Americans for Financial Reform Education Fund

Capital One-Discover Merger Fails to Meet Bank Merger Act Public Interest Requirements

The proposed acquisition of Discover by Capital One would create the sixth-largest bank in the United States, with $624 billion in consolidated domestic assets. However, this transaction does not meet the public interest conditions under the Bank Merger Act and Bank Holding Company Act. These statutes direct banking regulators to reject mergers, like the Capital One-Discover transaction, that fail to further the convenience and needs of communities, have sufficient managerial resources and solid financial prospects, or pose risks to the stability of the banking or financial system. Capital One has a demonstrated record of failing to fulfill the commitments it made to secure previous merger approvals, which alone warrants the rejection of this merger under these laws.

Due to the unique, vital economic role of chartered banks, Congress required regulatory evaluations of bank merger applications based on whether the combinations would satisfy the public interest. Banks play a critical function providing credit and financial services to households and businesses. Federal banking laws recognize this status by chartering banking institutions, delineating permissible banking activities, supervising the safety and soundness of banks, and requiring banks to serve the credit needs of all communities, including lower-income areas and communities of color, under the Community Reinvestment Act. Also, the federal government provides direct and implicit subsidies to chartered banks that justify increased merger scrutiny, including deposit insurance and discounted borrowing from the Federal Reserve.

Merger would harm the convenience and needs of consumers and communities: The merger would not enhance the quality of banking services offered to consumers and communities. The banks' credit card offerings — its primary product —target lower-income, Black, and Latine consumers, have been marketed deceptively, and use aggressive and unlawful collection practices. Capital One targets non-prime borrowers and routinely increases the credit cap of cardholders with subprime credit scores without their permission, effectively encouraging borrowers that had neared their credit limit to take on additional debt. Since 2006 Capital One has paid $225 million to settle deceptive credit card marketing cases and paid $87 million to settle cases that alleged it had unlawfully pursued or collected debts.

Capital One pledged, in its prior takeovers of Hibernia National Bank, North Fork Bancorp, and Chevy Chase Bank, that it would maintain its geographic footprint and banking services. But it closed 71% of its branches since 2009, a step which had disproportionate impact on lower-income, Black, and Latine communities that have lost access to retail banking services. It also stopped making home purchase and home improvement loans in 2017, sharply contracting the services that were offered by the banks it had acquired. And the merger is likely to include significant layoffs as Capital One eliminates duplicative credit card underwriting, servicing, and marketing operations, especially around Discover's Chicago headquarters.

Spotty compliance records do not fulfill "managerial resources" requirement: The merger would combine banks with significant regulatory compliance problems. Banking regulators must consider the merging banks history of compliance with banking and consumer protection laws and regulations under the "managerial resources" provision. When the Federal Reserve approved Capital One's takeover of ING, it required the bank to implement a regulatory compliance plan to address Capital One's compliance shortcomings. But its checkered record persisted — it paid $490 million in penalties for money laundering and $270 million in fines and settlements for exposing customers to a privacy breach on top of the credit card settlements — despite its commitments and expressed intent in prior merger approval orders. Discover signed a 2023 FDIC consent decree to address safety and soundness and consumer protection compliance issues that have festered for years. The continued regulatory compliance problems — even after the bank's commitments in prior mergers — warrant the rejection of this merger.

The combined bank could pose systemic risk to the financial system: The proposed merger would undermine the future prospects of the combined firm under stressed circumstances by creating a substantially larger bank with an unusually heavy exposure to risky credit card loan assets, leaving the firm vulnerable to financial distress in the event of a broad economic downturn. Credit card loans would make up nearly 40% of the assets of the combined firm; an outsize portion of those loans may be even more susceptible to delinquency and default. Capital One and Discover have much higher credit card delinquency rates than other large lenders. The 2023 Federal Reserve stress test found that Capital One's credit card assets could decline by 22% under macroeconomic stress *before* the merger, which would amount to a $54 billion erosion of assets for the combined bank.

These factors make the combined bank more susceptible to losses that could destabilize the financial and banking system. The size of the combined firm increases the chances that an economic stress could spark financial contagion that could be transmitted to other similarly situated banks, as happened with much smaller banks in 2008 and 2023. Additionally, if the merged bank became distressed and became unable to provide its regular-course-of-business transactions and critical functions to customers, its distress would heighten the risk to financial stability. The combined bank would hold 22% of credit card loans, be a key pillar of the credit card processing network and provide debit card services to over 4,100 other banks. There would be no ready substitutes for an institution that served such a large share of the market.

For more information, see AFREF's [Bank Merger Act Requires Rejection of Capital One-Discover Merger]