

**DC 37 Municipal Employees Legal Services
Empire Justice Center
Legal Services NYC-Bronx
MFY Legal Services
NEDAP
Western New York Law Center**

VIA Regulations.gov

October 12, 2011

Adam M. Drimer
Assistant Vice President
Federal Reserve Bank of Richmond
701 East Byrd Street
Richmond, Virginia 23261-4528

Re: Application by Capital One Financial Corporation to acquire 100% of the voting securities of ING Bank, FSB, Wilmington, Delaware, and subsidiaries, and thereby engage in the activities related to operating a federal savings bank, investment financial advisory and securities brokerage services

Dear Mr. Drimer:

The organizations listed above submit these comments in opposition to Capital One Financial Corporation's (Capital One) application to acquire ING Bank, FSB (ING). The proposed acquisition raises serious systemic risk considerations, and the Federal Reserve should deny the application on that basis alone.

According to Capital One, the acquisition would make the bank the fifth largest in the country by deposits – turning Capital One into yet another bank that is too big to fail. Furthermore, the ING deal is not an isolated transaction, but part of Capital One's larger plan to use ING's deposit base to acquire HSBC's domestic credit card business and expand its already huge credit card business. The Federal Reserve has a responsibility to consider the transactions together.

Our groups also have serious concerns regarding Capital One's community reinvestment performance, including its mortgage and small business lending record. In any event, the Federal Reserve is not in a position to rule on the application, given the regulatory uncertainty around Community Reinvestment Act assessment areas for internet banks and banks like Capital One, which have significant market presence but no branch locations in many geographies.

Our organizations work with thousands of low and moderate income New Yorkers, in communities throughout New York State, and can offer the Federal Reserve a vital on-the-

ground perspective. Through our work, we have encountered numerous horror stories about Capital One's credit card debt collection practices. As the unfair debt collection case examples set forth in this letter demonstrate, the bank's abusive practices also provide a basis for denying the application.

In sum, we call on the Federal Reserve to deny Capital One's application to acquire ING for the following reasons:

- The Federal Reserve should not permit the creation of yet another behemoth banking institution. If the Federal Reserve has learned anything from the financial meltdown and ensuing bank bailouts, it should be that creating another bank that is too big to fail creates enormous systemic risk.
- Capital One has announced two gigantic acquisitions – of ING Bank and HSBC's domestic credit card business. The latter includes a huge portfolio of subprime and store-branded cards originated by the notorious, and now defunct, predatory lender Household/Beneficial. The Federal Reserve should consider the two acquisitions together, not as isolated or unrelated transactions. Capital One has a well-documented history of abusive credit card practices, as does HSBC, and the Federal Reserve should not permit the bank to expand its unfair practices. Moreover, if the Federal Reserve approved Capital One's acquisition of ING, Capital One could later avoid public and regulatory scrutiny of its planned purchase of HSBC's credit card business.
- Capital One and ING both operate businesses that do not fit squarely within the current framework of the Community Reinvestment Act (CRA). The Federal Reserve should not consider the acquisition until it has updated the CRA regulations to address specific CRA issues raised by internet banks like ING, and banks like Capital One that do significant business in areas in which they have no branches.
- Capital One's mortgage and small business lending fail to meet community credit needs.
- Capital One engages in abusive debt collection practices, which are especially detrimental to very low income people and communities.

COMMENTERS

- **DC 37 Municipal Employees Legal Services (MELS)** is a union-sponsored prepaid legal plan providing benefits to current and retired employees of the City of New York. MELS provides representation in a wide range of consumer and debt matters, and its lawyers appear in hundreds of debt collection cases annually brought by credit card companies and debt buyers.

- **Empire Justice Center** is a nonprofit legal services organization in New York that provides legal services in a range of poverty law areas including consumer law.
- **Legal Services NYC – Bronx** is the largest provider of free civil legal services in the borough, and the largest Legal Services office in NYC. With a staff of about seventy, the office assists more than 10,000 Bronx residents each year in areas including government benefits advocacy, employment, tax, housing, foreclosure prevention, elder, consumer, immigration, and family and education law. Legal Services NYC – Bronx advances its mission by representing Bronx residents in court on critical issues that affect their lives, and conducts "Know Your Rights" trainings with advocates and community members.
- **MFY Legal Services, Inc.** is a nonprofit organization that provides advice and representation to more than 7,500 New Yorkers each year, working in concert with neighborhood social service providers and community advocates, and initiates affirmative litigation that impacts many thousands of people. Through its Consumer Rights Project, MFY provides advice and representation to consumers who are harassed by debt collectors, sued in New York courts, and affected in various ways by consumer issues.
- **NEDAP** is a resource and advocacy center based in New York City. Founded in 1995, NEDAP works with community groups and low income New Yorkers to promote community financial justice and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty.
- **Western New York Law Center** provides free residential foreclosure defense services for homeowners. The Law Center also engages in Fair Housing litigation, policy work and high impact class actions arising out of systemic legal problems affecting low income people. The Law Center works closely with groups in New York State and nationally to shape policy to accommodate the needs of low and middle income individuals and families.

SYSTEMIC RISK

Capital One's proposed acquisition of ING Bank would present significant systemic risk to the bank, the banking system, and the economy.

Capital One's plan to increase its subprime credit card lending using ING Bank's deposit base would introduce additional risk to Capital One. Capital One's planned acquisition of HSBC's U.S. credit card business would only concentrate that risk further. Capital One is already the nation's fourth largest issuer of Visa and MasterCard branded credit cards. Capital One's acquisition of HSBC's U.S. credit card business would increase the bank's market share by more than 50%.

Capital One's revenue is already highly dependent on its credit card business—in 2010, the bank generated 75% of its profits and 66% of its revenue from credit card lending. Furthering that dependence, particularly by enabling Capital One to expand its subprime credit card lending, will put the bank, investors, as well as the U.S. economy, at substantial risk.

Allowing the expansion of Capital One's poor lending practices will have a direct effect on credit markets because Capital One already securitizes approximately 75% of its credit card debt, and that debt makes up more than 20% of all credit card Asset Backed Securities (ABS). Given current and projected economic conditions, Capital One's credit card charge-offs could increase substantially, putting at significant risk the bank, the largely institutional investors in credit card ABS, and the broader economy and public.

CAPITAL ONE'S INADEQUATE MORTGAGE AND SMALL BUSINESS LENDING

Our groups join with California Reinvestment Coalition, the Community Reinvestment Association of NC (CRA-NC), and Woodstock Institute, among other organizations across the country, in raising serious concerns about Capital One's inadequate mortgage and small business lending in low and moderate income communities, particularly when compared to the scale and scope of the bank's credit card businesses. In New York, where Capital One has a clear physical presence, the lack of mortgage and small business lending is especially stark.

Capital One holds 3% of all bank deposits in New York City, and New York State is the bank's third largest market for credit card loans. In stark contrast, Capital One reported making only 0.12% of all first-lien mortgages to owner-occupants of 1-4 family homes, in 2009 – a staggeringly low total of just 70 such mortgages in all of New York City. Across New York State, Capital One made only 181 mortgage loans in 2009. Capital One also originated remarkably few multifamily loans, making only 0.80% of multifamily loans in the New York City MSA, in 2009.

Similarly, the Federal Reserve should consider Capital One's apparent failure to meet the lending needs of smaller businesses in New York State, as the bank has reported making few small business loans to enterprises with revenues under \$1 million. In 2009, Capital One reported making just 5.61% its small business loans to businesses with revenues under \$1 million, significantly lower than the 20.30% made by all lenders. Capital One also reported making significantly fewer small loans (under \$100,000) than other banks: 80.03% compared to 94.87% reported by all lenders. Capital One's small business lending is also problematic insofar as the bank relies on credit cards for its small business lending – a significantly costlier, less stable form of credit than traditional Small Business Administration and other direct small business loans.

CAPITAL ONE'S ABUSIVE CREDIT CARD AND DEBT COLLECTION PRACTICES

Many New York advocates associate Capital One with unethical credit card and debt collection practices, particularly as they affect very low income New Yorkers, and the Federal Reserve should seriously consider the impact of Capital One's abusive credit card and debt collection practices on low income people and communities. Four of our groups, DC 37 MELS, Legal Services NYC - Bronx, MFY Legal Services, and NEDAP, provide free legal advice and representation to thousands of low income New Yorkers facing debt collection lawsuits. Each year, our groups receive hundreds of complaints about Capital One's abusive credit card lending and debt collection practices.

In 2010, Capital One filed more than 37,000 debt collection lawsuits in New York City's civil courts – almost one in five of all such lawsuits filed that year. At this scale, Capital One's problematic debt collection practices potentially harm tens of thousands of New Yorkers. As our groups' research has shown, the lawsuits too frequently violate peoples' due process rights. They disproportionately harm low income communities and communities of color, undermining the goals and arguably the letter of the Community Reinvestment Act.

Case Examples

The following case examples show how Capital One treats its credit card customers, including by engaging in abusive debt collection practices. These practices show the bank's deliberate disregard for its low income customers. If the Federal Reserve permits Capital One to expand, the number of unfair lending and debt collection cases are likely only to increase.

- **Capital One failed to investigate a documented case of identity theft, depriving a low income senior of her limited income.** Mary B, a 71-year-old Brooklyn resident, was unaware that she had been a victim of identity theft, when someone changed the address on her Capital One card. She was also unaware that Capital One had sued her for failure to make her credit card payments, because the bank failed to notify her of the lawsuit. As a result of the lawsuit and subsequent judgment, Ms. B's bank account, which contained Social Security, was impermissibly frozen, leaving her with only 18 cents to live on. Ms. B contacted Capital One to explain that she never lived at the address used by the identity thief, but Capital One refused to investigate the matter. Although Ms. B eventually got her account released with the help of an attorney, she never received the full amount of money she lost as a result of Capital One's impermissible seizure of her funds.
- **Capital One sells disputed accounts to debt buyers, denying customers meaningful opportunity to address disputed information.** Capital One contacted Mr. F about an

alleged debt, but Mr. F never had a Capital One credit card. When he disputed the debt in writing and by phone, Capital One ignored his dispute and sold the alleged debt to a debt buyer. Once the debt buyer had control of the alleged debt, it sued Mr. F without notifying him of the lawsuit, and fraudulently obtained an automatic (default) judgment against him. This instance and many others illustrate Capital One's complicity in unfair and often discriminatory debt collection practices.

- **Capital One has duped seniors into giving up vital protections they have under New York State law against abusive debt collection practices.** Capital One had a judgment against Mr. D and sought to restrain his bank account, which contained only his directly-deposited Social Security and pension benefits. Attorneys for Capital One directed Mr. D to sign an authorization to automatically deduct monthly payments from his account to pay the judgment – even though all his funds in the account were legally exempt from debt collection.
- **Capital One delays filing lawsuits to the great detriment of its customers.** After losing his job after 9/11, Mr. G fell behind in making credit card payments and stopped making payments altogether in 2003 after he drained all of his savings and his 401(k) to pay his bills and stay afloat. Capital One waited until 2009, however, to sue Mr. G to collect on the debt. By the time Capital One sued him, almost six years after he defaulted, the amount of the debt had skyrocketed due to finance charges, fees, and interest. In papers provided to the Court, Capital One was unable to explain how it had calculated the figure it sued Mr. G for, or why it had waited so many years to sue him.
- **Capital One continues to pursue people for alleged debts – even after courts have dismissed the bank's debt collection lawsuits with prejudice.** Capital One pursued Ms. L for an alleged past due balance, plus 9% accruing interest, even though the court had already dismissed the bank's lawsuit to collect the alleged debt with prejudice, meaning Capital One was prohibited from suing Ms. L again. The court had dismissed the case six months earlier because the bank failed to produce legally-required documentation of the alleged debt.
- **Capital One routinely sends people to a third-party debt collector that poses as the bank, misleading customers who believe they are dealing directly with the bank.** Capital One has apparently violated the Fair Debt Collection Practices Act by sending allegedly delinquent customers “pre-legal notices” that direct them to call a toll-free number that, unbeknownst to callers, redirects them to a third party debt collector after they enter their account number.

These case examples illustrate systemic problems with Capital One's credit card debt collection practices, and call into question the bank's ability to serve a significantly expanded customer base.

CAPITAL ONE'S RECENTLY ANNOUNCED CRA COMMITMENT

In response to negative publicity surrounding its proposed acquisition of ING, Capital One last month announced a ten-year, \$180 billion community investment commitment. This commitment, however, reflects little more than business as usual. For starters, Capital One has slated more than half of this amount – \$104 billion – for “LMI consumer lending including auto loans, credit cards and other consumer loans.” These are precisely the three product areas in which groups across the country have shown the bank to engage in abusive practices. The bank has failed to acknowledge in any way how it will eliminate its abusive credit card lending and debt collection practices, which have proven so harmful to low and moderate income people and communities.

The bank's commitment is also questionable in terms of any additional lending or investments it would bring to low and moderate income communities. As Capital One testified on September 20, 2011, at a hearing before the Federal Reserve Board and Federal Reserve Bank of Richmond, the \$180 billion represents nothing more than the “expected growth in our business resulting from [the ING] acquisition.”

CONCLUSION

The days of the Federal Reserve's simply rubber-stamping enormous merger applications are over. There is too much at stake – in terms of systemic risk, as well as community reinvestment and fair credit access across the country – for the Federal Reserve to allow this merger.

Thank you for extending the comment period through today, and for holding public hearings on the proposed acquisition. If you have questions or would like to reach any of our organizations, please contact Alexis Iwanisziw (alexis@nedap.org) or Sarah Ludwig (sarah@nedap.org) at NEDAP (212-680-5100).

Sincerely,

DC 37 Municipal Employees Legal Services
Empire Justice Center
Legal Services NYC-Bronx
MFY Legal Services
NEDAP
Western New York Law Center