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November 15, 2024

VIA EZFile

Brent Hassell
Assistant Vice President
The Federal Reserve Bank of Richmond
P.O. Box 27622
Richmond, VA 23261

Re: Additional Information Regarding Application by Capital One Financial Corporation to Acquire Discover Financial Services (the "Additional Information Request")

We are submitting this letter and the related exhibits in response to your request for additional information, dated November 4, 2024, regarding the application seeking the prior approval of the Board of Governors of the Federal Reserve System (the "Federal Reserve") for Capital One Financial Corporation ("Capital One"), the parent of Capital One, National Association, to acquire Discover Financial Services ("Discover") and thereby acquire control of its subsidiary bank, Discover Bank (the "Application"). For ease of reference, your questions are included in bold with the responses immediately following. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Application.

*   *   *

Confidential treatment is being requested under the federal Freedom of Information Act, 5 U.S.C. § 552 (the "FOIA"), and the implementing regulations of the Board of Governors of the Federal Reserve System (the "Federal Reserve"), for the information contained in the Confidential Exhibits Volume to this letter (the "Confidential Materials"). The Confidential Materials include, for example, information regarding the business strategies and plans of (1) Capital One Financial Corporation ("COFC"), Vega Merger Sub, Inc. ("Merger Sub") and Capital One, National Association ("CONA") and (2) Discover Financial Services ("Discover") and Discover Bank, and other information regarding additional matters of a similar nature, which is commercial or financial information that is both customarily and actually treated as private by COFC, Merger Sub, CONA, Discover and Discover Bank and provided to the government under an assurance of privacy. Certain information in the Confidential Materials also includes confidential supervisory information, which is protected from disclosure. None of this information is the type of information that would otherwise be made available to the public under any circumstances. All such information, if made public, could result in substantial and irreparable harm to COFC, Merger Sub, CONA, Discover and Discover Bank. Other exemptions from disclosure under the FOIA may also apply. In addition, investors and potential investors could be influenced or misled by such information, which is not reported in any documents filed or to be filed in accordance with the disclosure requirements of applicable securities laws, as a result of which COFC, Merger Sub, CONA, Discover and Discover Bank could be exposed to potential inadvertent violations of law or exposure to legal claims. Accordingly, confidential treatment is respectfully requested for the Confidential Materials under the FOIA and the Federal Reserve's implementing regulations.

Please contact the undersigned (212-403-1354), Matthew T. Carpenter (212-403-1031) or Ledina Gocaj (212-403-1022) before any public release of any of this information pursuant to a request under the FOIA or a request or demand for disclosure by any governmental agency, congressional office or committee, court or grand jury. Such prior notice is necessary so that COFC, Merger Sub, CONA, Discover and Discover Bank may take appropriate steps to protect such information from disclosure.

If you have any questions about this submission or confidential treatment request, please do not hesitate to contact me.

Very truly yours,

Richard K. Kim

Enclosure

cc (by email):

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Capital One Financial Corporation Public Responses to Additional Information Request from the Federal Reserve Bank of Richmond, dated November 4, 2024

1. **Exhibit 1 of Capital One's Additional Information Response dated April 11, 2024, notes that Capital One intends to rely on 12 CFR 225.28(b)(1) as authority to retain the voting shares of Discover Home Loans, Inc. ("DHL Inc.") after consummation of the proposal. Exhibit C of Capital One's Additional Information Response dated June 14, 2024, notes that DHL Inc. continues to support loan repurchase requests, respond to quality assurance audits, and creates reports of repurchase activity. Confirm, if such is the case, that Capital One continues to intend to rely on section 4(c)(8) of the BHC Act to retain the voting shares of DHL Inc. after consummation of the proposal. Alternatively, clarify the authority under section 4 of the BHC Act that Capital One would use to retain these shares.**

Prior to ceasing operations in 2015, DHL Inc. provided mortgage lending services for loans it originated and sold on a servicing released basis to Fannie Mae, Freddie Mac and other lenders. In 2015, DHL Inc. stopped offering mortgage origination products and sold its origination business operations. The entity remains inactive and continues to have no business operations. As described in greater detail in Capital One's response to the Federal Reserve's third request for additional information, dated June 14, 2024, DHL Inc. continues to have an obligation to support loan repurchase requests, respond to quality assurance audits and create reports of repurchase activity. However, DHL Inc. has not repurchased any loans since 2015 and has not indemnified any loans since 2014. DHL Inc. would take these actions only to support Discover Financial Services or its subsidiaries; DHL Inc. does not itself have any employees and does not provide services or engage directly with external third parties.

Capital One will therefore not rely upon Section 4(c)(8) of the BHC Act to acquire DHL Inc., and the authority under 12 CFR § 225.28(b)(1) was previously listed in error (based on activities conduct by DHL Inc. prior to becoming inactive). Given that DHL Inc. remains inactive and does not have any business operations, Capital One believes that DHL Inc. is not engaging in any activities. However, to the extent that an authority is required for DHL Inc.'s role in supporting repurchase requests the correct authority upon which Capital One would rely to acquire DHL Inc. remains as originally reported in Capital One's Section 3 application to the Federal Reserve: 12 CFR § 225.22(b).

2. **The Board has received comments objecting to the proposal. To the extent not discussed in the Supplemental Information that Capital One submitted on August 7, 2024 ("Supplemental Information"), please provide information that is responsive to the following comments:**

    a. **Several commenters contend that Discover's status as a major issuer and owner of a debit payment network may give Capital One the ability and incentive to raise payment card transaction fees post-merger. Respond to these contentions. In your response, discuss the applicability of Regulation II's exemptions; whether Capital One plans to increase the transaction fees on Discover's networks; an explanation of the factors that would influence future potential increases in fees; how the acquisition of the Discover**

network would allow specific costs to be lowered and product and services improved, specifically as it relates to interest rates and fees; and any planned positive impacts on customers, merchants, and small businesses.

Note: A version of this response that also provides the citations to confidential sources is provided in the Confidential Annex A*. Those citations and a small amount of confidential material have been deleted from the version provided below.*

The Proposed Transaction will not give Capital One the ability or the incentive to raise payment card transaction fees post-merger. As described in Capital One's Application, competition for checking accounts, particularly primary bank accounts from which debit purchases derive, is robust. Capital One does not have market power today and it will not have market power as a result of the Proposed Transaction. Capital One will be no more able to force merchants to accept its debit cards than it is able to force consumers to bank with Capital One or use its debit card for purchases across the myriad of payment instruments.

The largest banks hold a significant share of primary banking relationships,[1] and others like Capital One compete vigorously with new product innovations for these relationships. For example, Capital One was the first top-ten retail bank to eliminate overdraft charges,[2] which resulted in Capital One booking approximately 2 million new checking accounts, a 10.1% change over 2021, and increasing its debit purchase volume by 15.1%. Capital One nonetheless remains small in checking compared to traditional banks that offer less attractive checking account terms.[3] Larger banks, in particular, are able to attract primary accounts and checking deposits at a significant cost discount to smaller or digital-first banks like Capital One.[4] As of

[1] *See* Mary Wisniewski, *Survey: Consumers stick with the same checking account for an average of 17 years*, BANKRATE (Jan. 4, 2022), https://www.bankrate.com/banking/how-long-people-keep-their-checking-savings-accounts/ ("[T]he average U.S. consumer has held on to the same checking account for 17.75 years, and 16.69 years for a primary savings account."); PYMNTS, *Study Finds Fewer Than 10% of Consumers Use FinTechs as a Primary Bank* (Sept. 12, 2022), https://www.pymnts.com/consumer-finance/2022/study-finds-fewer-than-10-of-consumers-use-fintechs-as-a-primary-bank/ ("Many consumers are not yet prepared to cut ties with their traditional financial institutions . . . [b]ut . . . this status quo is starting to change as consumers become curious about the benefits of digital banking, including easier transfers, lower costs and better notifications.").

[2] *See* Press Release, Capital One, *Capital One Eliminates Overdraft Fees for Customers* (Dec. 1, 2021), https://www.capitalone.com/about/newsroom/eliminating-overdraft-fees/.

[3] COFC's checking accounts have no monthly service fee, no account minimums, overdraft protection, and no overdraft fees. In comparison, checking accounts at Wells Fargo, Bank of America, and Chase Bank all have a monthly fee—which, in some cases, may be waived when an account meets certain minimum balance or direct deposit requirements—do not offer overdraft protection (*i.e.*, a charge that exceeds the account balance will be declined or returned), or charge a fee for overdraft protection. *Compare* Capital One, *Compare Checking & Savings Accounts*, https://www.capitalone.com/bank/open-an-account/ (last accessed Mar. 11, 2024) *with* Wells Fargo, *Checking Accounts*, https://www.wellsfargo.com/checking/ (last accessed Mar. 11, 2024); Bank of America *Checking*, https://www.bankofamerica.com/deposits/checking/advantage-banking/ (last accessed Mar. 11, 2024) (enter zip code data into search query); Chase, *Checking*, https://personal.chase.com/personal/checking (last accessed Mar. 11, 2024). Capital One checking customers can also add cash to their accounts at any Walgreens or CVS location using the Capital One mobile application without a debit card or ATM. Capital One, *Add Cash in Store*, https://www.capitalone.com/bank/add-cash-in-store/ (last accessed Mar. 18, 2024).

[4] *See, e.g.*, Max Reyes, *Regional Banks Battle for Deposits with Tougher US Rules Looming*, BLOOMBERG (July 17, 2023), https://www.bloomberg.com/news/articles/2023-07-17/regional-banks-battle-for-deposits-with-tougher-us-rules-looming (reporting on increased cost of deposits on smaller banks); Stefan Jacewitz & Jonathan Pogach,

December 31, 2023, Capital One ranked 16th in total transaction account deposits among banks and thrifts—not only behind the nation's largest banks, but also behind regional banks such as PNC Financial Services Group, KeyCorp, Citizens Financial Group, Huntington Bancshares, and Regions Financial, among others—and the combined Capital One-Discover will remain 16th after the Proposed Transaction with a combined share of just 1.1% of total U.S. transaction account deposits.[5]

Debit networks are notoriously concentrated, owing entirely to Visa and Mastercard, which accounted for approximately 85% of 2023 debit purchase volume. Discover, on the other hand, accounted for only 5% of such purchases. Moving all of Capital One's debit volume to the Discover's debit networks would increase Discover's debit network volume share from a modest 5% to a still-modest 6.5%.[6] This combined share of debit purchase volume would remain less than what Discover's debit network volume share was in each of 2008 to 2014, after which, Discover's share has declined.

As the Department of Justice recently alleged:

- "Visa is the dominant front-of-card network, Mastercard is the distant second front-of-card network, and two much smaller players account for the remainder."[7]
- "PIN Networks [like Discover's PULSE debit network] Lack Scale and Meaningful Opportunities to Compete for Debit Transactions."[8]
- "For most transactions, Visa's network fees are significantly higher than those of the PIN networks [like Discover's PULSE network],"[9] and "Visa, by its own recognition, continues to win despite PIN networks generally offering lower prices."[10]

The Proposed Transaction, nonetheless, has the potential to strengthen and scale the Discover's networks through the continued offering of attractive banking products and investments to improve the network. Increasing the competitive significance of the smallest competitor—Discover—in a highly concentrated industry tends to decrease prices, increase quantity, improve network quality for merchants and consumers, and incentivize competitors to increase their investments in product development, innovation, and customer service, among other aspects of competition.[11] Post-transaction, Discover's networks will benefit from

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Deposit Rate Advantages at the Largest Banks, 53 J. FIN. SERVS. RSCH. 1 (2018) (finding that the perception of lower risk at large banks led to large banks paying a lower risk premium).

[5] [*Redacted*].

[6] *See* [*redacted*].

[7] Complaint, ¶¶ 40, *United States* v. *Visa*, No.: 24-cv-7214 (S.D.N.Y. Sept. 24, 2024) (hereinafter "Visa Complaint").

[8] Visa Complaint at 22.

[9] Visa Complaint ¶ 45.

[10] Visa Complaint ¶ 96.

[11] *See* Organization for Economic Cooperation and Development, *Start-ups, Killer Acquisitions and Merger Control–Note by the United States*, Directorate for Financial and Enterprise Affairs Competition Committee, DAF/COMP/WD (2020) (June 11, 2020), https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/oecd-killer_acquisiitions_us_submission.pdf ("New entry, as well as

strengthened indirect network effects—which characterize card network markets[12]—from an immediate and over-time influx of consumers on one side of the network, making Discover's networks and products more valuable to merchants on the other side of the network.[13] Given the reduced and declining share—and limited current competitive significance—of Discover's networks today, the Proposed Transaction will play a pivotal role in increasing competition among payments networks.

Although the Proposed Transaction will not materially affect Capital One or Discover's competitive position in checking accounts or debit networks, it will allow Capital One to vertically integrate, resulting in improved debit economics and the ability to make additional investments to scale and improve network quality. When a customer makes a purchase with a debit or credit card, the merchant pays a merchant discount fee[14] comprising (1) a payments network fee and (2) an interchange fee paid to the cardholder's issuing bank (*i.e.*, Capital One).[15] In a three-party network, however, the payments network provider and the cardholder's issuing bank are commonly held. As a result, the merchant discount fee encompasses both the payments network and interchange fees.

Capital One transacts credit and debit transactions on four-party networks today. When a customer makes a purchase using a Capital One credit or debit card, Visa or Mastercard collects a payments network fee from both the merchant and the card issuer and Capital One receives an interchange fee from Visa or Mastercard. As a result of the Proposed Transaction, Capital One will vertically integrate with Discover's networks and, in so doing, the fees that Capital One will receive from merchants for debit transactions will reflect more of the merchant discount fee rather than just the interchange fee it receives from Visa and Mastercard today. Capital One will also not owe a network fee to Visa or Mastercard. That Capital One will receive more from each

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expansion by existing firms, can spur innovation that benefits consumers."); *see also* U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf, at and 11 ("New entry can yield a variety of procompetitive effects, including increased output or investment, higher wages or improved working conditions, greater innovation, higher quality, and lower prices."); U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines (2010), https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf ("Competition usually spurs firms to achieve efficiencies internally. Nevertheless, a primary benefit of mergers to the economy is their potential to generate significant efficiencies and thus enhance the merged firm's ability and incentive to compete, which may result in lower prices, improved quality, enhanced service, or new products. For example, merger-generated efficiencies may enhance competition by permitting two ineffective competitors to form a more effective competitor, *e.g.*, by combining complementary assets.").

[12] Jean-Charles Rochet & Jean Tirole, *Platform Competition in Two-sided Markets*, J. EUR. ECON. ASS'N, Vol. 1, No. 4 (2003); Jean-Charles Rochet & Jean Tirole, *Two-Sided Markets: A Progress Report*, RAND J. ECON., Vol. 37, No. 3 (2006); Evans, David S. Evans & Richard Schmalensee, *Multi-sided Platforms*, *in* THE NEW PALGRAVE DICTIONARY OF ECONOMICS (2017), available at https://doi.org/10.1057/978-1-349-95121-5_3069-1.

[13] *Cf. Ohio* v. *American Express*, 585 U.S. 529, 544 (2018) ("Due to indirect network effects, two-sided platforms cannot raise prices on one side without risking a feedback loop of declining demand. . . . Thus, courts must include both sides of the platform—merchants and cardholders—when defining the credit-card market.").

[14] In some cases, a merchant negotiates the merchant discount fee directly with the payments networks. In most cases, merchants rely on a merchant acquirer that negotiates merchant discount fees on behalf of individual merchants. In these cases, the merchant discount fee also includes a fee to the merchant acquirer.

[15] *See* Visa Complaint at ¶¶ 43-45 (describing how debit networks get paid).

debit transaction, however, does not reflect an increase in fees but the fact that Capital One will now also provide payments network services.

Regulation II (Debit Card Interchange Fees and Routing) ("Reg II"), also known as the Durbin Amendment, "establishes standards for assessing whether a debit card interchange fee received by a debit card issuer for an electronic debit transaction is reasonable and proportional to the costs incurred by the issuer with respect to the transaction."[16] Pursuant to Reg II, the Federal Reserve Board establishes interchange fee standards setting an interchange fee cap comprising a base component (presently $0.21), an *ad valorem* component (5 basis points multiplied by the value of the transaction), and, for certain issuers, a fraud-prevention adjustment (up to $0.01 per transaction).[17] Reg II exempts from the interchange fee standards and interchange fee cap, small debit issuers, debit cards issued in connection with a government-administered payment program, and general-use prepaid payment cards.[18] In a three-party network, as described above, there is no interchange fee paid from the payment network to the debit card issuing bank, because the network and the debit issuing bank are commonly held.[19] Instead, the debit card issuing bank receives a merchant discount fee directly from and as negotiated between the issuing bank and the merchant or merchant acquirer. As there is no interchange fee to regulate, Reg II does not apply to transactions that are processed over a three-party network.[20]

Thus, for transactions for which Discover is both issuer and network and there is no interchange fee to regulate, Capital One will be in the same position post-transaction as Discover is today. Capital One must negotiate—just as Discover does today—with merchants and merchant acquirers on an acceptable merchant discount fee. As described above, the Proposed Transaction will not give Capital One and Discover market power to impose, nor has Capital One assumed, higher merchant fees. In fact, depending on the merchant and transaction, the three-party network merchant discount fee may be more or less than the merchant discount fee paid in a comparable four-party network transaction (even if one component part of the merchant discount fee, the interchange fee, is subject to a regulatory cap).[21]

In analyzing the benefits of migrating existing debit and credit cards and issuing new credit and debit cards on Discover's networks, Capital One did not assume any price increase in Discover's merchant discount fee, and Capital One does not intend to increase any fees on

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[16] *Regulation II (Debit Card Interchange Fees and Routing*), Federal Reserve, https://www.federalreserve.gov/paymentsystems/regii-about.htm.

[17] 12 CFR Part 235.

[18] *See* Frequently Asked Questions about Regulation II (Debit Card Interchange Fees and Routing), https://www.federalreserve.gov/paymentsystems/regii-faqs.htm.

[19] *See, e.g.*, Letter from Robert Willig, American Express General Counsel's Office, to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, February 22, 2011, https://www.federalreserve.gov/SECRS/2011/March/20110303/R-1404/R-1404_022211_67230_584162046602_1.pdf.

[20] 12 CFR Part 235 (excluding from the definition of "payment card network," three-party systems where "debit transactions are processed by an entity that acts as system operator and issuer, and may also act as the acquirer.").

[21] As the Department of Justice recently alleged in the Visa Complaint, "For most [debit] transactions, Visa's network fees are significantly higher than those of the PIN networks [like Discover's PULSE network]." Visa Complaint ¶ 45.

Discover's debit or credit networks as a result of the Proposed Transaction.[22] A number of factors could influence potential fee changes, including legislative or regulatory changes, changes to Visa, Mastercard, and other competitors' services and/or fees, changes in consumer purchasing behavior, including switching to non-debit card payment options, changes that would allow merchants and merchant acquirers to negotiate more favorable fees and terms, and improvements to and greater acceptance and scale of the Discover Network.

The additional economics associated with transacting as a three-party network (*i.e.*, receiving more of the merchant discount fee and internalizing network fees that Capital One pays to Visa and Mastercard today)[23] will allow Capital One to improve its existing products and services, to invest in new and better products and services, and to better compete against much larger banking institutions like JPMorgan Chase, Bank of America, and Wells Fargo.[24]

Capital One plans to significantly invest in the quality of the Discover Global Network across the following dimensions:

- Discover's merchant acceptance, by increasing purchase volume on these networks through a material increase in the number of customers using the networks and building stronger relationships with merchants and merchant acquirers in the United States and abroad;[25]

- Discover's brand equity, by building greater brand awareness and consumer perception of merchant acceptance;

- Discover's network integrity, by reducing unnecessary transaction declines and improving payment and fraud dispute resolution processes;[26]

- Discover's technology stack, by bringing Discover's software tools and cybersecurity practices in line with Capital One's and decreasing Discover's reliance on technology contractors;[27] and

- Discover's risk management and compliance, by implementing Capital One's strong enterprise risk management framework at Discover.[28]

Capital One expects its planned investments in improved fraud detection and prevention technologies, in particular, to reduce the price of transactions for issuers, consumers, and merchants. As the Federal Reserve previously found, fraud losses for debit cards are on the rise (17.5 bps in 2021 versus 7.8 bps in 2011). These losses are borne by issuers, merchants, and

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[22] *See* [*redacted*].
[23] *See* [*redacted*].
[24] *See* [*redacted*].
[25] *Id.* at 7.
[26] *Id*. at 23, 37.
[27] *Id*. at 112-14.
[28] *Id*. at 81-85.

cardholders.[29] As the Department of Justice recently acknowledged in a court filing, Visa, by far the dominant debit network, "bears no financial risk for fraud. If someone uses a stolen debit card to run up fraudulent purchases, for example, the merchant or the issuer bears the financial risk—never Visa."[30] Capital One, as an issuer-network, will have significant incentives to improve fraud detection and prevention due to the high costs borne by Capital One. In 2023, Capital One's fraud losses and investments in fraud detection and prevention amounted to an estimated $70 million.

[*Redacted*].[31] [*Redacted*],[32] [*redacted*].[33]

Capital One already offers an industry leading no-fee, no-minimum balance checking account product, and has no plans to make any changes to these terms as a result of the Proposed Transaction. As Capital One has committed to in its Community Benefits Plan, and as made possible by the additional economics associated by transacting in a three-party system,[34] Capital One does plan to significantly *expand* access to its consumer-friendly no fee, no-minimum balance checking accounts. Capital One plans to incentivize additional checking account openings by, *inter alia*, offering cash bonuses to new checking customers who meet specified criteria, which is a direct monetary benefit to consumers.[35]

Merchant acceptance is another area where customers are likely to benefit from the Proposed Transaction. Capital One intends to increase merchant acceptance through marketing initiatives and technological investments. Through these efforts and by adding customers to the Discover Network, Capital One will improve merchant acceptance of the Discover Network, including internationally, where Discover acceptance is lacking compared to Visa and Mastercard, which in turn benefits customers who will be able to transact through the Discover Network with a broader set of merchants.

b. Several commenters allege that there are customer service differences between Discover and Capital One. Specifically, commenters allege that Discover provides better customer service than Capital One and that the combined organization would not have sufficient incentives to maintain Discover's current customer service standards. Clarify whether Capital One has conducted a review to identify differences in the customer service programs of Capital One and Discover, and whether Capital One has plans

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[29] *See* BOARD OF GOVERNORS OF THE FEDERAL RESERVE, 2021 INTERCHANGE FEE REVENUE, COVERED ISSUER COSTS, AND COVERED ISSUER AND MERCHANT FRAUD LOSSES RELATED TO DEBIT CARD TRANSACTIONS 3 (Oct. 2023), https://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2021.pdf.

[30] Visa Complaint ¶ 65.

[31] *See* [*redacted*].

[32] *See* [*redacted*].

[33] *See* [*redacted*].

[34] *See id*. at 37 ([*redacted*]).

[35] *See* [*redacted*].

to incorporate aspects of Discover's approach into the merged institution's customer service program.

Contrary to the commenters' claims, Capital One receives high marks for overall customer satisfaction, including #1 in JD Power U.S. National Banking Overall Customer Satisfaction, for four years running. In addition, Capital One frequently ranks #1 in Net Promoter Score (NPS) for major Visa/Mastercard issuers. Put simply, Capital One and Discover are among the very top banks in the United States in terms of creating customer satisfaction. Both institutions will learn from each other after closing of the Proposed Transaction to achieve high levels of customer satisfaction as a combined organization.

Capital One and Discover are both companies that highly value customer experience and invest in offering great customer service. Throughout diligence and in integration planning, Capital One has identified a broad set of similarities in approach to customer service programs between Discover and Capital One, including, but not limited to:

- Hours of operation;
- Company-wide service levels (*e.g.*, ratio of calls answered within 30 seconds);
- Agent training and advancement programs;
- Investments in specialized agent servicing software;
- Policies designed to help customers across products and experiences (*e.g.*, forbearance and hardship policies to help customers facing life hurdles and financial challenges); and
- A strong focus on customer experience, with monitoring and controls in place to escalate customer issues to executives.

Capital One also identified some key differences in approach to customer service programs between Discover and Capital One, including but not limited to:

- Discover markets servicing as a key tenet of its value proposition in its national advertising, where Discover has built brand equity around great servicing;
- Employees who handle Discover Voice servicing are fully based in the United States;
- Discover owns and operates a proprietary credit network, which enables good customer experiences in some of the most complex servicing challenges like merchant disputes and fraud;
- Discover does not apply tiering or segmentation filters to its customer base;
- Discover owns its own fulfillment center for statements, letters and plastic personalization; and

- Discover operates a prominent Live Agent Chat program.

Throughout the integration, Capital One aims to preserve the key differentiators that drive positive outcomes for customers. Within customer servicing, the goal is to learn from Discover's operations and bring those learnings to the full joint customer base. For example, based on the strong customer use of Discover's Live Agent Chat capabilities, Capital One plans to invest in building similar capabilities both for converted Discover accounts and the existing Capital One portfolio.

c. Some commenters express concerns regarding the proposal's potential impact on communities, consumers, merchants, and small businesses, particularly belonging to LMI and minority communities. Respond to these concerns.

Capital One is unique among large banks in its focus on meeting the needs of the full spectrum of American consumers. Since its inception, Capital One has served as an engine for financial inclusion and well-being at each stage of our customers' financial journeys. Underscoring a strong commitment to the principles of the Community Reinvestment Act ("CRA"), Capital One has ranked first or second among all banks in CRA-qualified community development lending by total dollar amount over the past six reported years.

Below we describe two aspects of our effort to meet the needs of the full spectrum of American communities, consumers and small businesses. First, Capital One has been an industry leader in serving the needs of LMI consumers through retail banking, credit card and auto loan products; and is first among the largest banks in percentage of branches located in LMI communities, where Capital One has also grown the presence of its iconic Cafés. Second, Capital One has emphasized a diverse and innovative delivery model for its products that can reach communities, consumers and small businesses across the country. The Proposed Transaction's effects on merchants are separately discussed in the response to Question 2(a).

Capital One's Commitment to Serving LMI communities

Capital One has long chosen to serve subprime and LMI consumers through our best-in-class credit card, auto and retail banking products where many other financial institutions, including large, midsize and small banks and credit unions, have made a strategic decision not to do so. Capital One has done so by offering highly competitive and proconsumer products with substantially lower and fewer fees than other providers, thus better enabling its customers to succeed with these products. Since its founding, Capital One has enabled over 42 million customers with subprime or no FICO scores, when they opened an account with Capital One, to achieve prime or better FICO scores. As a result, Capital One has grown and deepened these relationships, and been able to offer these customers, across all incomes and credit profiles, access to a suite of lending and deposit products.

As Capital One has grown, whether organically or via acquisition, its commitment to LMI consumers and communities has grown. As discussed further below, Capital One has significantly expanded and increased the scope and reach of its retail banking products and services, blending a unique mix of digital and physical delivery channels, to greatly increase its presence in LMI communities, and deposit balances from LMI consumers. Capital One offers checking and savings products *all* of which are uniquely designed to serve the needs of LMI consumers, with no fees, no minimums and free overdraft protection. Its flagship 360 Checking account is Bank On certified.

Since its inception, Capital One has also significantly grown its auto and credit card lending to LMI borrowers. Between 2012 and 2023, total LMI lending across Capital One's Auto and Consumer Card[36] divisions grew from $14.7 billion to $52.0 billion—an increase of 254 percent. On average over this period, Capital One provided $33.6 billion in LMI lending annually. Capital One is equally proud that a meaningful percent of its total lending flows to LMI consumers and communities. Between 2012 and 2023, the average percent of LMI lending annually was 50.1% and the range was from 45.8% to 53.2%. As stated above, this mix demonstrates how Capital One is unique among top 10 banks in serving LMI customers and communities.

Further underscoring its commitment to LMI populations, Capital One's Community Benefits Plan commits $265 billion in lending and investment to LMI consumers, small businesses and communities over five years. Of the $265 billion, over $215 billion will serve LMI consumers and small businesses. This lending includes direct lending through our Auto, Card, and Business Cards and Payments Divisions as well as indirect lending through Community Development Financial Institutions.

A further breakdown of the $215 billion is below:

- $125 billion in credit card lending to LMI consumers and consumers who reside in LMI communities nationwide over the duration of our Community Benefits Plan;
- $75 billion in automobile lending to LMI consumers and consumers who reside in LMI communities nationwide over the duration of our Community Benefits Plan;
- $15 billion to small businesses and businesses in LMI communities and/or businesses with $1 million or less in revenue; and
- $600 million to Community Development Financial Institutions ("CDFIs"), Minority Depository Institutions and credit unions. A portion of this lending will be directed to small businesses in LMI communities as well as LMI consumers through small dollar loans.

In addition to financial commitments related to LMI lending, Capital One has made several programmatic commitments designed to help all customers, and especially LMI and subprime customers, have success with its products and improve their financial well-being.

[36] Excludes U.S. credit card portfolio purchases.

Several programmatic commitments in Capital One's Card business build on the principles of expanding access to and success with credit, including:

- Expanding the Secured Card unsecuring program (returning customers' deposits) with the goal of unsecuring 90%+ of customers in good standing with Capital One and other bureau accounts once they have been a customer for two years. This represents a 15-20% expansion of this program, and builds upon Capital One's practice of auto-reviewing accounts for unsecuring eligibility to proactively support customers' ability to improve their credit standing;

- Providing a streamlined ability to opt out of credit line increases through a simple and easy-to-use digital interface, allowing customers to more easily control decisions regarding their available credit; and

- Enhancing CreditWise functionality with more financial health tools, including a goal setting tool to help consumers achieve critical milestones in credit score improvement.

In Auto, Capital One has made a commitment to launch a "Second Look" auto loan program to refer consumers declined through Capital One's Auto Navigator to CDFIs, and provide pro bono and technical assistance to CDFI partners to enhance and expand their ability to serve a critical need within this market. Additionally, Capital One will expand its "Keep Customers in their Cars" program, which leverages innovative loan adjustments and modifications to avoid repossession. This program is specifically designed to provide customers with ongoing access to mobility, a critical resource in accessing and maintaining jobs, affordable housing, healthcare and healthy food and other essential services. Finally, Capital One committed to connect nonprofits and their clients to Capital One's Auto Navigator tool to equip consumers with a resource that provides more transparency into the auto financing process, which enables them to shop with more confidence.

Beyond the $15 billion in lending to small businesses, Capital One has committed to launching Ventures Lending – a mission-based credit card focused on closing gaps in equity and opportunity targeted to traditionally underserved small businesses. This new product will provide below-market rate pricing and was based on input from Capital One's Community Advisory Council. Capital One will partner with CDFIs to originate lending and deliver wrap-around services designed to enhance the long-term viability of these businesses.

As a national bank and one of the country's largest consumer lenders, Capital One's core credit card and bank advertising campaigns are designed to reach a broad population and diverse audiences that represent the U.S. population. Capital One partners with media suppliers such as BET, Univision and Blavity to develop content created by and for people of color. Capital One also invests in media properties owned by people of color including Urban One, Allen Media Group and Canela Media. As part of the Community Benefits Plan, Capital One is taking additional steps to increase awareness of and access to its industry-leading credit and deposit products by underserved consumers, including consumers of color. For example, the Community Benefits Plan pledges a 30% increase in diverse and culturally relevant marketing spend over the duration of the Community Benefits Plan.

Capital One's Diverse, Innovative Delivery Network for Products

Capital One has strategically developed a diversified delivery network to meet a range of continually evolving customer needs. This delivery network is a blend of in-person and digital channels that meet customers where they are. This strategy has also enabled Capital One to make substantial investments in best-in-class deposit products, leading digital capabilities for customers, expanded national physical presence through a network of innovative Cafés, better-than-industry deposit growth, elimination of overdraft fees and digital literacy support for customers and noncustomers alike. These investments in digital banking capabilities have significantly increased access to banking services and have bridged the gap for underserved populations. The results of these investments stand as an irrefutable testament to that fact.

Customer preferences, including how they manage their money and interact with banks, continue to evolve. Capital One's customers are increasingly engaging with us digitally. Capital One was early to recognize and respond to these changes in consumer behavior, in particular, how most banking transactions that traditionally occurred in branch locations have significantly shifted to mobile banking and other digital channels. The expanded capabilities of these alternative channels and the extraordinary growth in consumer use have forever changed the role of the physical branch location. Capital One continues to see steady growth in many digital channels and tools; however, Capital One knows that customers also value physical presence. Capital One does too, and its goal is to deliver compelling and optimal customer experiences across all channels, not just one.

This plan has provided a strategy that is effective with all segments of consumers, especially those who live in LMI geographies across Capital One's footprint. The strategy has focused on maintaining an extraordinarily strong distribution of branches in LMI areas. From CONA's 2007-2010 CRA exam period to June 30, 2024, only 20% of the branches that have closed were in LMI areas. The remaining 80% were in middle- and upper-income areas or areas where the income is not available. As illustrated in the following chart, Capital One's branch distribution in LMI areas has increased in every successive CRA examination period since 2010, even with standard governmental revisions of census tract income designations occurring every five years. According to the FDIC, as of June 30, 2024, there were 48 depository institutions with 200 or more branch locations. The average percentage of branches in LMI areas for these institutions is 25.9%. Capital One's current percentage of branches in LMI areas (34%) is substantially higher than that average. Additionally, of those 48 depository institutions, only one (which ranks #25 with 350 branch locations) has a higher percentage of branches in LMI areas than Capital One.

Capital One's Branch Distribution by Tract Income							
Tract Income	**12/31/2010**	**12/31/2013**	**12/31/2016**	**12/31/2019**	**12/31/2022**	**12/31/2023**	**6/30/2024**
LMI	20.6%	25.4%	27.3%	29.2%	32.3%	32.5%	34.0%
Non-LMI	79.4%	74.6%	72.7%	70.8%	67.7%	67.5%	66.0%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Since the acquisition of ING Direct in 2012, Capital One has expanded its presence in new and existing assessment areas through its innovative and unique Cafés. Capital One currently has 55 Capital One Cafés with 44 operating in 21 of the top 25 MSAs. Cafés are non-branch facilities where current and prospective customers can access retail banking services through deposit-taking ATMs and mobile and online banking. Cafés are staffed by Capital One personnel ("Ambassadors") who provide customer service and account assistance through digital tools, such as mobile phones and tablets. In fact, Capital One has made significant investments to expand the services offered at Café locations. Ambassadors can guide or assist customers with completing almost all the services that can be completed at a branch location, with certain limitations. The Cafés include several amenities designed to benefit the whole community, such as meeting spaces available for use by the community, free Wi-Fi and financial education workshops that are open to the public.

The Café sites are generally in high-traffic areas that are most likely to be routinely convenient for broad and diverse populations. In fact, based on customer usage data from 2020-2023, more than 75% of the Capital One's Café network is readily accessible to LMI populations when compared to demographic benchmarks.[37] And as Capital One's Café network has expanded, so too have its CRA responsibilities. At the end of Capital One's 2013 CRA exam period and following its acquisition of ING Direct, Capital One had 37 assessment areas in Connecticut, Delaware, Louisiana, Maryland, New Jersey, New York, Texas, Virginia, and Washington D.C. Today Capital One has 59 assessment areas that include locations in the additional states of Arizona, California, Colorado, Florida, Georgia, Illinois, Massachusetts, Michigan, Minnesota, Missouri, Nevada, Ohio, Oregon, Pennsylvania, and Washington.

Throughout Capital One's digital journey, it has significantly expanded the ability of its customers to access fee-free cash. Capital One now has an expansive ATM network with nearly 70,000 Allpoint and MoneyPass locations that supplements its proprietary network of more than 1,200 ATMs. Capital One has also entered into innovative partnerships, including with CVS and Walgreens, allowing its customers to make fee-free deposits through their nationwide locations as well as select Allpoint+ ATMs enabled in 2024. The CVS and Walgreens locations are within a ten-minute drive for about 88% of Capital One's bank customers. Capital One now has more than 20,000 physical touch points for customers to avail themselves of cash deposits, which touch points include its branch and ATM network as well as its partnerships with these third parties. That number far surpasses the branch networks of even the largest banks in the nation.

Capital One continues to innovate, finding effective digital solutions for nearly every service available in a traditional bank branch. The most recent example is our Cashier's Check Kiosks, enabling customers to access certified funds on their time by using their mobile device at a self-service kiosk. Piloted in February 2023, the kiosks are currently available in five Café locations with plans to expand further.

Resizing its branch network, in line with customer needs and transaction volumes, has allowed Capital One to strategically invest in best-in-class products and experiences such as

[37] Apex (the application that Ambassadors use to help customers open and service accounts in the Café) and ATMs are used to evaluate LMI Café usage and only includes Capital One Retail Bank customers. Accessible Cafés include those in LMI areas and those in middle- and upper-income areas where LMI usage data is 80% or more of the market's LMI demographic benchmark.

eliminating all overdraft fees and offering fee-free checking accounts. Capital One's consumer checking and savings accounts are simple, with no monthly fees, no minimum balance requirements and fee-free overdraft protection, making them responsive to the needs of a wide range of customers and specifically LMI individuals. In January 2022, Capital One became the first top ten retail bank to eliminate all overdraft fees and non-sufficient fund ("NSF") fees for its consumer banking customers. Capital One remains the only top ten bank to have eliminated overdraft and non-sufficient funds fees from all its products while still providing free overdraft protection on a checking account without fees or minimum balance requirements. Capital One's savings products offer higher interest rates than traditional bank savings products. Further, these products are offered to customers whether they open an account at a branch location or through digital channels. This is an uncommon practice in banking where most banks provide traditional, and usually higher-cost products, through their branch network.

In testimony at the Federal Reserve Board and OCC's July 19, 2024 public meeting, Paula Grieco, Senior Vice President at Commonwealth—a national nonprofit building financial security and opportunity for financially vulnerable people through innovation and partnerships—said: "Our perspective is informed by our work with Capital One for 15 years across research, social impact, and community-based projects and our participation in Capital One's community advisory council. Through these experiences, we've seen that, first, Capital One continues to offer leading, low-cost, widely accessible, easy-to-use banking products. Their 360 Checking and savings account, in particular, that addressed an essential need in the market, especially for those living on modest incomes who do not always feel well-served by traditional banks. Capital One's decision in January 2022 to eliminate overdraft fees is an example of how they continued to refine those products [sic] to work for all customers."[38]

As a result of these efforts, Capital One's flagship 360 Checking account was awarded "Bank On" certification by the Cities for Financial Empowerment Fund, a national nonprofit organization working to ensure that everyone has access to a safe, affordable transactional banking account. The certification standards include core and strongly recommended features that address cost, functionality and consumer safety. The standards also establish an ambitious, but achievable, baseline for safe, affordable and appropriate accounts that meet the needs of consumers with low incomes, particularly those outside the financial mainstream. For most banks, their "Bank On" product is not their primary offering and is made available in limited circumstances such as certain customer segments. Capital One's "Bank On" 360 Checking account is its primary checking account offered through both its branch and digital channels. Capital One's customer-centric choices in developing superior products help explain why it is ranked number one in U.S. National Banking Overall Satisfaction, according to J.D. Power.[39]

Capital One's strategy has also focused on helping its customers understand how to access their money through digital means, which due to the convenience, is increasingly a preferred method of conducting transactions. Capital One continues to see steady growth in the use of digital channels and tools. To enable its customers to navigate these capabilities successfully, Capital One has invested heavily in improving financial literacy and awareness. In

[38] Joint public meeting of the Federal Reserve and OCC, July 19, 2024.

[39] J.D. Power Finds, *Retail Bank Customer Satisfaction Holds Steady but Trust Declines*, March 28, 2024, https://www.jdpower.com/business/press-releases/2024-us-retail-banking-satisfaction-study.

2023, Capital One began a partnership with Khan Academy to help bring a free online financial literacy course to life. The course breaks down complex financial concepts into self-paced, easy-to-understand units, covering topics like digital banking, budgeting, savings, credit, investments, insurance, taxes, scams, fraud and more. This course has been accessed by over 850,000 learners since its launch. This complements Capital One's unique and innovative Ready, Set, Bank! ("RSB") program. RSB was developed in 2016 and features a wide range of digital banking topics through forty short videos of seniors teaching seniors how to use online banking. A Spanish language version, Listos, Clic, Avance! of RSB was developed and mirrors the original offerings.

Combined, all these strategies have resulted in significant deposit growth over the past decade. Since June 30, 2013, which is the first annual FDIC Summary of Deposits report of CONA following Capital One's acquisition and consolidation of ING Direct, Capital One's deposits have nearly doubled (98.1%) from \$188.04 billion to \$372.46 billion as of June 30, 2024. For that same period, industry deposits grew from \$9.43 trillion to \$17.41 trillion or 84.6%.

Because Capital One's deposit products are free of customary banking fees including fee-free overdraft protection and there are no minimum balance requirements, its checking and savings products are ideally suited for LMI customers. The following information summarizes that data over the past ten years (the three most recent CRA examination periods plus 2023), demonstrating continuous growth in attracting, serving and retaining customers in LMI geographies.[40]

From 2020 through 2023 for all CRA assessment areas:[41]

- As detailed in the Application, from 2020 through 2023, customers in LMI geographies opened approximately 1.6 million new checking accounts with Capital One. These checking accounts have no monthly fees and no minimum balances, and as of January 2022, they have no overdraft or NSF fees.

- Customers in LMI geographies opened more than 437,000 new checking accounts in 2023 in Capital One's local markets, which was 206,000 more (an increase of 89%) than the number opened during 2019.

- Similarly, customers in LMI geographies opened over 393,000 new savings accounts in 2023 in Capital One's assessment areas, which was about 189,000 (or 93%) more than the number opened during 2019.

- Furthermore, there were more than 1.9 million open checking accounts, with no monthly fees, no minimum balance requirements and no-fee overdraft protection, owned by customers in LMI geographies in Capital One's local markets on

[40] Data from the end of one period may differ from data at the beginning of the next period primarily due to changes in census tract income designations over time and growth in CRA assessment areas. For comparative purposes, census tract income designations and CRA assessment areas are held steady within each period.

[41] Data for 2023 was added to the 2020-2022 exam period for purposes of providing the most recent results for the Application.

December 31, 2023, which was an increase of more than 911,000 (87%) compared to the number of retained checking accounts held by customers in LMI geographies in Capital One's local markets on December 31, 2019.

- Similarly, there were more than 1.6 million savings accounts held by customers in LMI areas in Capital One's local markets on December 31, 2023, which was an increase of more than 544,000 (49%) over the number of retained savings accounts held by customers in LMI geographies in Capital One's local markets on December 31, 2019. Also, between 2020 and 2023, customers in LMI geographies opened over 1.2 million new savings accounts in Capital One's local markets.

From 2017 through 2019 for all CRA assessment areas:

- Customers in LMI geographies opened over 906,000 new checking accounts, which was over 139,000 more (an increase of approximately 18%) than the number opened during 2014-16.

- Similarly, LMI customers opened over 820,000 new savings accounts, which was over 160,000 more (an increase of approximately 25%) than the number opened during 2014-16.

- LMI customers represented an average of over 1.3 million open checking accounts during 2017-19, which was over 270,000 more (an increase of approximately 26%) than the average number of open checking accounts during 2014-16.

- Similarly, LMI customers represented an average of over 1.6 million open savings accounts, which was over 200,000 more (an increase of approximately 14%) than the average number of open savings accounts during 2014-16.

From 2014 through 2016 for all CRA assessment areas:

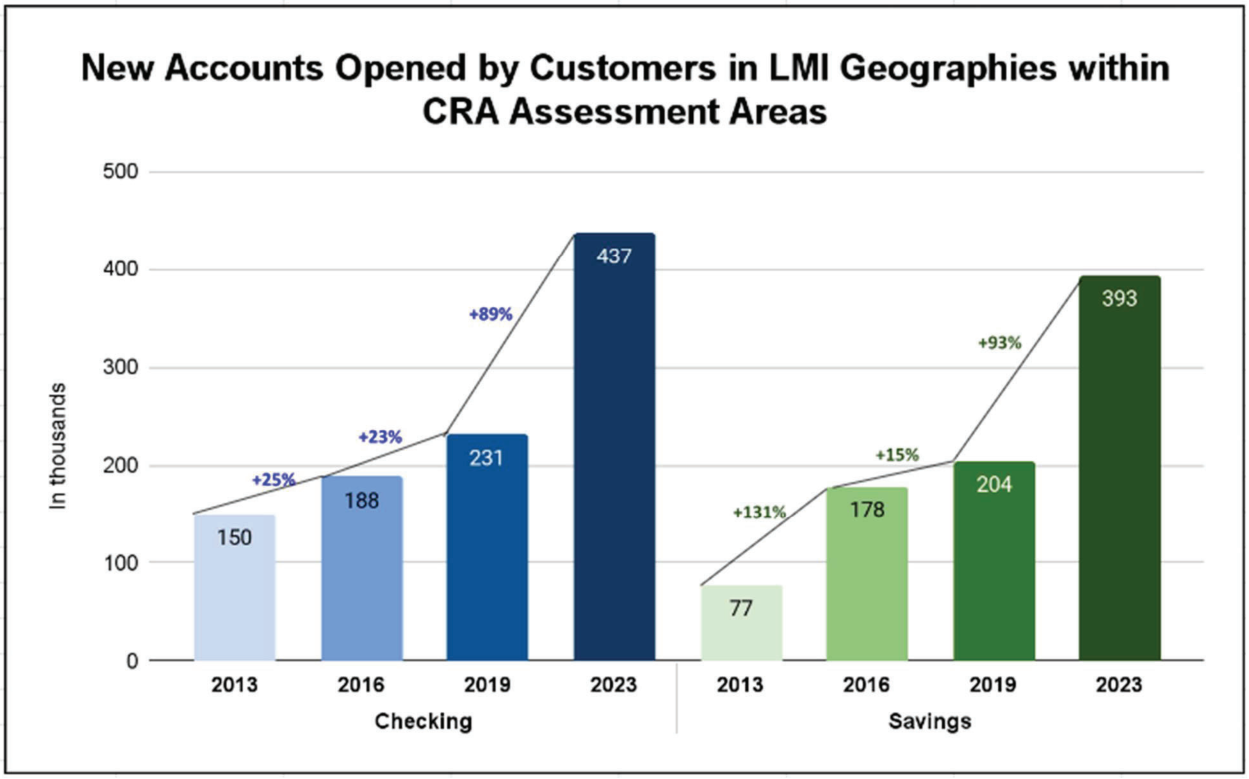
- Customers in LMI geographies opened over 150,000 new checking accounts in 2013, comprising approximately 33% of all new checking accounts, with that percentage rising to approximately 40% of all new checking accounts (over 188,000 accounts) in 2016.

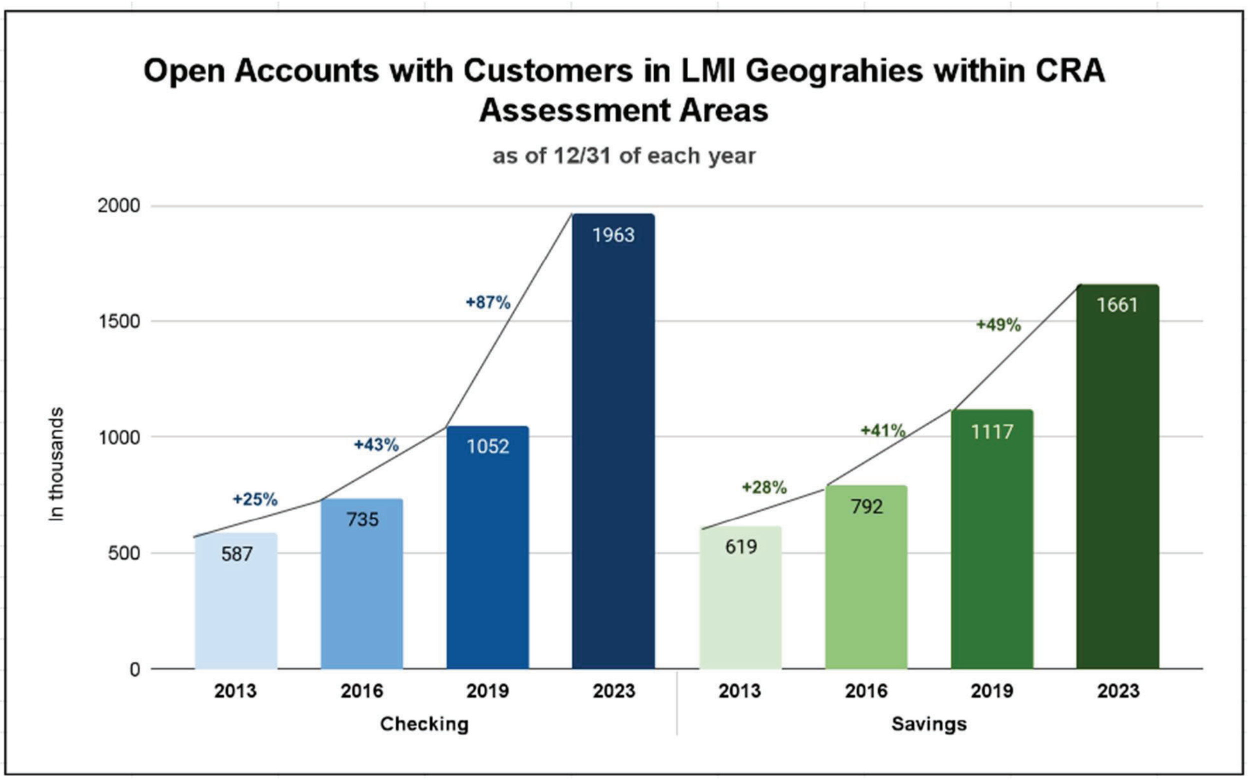
- Similarly, LMI customers comprised approximately 24% of new savings accounts (over 77,000 accounts) in 2013, rising to approximately 32% (over 178,000 accounts) in 2016.

- LMI customers had over 587,000 open checking accounts, comprising approximately 24% of all open checking accounts in 2013. This percentage increased to 27% (over 735,000 accounts) in 2016.

- Similarly, in 2013, LMI customers comprised approximately 19% of open savings accounts (over 619,000 accounts). This percentage increased to approximately 22% (over 792,000 accounts) in 2016.

The following charts illustrate the growth in new account openings and open accounts as outlined in the sections above.





Source: Capital One internal data

By seizing on the transformational opportunities of digital banking, Capital One has made significant investments in leading edge digital technology, focused sharply on its mission to offer best-in-class checking and savings products both through its branch network and its digital channels, built innovative solutions to meet customer needs and created an expansive network of physical touch points extending well beyond its branch locations. As a result, Capital One has experienced better-than-industry deposit growth. But most critically, all these efforts have not just led to successful deposit growth, but as the data demonstrates, they have been highly effective in meeting the financial needs of underserved populations and communities, particularly the LMI segment. Capital One is fully committed to this path as customer needs and digital solutions continue to evolve.

d. One commenter alleges that the combined institution would have a weakness that may impact the institution's future prospects: asset concentration in credit card loans, as well as other consumer lending products similarly sensitive to economic stress such as auto loans, which the commenter alleged could leave the combined firm vulnerable to an economic downturn. Respond to this comment.

In contrast to the commenter's allegations, the Proposed Transaction will make CONA a stronger, more resilient bank by adding scale to its fully diversified credit card business, adding insured deposits to its funding base and diversifying its revenue mix with the acquisition of the Discover Global Network. Capital One is, and the combined company after the Proposed Transaction will be, a fully diversified financial institution, across commercial and consumer segments, across the credit spectrum and as diverse as the U.S. economy.

Based on current projections, the Proposed Transaction would increase CONA's asset concentration in domestic credit cards from 46% to 56%, but will reduce CONA's credit card portfolio's mix of subprime assets from 32% to 27%. Despite the increase in credit card concentration, CONA's credit card assets are, and as a result of the Proposed Transaction will continue to be, substantially and inherently diversified across millions of consumers that reside throughout the country and that are employed across multiple sectors representing the full diversity of the entire U.S. economy. CONA's auto loan assets are similarly diversified across geography and consumer segments, and continue to offer additional diversification benefits to Capital One due to differences in their product terms and drivers of credit performance (e.g., asset prices).

Moreover, Capital One is proud of its heritage as a lender to the full spectrum of American consumers, including those borrowers with limited or no credit history who have been historically underserved by the traditional banking industry. This commitment to financial inclusion has resulted in a larger percentage of loans on its balance sheet made to borrowers with subprime credit scores relative to most competitors, many of which have made strategic decisions to avoid significant lending to such consumers. As noted above, however, CONA's percentage of subprime credit card assets relative to its credit card portfolio will decline as a result of the Proposed Transaction.

The Proposed Transaction will also benefit from Capital One's best-in-class consumer credit risk management capabilities and talent, including leading edge analytics and loss forecasting tools, enabled by decade-long investment in Capital One's technology and data infrastructure. Capital One believes that credit card assets are more resilient and favorable than many other asset classes given their dynamic nature. These assets feature variable APRs, and provide flexibility to increase or decrease credit limits over time, and choices to reduce marketing can rapidly increase capital available to the bank. Card portfolios have demonstrated that they can run off quickly in times of stress, which is inherently countercyclical and a benefit to capital, unlike commercial lending, where exposures may grow in times of stress and are procyclical as borrowers draw on their credit facilities.

Capital One and Discover have both demonstrated resilience in their portfolios by successfully navigating numerous financial downturns, including the financial crisis of 2007-2008, the economic turbulence resulting from the COVID pandemic and the turmoil in the banking sector in the spring of 2023. Through these events, Capital One maintained its commitment to lending to the full spectrum of consumers, as well as small businesses and commercial enterprises, in a safe and sound manner. In addition, during the Global Financial Crisis of 2007-2008, Capital One maintained profitability in its credit card business and overall, acquired Chevy Chase Bank and ING Direct, and was among the first group of banks to fully repay under the Troubled Asset Relief Program.

Furthermore, on consummation of the Proposed Transaction, the capital and liquidity resources and ratios of COFC and CONA will remain well above regulatory requirements and consistent with supervisory expectations. CONA also maintains, and will continue to as a result of the Proposed Transaction, a ratio of FDIC insured deposits to total deposits that is one of the highest within the industry, especially relative to any bank that has a commercial business. As noted in the original investor presentation on February 19, 2024, the Proposed Transaction is expected to further strengthen Capital One's balance sheet, with a pro forma CET1 ratio of 13.9% and 84% of company deposits insured as of December 31, 2023.

Lastly, based on the firm-specific results of the supervisory stress test released on June 26, 2024, Discover estimated its preliminary Stress Capital Buffer ("SCB") to be 3.1%,[42] while Capital One's results implied a preliminary SCB of 5.5%. The SCB is a reasonable proxy for the Federal Reserve's view on the overall resilience of a financial institution and its balance sheet under stress—a lower SCB implies that the business is less exposed to a severe economic shock.[43] Arithmetically, a combination of the two firms would imply a lower SCB for Capital One as a combined company post-acquisition. This view of financial institution resilience is predicated on a holistic assessment of all activities of a firm—including all consumer lending activities, such as credit card and auto lending—using actual loan level balances and relevant credit data such as FICO scores. Criticisms of the Proposed Transaction based on concerns about risks related to combining the credit card lending activity of Capital One and Discover, or Capital One's legacy lending activities in credit card and auto, are simply unfounded, as demonstrated by the SCBs of Capital One and Discover. Capital One will also continue to have

[42] Per company 10-Q filing on July 31, 2024.

[43] The primary driver of a calculated SCB is the reduction in CET1 capital under stress as calculated by the Federal Reserve in the supervisory stress testing exercise. SCB calculations also include certain planned dividends as described in each firm's annual capital plans.

the governance, infrastructure and systems to meet all the relevant regulatory requirements and supervisory expectations for a Category III banking organization.

e. **One commenter expresses several money laundering and national security concerns. These concerns include whether Capital One possesses the administrative capacity and scale to comply with Office of Foreign Assets Control ("OFAC") and anti-money-laundering regulations, in view of the proposed acquisition of a global banking network; and whether Capital One has a satisfactory record of compliance with OFAC. Respond to this comment.**

In recent years, Capital One has committed significant investments to strengthening its risk management and compliance functions to foster a culture of excellence in risk management and to create a best-in-class risk management framework. Please see Capital One's response to the public comments, dated August 7, 2024, for a detailed description of Capital One's enhancements to its risk management framework in Section V. Risk and Compliance.

In particular, Capital One has invested in creating and maintaining a strong BSA/AML and Sanctions compliance program (the "AML Program"). The AML Program is based on five pillars: internal policies, procedures and controls; designation of an AML officer; employee training; independent testing; and customer due diligence. The AML Program is intended to ensure that Capital One complies with applicable laws, rules, regulations and supervisory guidance related to anti-money laundering, counter-terrorist financing and economic sanctions risks and controls; to identify and manage these risks and controls through sound governance and oversight, and operate in a manner consistent with Capital One's business strategy and risk appetite; and to protect Capital One's business and reputation, as well as the broader financial system, from financial crime and/or activities prohibited by law or regulation. The COFC and CONA Boards of Directors and senior management prioritize the important objectives associated with maintaining the integrity of the financial system as a whole, protecting national security and making appropriate referrals to law enforcement. The AML Program is administered in a safe and sustainable manner, and is sufficiently staffed with appropriately trained and knowledgeable professionals across the BSA/AML and Sanctions ecosystem. Capital One maintains a written BSA/AML/Sanctions policy (including a Customer Identification Program) approved by the COFC Board of Directors and a Board-appointed BSA Compliance and Sanctions Officer ("Chief AML Officer"), who possesses the necessary knowledge, authority and resources to effectively execute all assigned duties. The Chief AML Officer is supported by an experienced, knowledgeable and competent team of AML, Sanctions, Risk Management and Technology leaders and professionals. The AML Program's execution approach aligns with Capital One's enterprise-wide defined risk and control framework components, as defined by the COFC Enterprise Risk Management Policy, consistent with heightened standards, and leverages all three lines of defense.

Capital One was founded on a belief that banking would be transformed by technology and information, so it built a bank with the infrastructure of a modern technology company with advanced capabilities to leverage data and analytics at scale. This philosophy applies to how Capital One has approached its AML Program and Capital One continues to invest in further advancing its AML Program, with a focus on rigor, adaptability and sustainability. The AML

Program is also taking an innovative approach to meeting compliance obligations at scale through technology investments in machine learning for transaction monitoring, next-generation customer risk-rating processes and modern investigator platforms.

Capital One applies a continuous improvement approach, and designs and enhances controls to adhere to both legal requirements and to each applicable entity's defined business strategy and risk appetite; this continuous improvement approach applies to COFC's AML Program, as well. All Capital One associates and contractors are required to complete enterprise-wide AML/Sanctions training annually. Specific BSA/AML/Sanctions Compliance training courses tailored to roles, responsibilities and business segments are required for relevant associates and contractors. Training is also provided annually to the Board of Directors. In addition, relevant information, including Suspicious Activity Reporting (SAR) information, is regularly provided to senior management and the COFC Boards of Directors. Between consummation of the Proposed Transaction and systems conversion, CONA will aim to execute on integration activities promptly. The BSA/AML/OFAC compliance risk of the combined entity will be a point of focus in this interim period. CONA will support effective oversight through the establishment and execution of business monitoring and compliance oversight of the AML processes supporting the Discover portfolio, risk assessments and testing, ongoing AML compliance advice and training as appropriate, and management of issues and escalations consistent with Capital One risk management practices.

Capital One has no outstanding consent orders or other enforcement actions with any of its regulators. All previous orders were fully remediated to the satisfaction of its regulators. The Proposed Transaction will result in a combined entity that will leverage Capital One's robust risk management system and compliance culture across the combined organization, enabling Capital One to better serve its customers, businesses and communities.