.

CRA Performance of Discover Bank

Discover Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 7, 2022 ("Discover Bank

Evaluation").[88] The Discover Bank Evaluation was conducted pursuant to two FDIC-approved strategic plans, which specified measurable goals for meeting the credit and community development needs of the bank's AA and the broader statewide or regional area.[89] The Discover Bank Evaluation reviewed the bank's performance in the following five goals: new qualified community development loans and investments; ratio of community development loans and qualified investments to average assets; community development grants; community development services; and consumer loans in moderate-income census tracts in Discover Bank's AA. Examiners concluded that Discover Bank's activities met or exceeded its goals for Outstanding performance in all five of its goals. However, examiners lowered the assigned rating to "Satisfactory" in light of continuing deficiencies in Discover Bank's student loan servicing operation that had resulted in a consent order with the CFPB in 2015 and in a second consent order with the CFPB due to ongoing deficiencies in 2020.[90] Discover completed a sale of its student loan servicing operation at the end of 2024.

Examiners found Discover Bank provided a high level of community development investments, loans, grants, and services that displayed extensive use of

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[88] The Discover Bank Evaluation was conducted using the Examination Procedures for Institutions with Strategic Plans. See 12 CFR 345.27 (2022). Examiners reviewed Discover Bank's performance from January 1, 2020, through December 31, 2021, under two strategic plans, the 2018–2020 CRA Strategic Plan (effective January 1, 2018, through December 31, 2020) and the 2021–2025 CRA Strategic Plan (effective January 1, 2021, through December 31, 2025).

[89] Discover Bank's AA consists of all 53 census tracts in Sussex County, Delaware, and six contiguous census tracts in Kent County, Delaware.

[90] Some commenters objected to the proposal, citing a consent order entered into by Discover Bank and certain Discover nonbank subsidiaries with the CFPB related to unfair and deceptive student loan collection practices in 2015, and a consent order entered into by Discover Bank and certain Discover nonbank subsidiaries in 2020 with the CFPB related to violations of the 2015 consent order, the Electronic Fund Transfer Act, and the Consumer Financial Protection Act of 2010. As discussed infra, the student loan business was sold by Discover at the end of 2024. The Board has considered information provided by Capital One, has reviewed confidential supervisory information, and has consulted with the CFPB with respect to the matters at issue in these consent orders.

innovativeness and complexity with effective response to credit and community development needs. Examiners noted that bank management has been innovative in designing and implementing the CRA program, which includes providing loans and investments through partnerships with various for-profit and nonprofit organizations and financial institutions.

Discover Bank's Efforts since the Discover Bank Evaluation

Capital One represents that, since the Discover Bank Evaluation, Discover Bank has continued to meet its CRA goals under Discover Bank's FDIC-approved strategic plans. Capital One contends that Discover Bank has exceeded its "Outstanding" goal for new community development loans and investments in 2023; met its "Outstanding" goals for 2022 and 2023 in the ratio of community development loans and qualified investments to average assets; met its 2022 and 2023 annual goals for "Outstanding" performance in community development grants; exceeded its 2022 and 2023 annual goals in community development services; and exceeded its goals for "Outstanding" performance for consumer loans in moderate-income census tracts in Discover Bank's AA in 2022 and 2023.

Additional Supervisory Views

In its review of the proposal, the Board consulted with and considered the views of the OCC as the primary federal supervisor of CONA and of the FDIC as the primary federal supervisor of Discover Bank. The Board also considered the results of the most recent consumer compliance examinations of CONA and Discover Bank, which included reviews of the banks' compliance management programs and their compliance with consumer protection laws and regulations, including fair lending.[91] Lastly, the

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[91] Some commenters objected to the proposal, citing a September 2023 consent order between Discover Bank and the FDIC related to unsafe or unsound banking practices in Discover Bank's compliance-management system for compliance with consumer protection laws, including the Federal Trade Commission Act, the Truth in Lending Act, the Servicemembers Civil Relief Act, and the Electronic Records and Signatures in Commerce Act. The Board has consulted with the FDIC with respect to these allegations and the matters at issue in that consent order.

Board also considered the results of the most recent consumer compliance examinations of CONA and Discover Bank by the CFPB.

The Board has taken this information, as well as the CRA performance records of CONA and Discover Bank, into account in evaluating the proposal, including in considering whether Capital One has the experience and resources to ensure that the combined organization would help meet the credit needs of the communities to be served following consummation of the proposed transaction.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. This includes, for example, the combined organization's business model and intended marketing and outreach and existing and anticipated product and service offerings in the communities to be served by the organization; any additional plans the combined organization has for meeting the needs of its communities following consummation; and any other information the Board deems relevant.

Capital One represents that both Capital One and Discover have demonstrated strong commitments to serving the needs of their communities, including through strong CRA performance and ongoing community engagement activities. Capital One asserts it will build on each of Capital One's and Discover's existing businesses; that the combined organization will benefit from Capital One's recent modernization of its technology and its recently expanded products and services; and that the resulting institution will have a comprehensive risk-management system and compliance culture that is better able to serve its customers. Capital One asserts that the transaction will allow Capital One to continue to innovate and improve its offerings. Additionally, Capital One asserts that the complementary nature of each organization's CRA program will result in an improved program with expanded opportunities moving forward, including a higher level of support for LMI consumers and neighborhoods and small businesses, such as through increased direct lending and support for community development financial institutions.

As part of the transaction, Capital One would acquire and operate the Discover Global Network. Capital One asserts this acquisition would improve services to customers by promoting competition among debit- and credit-card payment networks for several reasons. Capital One states the transaction has the potential to strengthen and scale the Discover Global Network through investments to improve the network and the continued offering of certain banking products. More specifically, Capital One states it plans to invest in the Discover Global Network by improving network integrity, technology, and cybersecurity practices (such as by reducing Discover's reliance on contractors); risk management; brand awareness; and merchant acceptance. Capital One represents that improving Discover Global Network, which would compete with larger card payment networks, would decrease prices, improve network quality for merchants and consumers, and incentivize competitors to invest in their own products and services. Capital One states that the Discover Global Network would benefit from indirect network effects from an increase in consumers on one side of the network, which Capital One asserts would make Discover's networks and products more valuable to merchants. Capital One asserts the proposal would not give it the ability or incentive to raise debit-card transaction fees post-merger, given the competitive landscape for checking accounts and Discover's smaller market share of debit-card payment volume on its network compared to those of its two largest competitors. Capital One states it does not intend to increase any fees on Discover's debit-card or credit-card payment networks as a result of the transaction but that external factors could impact fees, including changes in legislation or consumer behavior.

Capital One states Discover's customers will gain access to a broader set of financial products and services, including digital tools, a nationwide branch network, cash-load services through various partner stores, and fee-free ATMs. Additionally, Capital One represents that there will be opportunities to offer several products and services not currently offered by Discover to its customers, including direct and indirect loans for purchasing or refinancing new and used automobiles; proprietary technology for vehicle purchases and prefinancing; certain business card products; traditional banking services for small business owners; and lending, capital markets, and transaction services for corporations. Capital One states the proposal would allow it to significantly expand the availability of its Bank On certified, no fee, minimum balance- and overdraft-free checking product to a broader set of consumers.

Capital One represents it does not plan to make any significant changes to Capital One and CONA products and services, aside from the Discover Global Network changes described above, as a result of consummation of the transaction. Capital One states that Capital One and Discover offer different features in connection with certain banking products offered by both organizations, that it does not plan to make significant changes to current CONA products and services, and that it will evaluate all of Discover's products and services for opportunities to optimize its product offerings to offer an improved suite of financial products. For Discover services and products not currently offered by Capital One, Capital One represents it will continue to service those products for legacy customers and assess whether there are additions to Capital One's suite of products that would align with the organization's overall strategy and risk profile. More specifically, Capital One represents that CONA does not currently offer home equity loans, personal loans, or money market or individual retirement accounts. Capital One states it will assess whether such products should be offered to new customers.

Branch Closures

Physical branches remain important to many banking organizations' ability to meet the credit needs of the local communities in which they operate. When banking organizations combine, whether through acquisitions, mergers, or consolidations, the combination has the potential to increase or to reduce consumers' and small businesses' access to available credit and other banking services. Although the Board does not have the authority to prohibit a bank from closing a branch, the Board focuses on the impact of expected branch closures, consolidations, and relocations that occur in connection with a proposal on the convenience and needs of the communities to be served by the resulting institution. In particular, the Board considers the effect of any closures, consolidations, or relocations on LMI communities.

Federal banking law provides a specific mechanism for addressing branch closings, including requiring that a bank provide notice to the public and the appropriate federal supervisory agency before a branch is closed.[92] In addition, the federal banking supervisory agencies evaluate a bank's record of opening and closing branches, particularly branches located in LMI geographies or that primarily service LMI individuals, as part of the CRA examination process.[93]

Some commenters alleged that Capital One has a business strategy of closing branches, resulting in decreased access to banking services by LMI persons and minorities. Capital One represents that it will retain Discover Bank's main office in Greenwood, Delaware; that no branch of Discover Bank would be closed, consolidated, or relocated in connection with the proposal; and that no branches of CONA are anticipated to be closed, consolidated, or relocated in connection with the proposal. Although Capital One has closed several branches in recent years, Capital One represents that the decisions were based on responses to customer behavior and that community impact was assessed prior to all closings. The Board notes that OCC examiners found that CONA's record of opening and closing of branches has not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. In addition, the Board consulted the OCC regarding the institution's record of compliance with fair lending laws and regulations and related policies and procedures.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory

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[92] See 12 U.S.C. § 1831r–1. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

[93] See, e.g., 12 CFR 228.24(d)(2) (2023).

information, information provided by Capital One, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that the convenience and needs factor is consistent with approval.

Financial Stability Considerations

Section 3 of the BHC Act requires the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[94] In addition, section 4 of the BHC Act requires the Board to balance the expected public benefits of the proposal with the "risk to the stability of the United States banking or financial system."[95]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the combined organization and the incremental effect of the transaction on the systemic footprint of the acquiring bank holding company. These metrics include measures of the size of the combined organization, the availability of substitute providers for any critical products and services offered by the combined organization, the interconnectedness of the combined organization with the banking or financial system, the extent to which the combined organization contributes to the complexity of the financial system, and the extent of the cross-border activities of the combined organization.[96] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving

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[94] 12 U.S.C. § 1842(c)(7).

[95] 12 U.S.C. § 1843(j)(2)(A).

[96] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

the combined organization. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.[97]

Some commenters expressed concerns that the proposed merger would have adverse effects on U.S. financial stability. Some commenters alleged that Capital One would be viewed as "too big to fail" without providing further detail, while other commenters expressed general concerns about the potential for the merger or the combined organization to have a significant effect on financial stability. Other commenters asserted that, if the combined organization were to fail, only the largest banks could acquire it, and also asserted that the combined organization's roles in credit-card lending and card payment networks would be critical services that could result in financial stability harms if disrupted.

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The Board reviewed publicly available data, comments received from the public, data compiled through the supervisory process, and data obtained through information requests to the institutions involved in the proposal, as well as qualitative information.

Size. An organization's size is one important indicator of the risk that the organization may pose to the U.S. banking or financial system. Congress has imposed specific size-based limitations on the amount of deposits and liabilities a banking organization may control.[98] In addition, section 165 of the Dodd-Frank Act requires the Board to apply enhanced prudential standards to bank holding companies with

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[97] For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (Feb. 14, 2012).

Capital One currently is a triennial full filer under the resolution plan rule, 12 CFR parts 243 and 381, and the firm is scheduled to file its next full resolution plan in October 2025.

[98] 12 U.S.C. §§ 1842(d)(2)(A) and 1852 (imposing a 10 percent nationwide deposit limit and a 10 percent nationwide liabilities limit on potential combinations by banking organizations).

$250 billion or more in total consolidated assets.[99] Size also is among the factors that the Board must take into consideration in differentiating among banking organizations under section 165.[100]

In this case, the Board has considered measures of the combined organization's size relative to the U.S. financial system, including the combined organization's consolidated assets, consolidated liabilities,[101] total exposures, and U.S. deposits. As a result of the proposed acquisition, the combined organization would become the eighth largest U.S. financial institution[102] based on total assets. Its total exposures would account for 2.6 percent of the total for institutions that file the FR Y-15 form.[103] Based on deposits, the combined organization would become the sixth largest U.S. financial institution, with 2.6 percent of the total deposits of U.S. firms.

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[99] See 12 U.S.C. § 5365.

[100] See 12 U.S.C. § 5365(a)(2)(A). The Board has previously used size as a simple measure of a banking organization's potential systemic impact and has differentiated the stringency of capital and liquidity requirements based on total consolidated asset size.

[101] The Board has considered both consolidated liabilities on the combined organization's pro forma balance sheet and liabilities as computed under the limitations on consolidated liabilities in section 622 of the Dodd-Frank Act. See 12 U.S.C. § 1852.

[102] In this context, a U.S. financial institution includes all insured depository institutions, insured depository institution holding companies, nonbank financial companies supervised by the Board under Title I of the Dodd-Frank Act, and any foreign bank or company treated as a bank holding company. See 12 U.S.C. § 1852(a)(2).

[103] The FR Y-15 form collects data on systemic importance indicators, including total exposures, which the Board used in its assessment of the financial stability implications of the proposal. For this reason, this order often discusses the financial stability metrics of the combined organization relative to institutions that file the FR Y-15 form. The panel of institutions that file the FR Y-15 form consists of U.S. bank holding companies and covered savings and loan holding companies with total consolidated assets of $100 billion or more; foreign banking organizations ("FBOs") with combined U.S. assets of $100 billion or more, including, if applicable, any U.S. intermediate holding company ("IHC") of the FBO regardless of the size of the IHC; and U.S.-based organizations designated as global systemically important banks ("G-SIBs") that do not otherwise meet the consolidated assets threshold. FR Y-15 data and other data reported in this section are as of December 31, 2024, unless otherwise noted.

These measures suggest that, although the combined organization would be large on an absolute basis, its shares of U.S. financial system assets, liabilities, total exposures, and deposits would remain moderate, and its shares of national deposits and liabilities would remain well below the 10 percent limitations set by Congress.

Although the proposed transaction would increase Capital One's size, the combined organization's larger size must be viewed in conjunction with other metrics. Accordingly, the Board has considered other factors, both individually and in combination with size, to evaluate the likely impact of this transaction on the stability of the U.S. banking or financial system.[104]

Substitutability. The Board has considered whether Capital One or Discover engage in any activities that are critical to the functioning of the U.S. financial system and whether there would be adequate substitute providers that could quickly perform such activities should the combined organization suddenly be unable to do so as a result of severe financial distress. The Board primarily evaluated the roles of Capital One and Discover in payments activities, custody activities, and underwriting activities. Neither Capital One nor Discover is a major provider of these services.[105] The combined organization would account for less than 1 percent of nonretail payments activities, assets under custody, and underwriting activities of the totals reported by institutions that file the FR Y-15 form. For most of these activities, the combined organization would have a small share on a nationwide basis, and numerous competitors would remain.

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[104] Commenters noted that the combined organization would be larger than the regional banks that failed in 2023. The Board notes that the pro forma institution would have a relatively stable funding profile. In addition, the pro forma institution would have relatively low reliance on uninsured deposits, noncore deposit funding, and short-term wholesale funding compared to other similarly sized institutions.

[105] Payments activity reported on the FR Y-15 form excludes payments made through retail payment networks. However, the Board also considered whether the pro forma organization's role as an operator of retail payment networks could have financial stability implications, as described infra.

Some commenters asserted that the combined organization's roles in card payment networks and in credit-card lending would be critical services that could result in financial stability harms if disrupted. With respect to card payment networks, the Board considered the pro forma organization's role as an operator of credit-card and debit-card networks. In the event of a disruption to the Discover Global Network, the typical cardholder or merchant would have access to a range of substitute payment methods, including cash and other payment cards that often operate on different networks. Furthermore, among retail payment networks, other networks, like the Automated Clearing House network, carry a much larger value of payments than major card networks, including the Discover Global Network. Finally, Discover's market share of credit-card and debit-card transactions is modest. While migrating all of Capital One's cards to the Discover Global Network could substantially increase its market share of credit-card transactions, the pro forma institution's market share would remain well below that of market leaders. To the extent that Capital One migrates its credit cards to the Discover Global Network, it would decrease concentration in the markets for card payment network services by moving volume from networks with larger market shares to a network with a smaller market share. With respect to credit-card lending, as discussed in the ***Competitive Considerations*** section above, thousands of competitors would remain.

Interconnectedness. The Board has reviewed data to determine whether financial distress experienced by the combined organization could create financial instability by being transmitted to any other institutions or markets within the U.S. banking or financial system. Specifically, the Board considered measures of interconnectedness between the combined organization and the rest of the financial system during financial distress, such as potential direct losses to counterparties, asset-price declines due to fire sales, and contagion effects.

Capital One and Discover do not engage in business activities or participate in markets to a degree that would pose significant risk to other institutions in the event of financial distress of the combined organization. The dollar amount of short-term wholesale funding would be less than 1 percent of the total for FR Y-15 filers. The combined organization's shares of U.S. financial system intra-financial system assets and liabilities would also be 1.5 percent or less of the total for FR Y-15 filers. The pro forma institution's share of securities outstanding would be higher, at 3.9 percent of the total for FR Y-15 filers. However, securities outstanding would largely comprise widely held equity and certificates of deposit, the latter of which are mostly insured. These types of securities are unlikely to transmit distress to other institutions.

Complexity. The Board has considered the extent to which, if the proposal were to be consummated, the combined organization would contribute to the overall complexity of the U.S. banking or financial system. In this analysis, the Board considered the level of over-the-counter derivatives exposures ("OTC derivatives"), holdings of Level 3 assets,[106] and the volume of trading book and available-for-sale securities at both Capital One and Discover. The combined organization's level of notional OTC derivatives exposures, Level 3 assets, and amount of trading and available-for-sale securities would represent less than 1 percent of each of the totals for institutions that file the FR Y-15 form.

The Board also has considered whether the complexity of the combined organization's assets and liabilities would hinder the organization's timely and efficient resolution in the event the organization were to experience financial distress. Capital One and Discover do not engage in complex activities, such as being a core clearing and settlement organization for critical financial markets, that might complicate the resolution process by increasing the complexity, costs, or timeframes involved in a resolution.

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[106] Level 3 assets are defined in the Statement of Financial Accounting Standards No. 157 ("Fair Value Measurements") as assets whose accounting valuations are derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable. These assets are deemed complex to evaluate and cannot be measured at fair value because there is not a clear market price or a standard valuation model. A higher share of these assets could lead to disorderly resolution of an entity in case of failure.

Cross-Border Activity. The Board has reviewed the cross-border activities of Capital One and Discover to determine whether the cross-border presence of the combined organization would create difficulties in coordinating any resolution of the firm, which could significantly increase the risk to stability of the U.S. banking or financial system. At consummation, the combined organization would engage in limited activities outside the United States. In particular, the combined organization would account for less than 1 percent of either total cross-border claims or total cross-border liabilities of institutions filing the FR Y-15 form.

Financial Stability Factors in Combination. The Board has assessed the foregoing factors individually and in combination to determine whether interactions among them might mitigate or exacerbate risks suggested by looking at them individually. The Board also has considered whether the proposed transaction would provide any stability benefits and whether prudential standards applicable to the combined organization would offset any potential risks.[107]

For instance, concerns regarding the combined organization's size would be greater if Capital One or Discover also were highly interconnected to many different segments of the U.S. banking or financial system through counterparty relationships or other channels or if the combined organization were to participate to a larger extent than Capital One or Discover does in short-term funding and capital markets. As discussed, the combined organization would not be highly interconnected. The Board also has considered other measures that are suggestive of the degree of difficulty with which the combined organization could be resolved in the event of a failure, such as the organizational and legal complexity and cross-border activities of the combined organization. As noted above, commenters expressed concerns related to the resolvability of the combined organization; however, although larger in size, the combined organization would not be highly complex, would have limited cross-border activities, and would not be highly interconnected.

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[107] See 12 U.S.C. § 5365.

The Board further considered the G-SIB method 1 score of the combined organization. The G-SIB method 1 score is a measure of an institution's systemic importance and is a weighted sum of an institution's indicators of size, interconnectedness, complexity, cross-jurisdictional activity, and substitutability.[108] On consummation of the proposal, the Board estimates that the combined organization would have a G-SIB method 1 score of 29 points, reflecting low complexity, low cross-jurisdictional activities, and limited provision of critical services. The pro forma institution's G-SIB method 1 score is well below the threshold (130 basis points) that identifies a financial institution as a G-SIB.

In light of all the facts and circumstances, 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. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Acquisition of Nonbanking Companies

Capital One also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire the Discover Nonbanking Companies and thereby engage in extending credit and servicing loans, activities related to extending credit, and data processing. The Board previously has determined by regulation that these activities are closely related to banking for purposes of section 4(c)(8) of the BHC Act.[109] Capital One has stated that it would conduct these activities in accordance with the Board's regulations governing these activities for bank holding companies.

Section 4(j)(2)(A) of the BHC Act requires the Board to "consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair

[108] See 80 Federal Register 49082 (Aug. 14, 2015).

[109] See 12 CFR 225.28(b)(1), (2), (14).

competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[110]

Under the proposal, Capital One would acquire a controlling interest in each of the Discover Nonbanking Companies and thereby engage in extending credit and servicing loans, activities related to extending credit, and data processing. 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 when such investments and actions are consistent, as in this case, with the relevant considerations under the BHC Act.[111] The proposal would allow Capital One to expand the range of financial products and services available through the Discover Nonbanking Companies. Capital One also represents that it plans to make significant investments in the Discover Global Network to improve Discover's technology stack, risk management, and compliance. These improvements could provide benefits, including the reduction of fraud, improvement of dispute resolution processes, and offering of expanded products and services to customers and merchants that use and accept Discover payment network cards. An improved and larger Discover Global Network may result in an increase in the number of merchants who accept Discover Global Network cards, which would increase value for cardholders.

The Board concludes that the performance of the proposed nonbanking activities, as assessed under Regulation Y, Board precedent, and this order, is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the U.S. banking or financial system. Based on the entire record, and

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[110] 12 U.S.C. § 1843(j)(2)(A).

[111] See, e.g., LINKBANCORP, Inc., FRB Order No. 2023-007 (Nov. 15, 2023); First Citizens BancShares, Inc., FRB Order No. 2021-12 (Dec. 17, 2021); The Toronto-Dominion Bank, FRB Order No. 2020-04 (Sept. 30, 2020); Morgan Stanley, 94 Federal Reserve Bulletin C103 (2008); Arvest Bank Group, 89 Federal Reserve Bulletin 439 (2003); The Charles Schwab Corporation, 86 Federal Reserve Bulletin 494 (2000).

for the reasons discussed above, the Board concludes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience to the public, financial stability, and other factors weigh in favor of approval of the proposal. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.[112] In reaching its conclusion, the

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[112] Some commenters expressed concerns regarding ex parte communications and the opportunity for the public to rebut all information that was provided by Capital One. On review, the Board found that the public had a full opportunity to provide the Board with information related to the factors that the Board must consider in acting on the proposal. The information submitted by Capital One, and the release of that information to the public, was in accordance with the Board's regulations and policies.

A commenter requested that the Board hold additional public meetings. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); see also 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. The Board's regulations provide for a formal public hearing or informal public meeting on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing or meeting if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the request in light of all the facts of record. In the Board's view, commenters have had ample opportunity to provide testimony and submit comments on the proposal. As noted above, the Board and the OCC held a virtual public meeting on the application, at which 147 individuals gave testimony. Commenters submitted numerous written comments that the Board has considered in acting on the proposal. The request does not identify disputed issues of fact that are material to the Board's decision and would be clarified by further public meetings. In addition, the request does not demonstrate why written comments do not present the commenter's views adequately or why further meetings otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that

Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Capital One with all the conditions imposed in this order and on any commitments made to the Board in connection with the proposal. The Board's approval also is conditioned on receipt by Capital One of all required regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 30th calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Richmond, acting under delegated authority.

By order of the Board of Governors,[113] effective April 18, 2025.

(signed) Ann E. Misback

Ann E. Misback
Secretary of the Board

further public meetings are not required or warranted in this case. Accordingly, the request for further public meetings on the proposal is denied.

One commenter stated the Board's comment period should have been extended further. As noted above, the Board provided for a comment period of more than 119 days. During this time, multiple commenters submitted detailed comments in writing regarding the proposal. The Board's rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter did not identify circumstances that would warrant a further extension of the public comment period for this proposal. Accordingly, the Board has determined not to further extend the comment period.

[113] Voting for this action: Chair Powell, Vice Chair Jefferson, Governors Bowman, Waller, Cook, Barr, and Kugler.