

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY

In the Matter of:	)	
	)	AA-EC-2012-101
Capital One Bank (USA), N.A.	)	
Glen Allen, Virginia	)	

**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his national bank examiners, has examined the affairs of Capital One Bank (USA), N.A., Glen Allen, Virginia (hereinafter the “Bank”), and has identified: (1) violations of the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. app. 50 §§ 501-597b, from at least July 15, 2006, and (2) deficiencies in the Bank’s program for compliance with the SCRA. The OCC has informed the Bank of the findings resulting from the examination.

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a Stipulation and Consent to the Issuance of a Consent Order, dated July 25, 2012 (“Stipulation and Consent”), that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Cease and Desist Order (“Order”) by the Comptroller. The Bank has committed to taking all necessary and appropriate steps to remedy the deficiencies and to enhance the Bank’s compliance with the SCRA. The Bank has begun implementing procedures to remediate the practices addressed in this Order.

## ARTICLE I

### COMPTROLLER'S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, the following:

- (1) For purposes of this Article and the Order, the following definitions shall apply:
  - (a) "Accounts" refers to Capital One credit cards including the credit card account assets that the Bank and CONA, defined herein, acquired from HSBC Holdings on May 1, 2012 and that are owned by the Bank and CONA.
  - (b) "CONA" refers to Capital One, N.A.
  - (c) "SCRA benefits" refers to the benefits provided by 50 U.S.C. app. § 527. Section 527 provides that an obligation incurred by a servicemember, or a servicemember and his or her spouse jointly, before the servicemember entered military service (*i.e.* active duty, as defined in 10 U.S.C. §101(d), may not bear an interest rate in excess of percent (6%) per year on obligations incurred, during:
    - (i) the period of military service and, pursuant to Section 516, in the case of reservists, during the period beginning on the date of receipt of the order to report and ending on the date on which the reservist reports for military service; and
    - (ii) for a mortgage, trust deed, or other security in the nature of a mortgage, for one year after the period of military service.

- (d) “SCRA protection” refers to all of the protections provided by the SCRA other than the SCRA benefits. SCRA protection is to be provided whether or not a servicemember has made a request for such protection.
  - (e) “SCRA-Protected Servicemember” includes servicemembers as defined in 50 U.S.C. app. § 511(1) and (2).
- (2) In connection with the Accounts, the Bank:
- (a) obtained default judgments on debts owed on certain credit card accounts without filing accurate affidavits of military service in violation of 50 U.S.C. app. § 521;
  - (b) denied certain written requests made by SCRA-Protected Servicemembers to have their interest rate on their credit cards lowered to six percent (6%) per annum in violation of 50 U.S.C. app. § 527; and
  - (c) provided insufficient benefits pursuant to 50 U.S.C. app. § 527 on certain credit card accounts that were enrolled for such benefits by not applying the six percent (6%) interest limitation correctly in violation of 50 U.S.C. app. § 527.
- (3) The Bank failed to devote to its compliance with the SCRA adequate oversight, internal controls, policies and procedures, internal audit, and training.
- (4) The Bank’s violations of 50 U.S.C. app. §§ 521 and 527 caused substantial consumer injury.

(5) The Bank's violations of 50 U.S.C. app. §§ 521 and 527 are part of a pattern of misconduct.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), the Comptroller hereby ORDERS that:

## ARTICLE II

### COMPLIANCE COMMITTEE

(1) The Board's Audit and Risk Committee ("ARC") shall be responsible for monitoring and overseeing the Bank's compliance with the provisions of this Order. The ARC shall maintain minutes of its meetings at which compliance with this Order is discussed.

(2) Within thirty (30) days of this Order, and within twenty (20) days after the end of each quarter thereafter, the ARC shall ensure that the Bank monitors and reports, in writing, to the ARC on the Bank's compliance with the provisions of this Order.

(3) Within sixty (60) days of this Order, and within thirty-five (35) days after the end of each quarter thereafter, the ARC shall submit a written progress report to the Board setting forth in detail:

- (a) actions taken since the prior report (if any) to comply with each Article of this Order;
- (b) the results of those actions; and
- (c) a description of the actions needed and the anticipated time frame to achieve full compliance with each Article of this Order.

(4) Within thirty (30) days of the receipt of the ARC's initial report and within thirty (30) days of the receipt of each quarterly report thereafter, the Board shall submit progress reports to the Examiner-in-Charge. These reports shall:

- (a) include the ARC's report to the Board for the applicable quarter, with any additional comments by the Board; and
- (b) describe any actions initiated by the Board or the Bank to comply with each Article of this Order.

### ARTICLE III

#### COMPREHENSIVE ACTION PLAN

(1) Within fifteen (15) days of this Order, the Bank shall submit to the Deputy Comptroller for Large Bank Supervision ("Deputy Comptroller") and the Examiner-in-Charge an acceptable plan containing a complete description of the actions that are necessary and appropriate to achieve compliance with Articles IV through IX of this Order ("Action Plan"). In the event the Deputy Comptroller or the Examiner-in-Charge asks the Bank to revise the Action Plan, the Bank shall promptly make the requested revisions and resubmit the Action Plan to the Deputy Comptroller and the Examiner-in-Charge. Following acceptance of the Action Plan by the Deputy Comptroller, the Bank shall not take any action that would constitute a significant deviation from, or material change to, the requirements of the Action Plan or this Order, unless and until the Bank has received a prior written determination of supervisory non-objection from the Deputy Comptroller.

(2) The Board shall ensure that the Bank achieves and thereafter maintains compliance with this Order, including, without limitation, successful implementation of the Action Plan. The Board shall further ensure that, upon implementation of the Action Plan, the Bank achieves and maintains an effective and sustainable enterprise-wide SCRA Compliance Program and the Third-Party Provider policies and procedures that

are required by Articles IV and V, respectively, of this Order. In order to comply with these requirements, the Board shall:

- (a) require the timely reporting by the Bank of such actions directed by the Board to be taken under this Order;
- (b) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (c) require corrective action be taken in a timely manner for any non-compliance with such actions.

(3) The Action Plan shall specify timelines for completion of each of the requirements of Articles IV through IX of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in this Order.

#### ARTICLE IV

##### SCRA COMPLIANCE PROGRAM

(1) Within thirty (30) days of this Order, the Bank shall develop a written program to ensure the Bank's compliance with the SCRA ("SCRA Compliance Program"). The Board shall approve and cause the Bank to submit this SCRA Compliance Program to the Deputy Comptroller for prior determination of supervisory non-objection. The SCRA Compliance Program shall require, at a minimum:

- (a) Adequate written policies and procedures to ensure compliance with the SCRA, including, but not limited to:
  - (i) uniform standards and processes for determining whether a servicemember who submits a request for SCRA benefits is eligible for such benefits in all Accounts, including any

CONA credit cards, mortgages, home equity loans, motor vehicle finance loans, consumer loans and lines of credit accounts, and commercial lending accounts that the borrower may have, not just the Account that is the subject of the request;

- (ii) policies and procedures for notifying a servicemember of the Bank's denial to provide SCRA benefits or protection;
- (iii) processes to ensure that all factual assertions made in affidavits of military service filed by the Bank or on behalf of the Bank are accurate, complete, and reliable;
- (iv) procedures for when a search of the Department of Defense Manpower Data Center ("DMDC") database must be conducted before filing and obtaining a default judgment on an Account, or making a determination of eligibility for SCRA benefits;
- (v) procedures for initiating and pursuing a waiver under a written agreement, as provided in 50 U.S.C. app. § 517; and
- (vi) consistent procedures for application of state laws that provide more benefits or protection to servicemembers than those provided by the SCRA.

- (b) The development and implementation of written policies and procedures governing documentation and record retention requirements, which shall include:
  - (i) Written procedures and processes to ensure that the requirements of this subparagraph, are consistently applied, and complied with, throughout the Bank.
  - (ii) Written procedures requiring that the Bank obtain and maintain sufficient documentation to evidence: (1) the dates of SCRA-protected military service for servicemembers who request SCRA benefits or who are otherwise potentially entitled to SCRA protection; (2) the method, date, and results of military status verifications prior to seeking or obtaining a default judgment on an Account of a SCRA-Protected Servicemember; (3) dates of correspondence with the SCRA-Protected Servicemember; and (4) the calculation of benefits provided pursuant to 50 U.S.C. app. § 527.
  - (iii) Written procedures and processes for documenting the basis of the Bank's determination of an Account's eligibility for SCRA benefits or protections or of the Bank's denial of such benefits or protection.
  - (iv) The establishment of an effective record retention system to assure the maintenance and accessibility of complete



records within the Bank that demonstrates its compliance with the SCRA and the requirements of this Paragraph.

- (c) The development of standard internal guidance, guidelines, and formats that convey complete and accurate information regarding the SCRA that is to be used by all Bank senior management, irrespective of their duties, and Bank employees who are involved in:
  - (i) providing customer service to servicemembers in connection with the servicing of their Accounts; or
  - (ii) servicing.
- (d) Written policies and procedures for conducting periodic reviews and updating, as applicable, the guidance, guidelines, and formats required by Paragraph (1)(c) of this Article.
- (e) Written policies and procedures to ensure that risk management, quality control, internal audit, and corporate compliance have the requisite authority and status within the Bank so that deficiencies in the SCRA policies, procedures, or processes are identified and properly remedied.
- (f) A system of ongoing monitoring and testing by senior management within their line of business to:
  - (i) ensure compliance with the SCRA, the SCRA Compliance Program, and the SCRA Training Program;

- (ii) verify that the policies and procedures described in Paragraphs (1)(a) and (1)(b) of this Article are being followed and are effective in detecting and preventing violations of the SCRA; and
  - (iii) ensure consistent adherence to the guidance, guidelines, and formats described in Paragraph (1)(c) of this Article.
- (g) Reporting, on at least a monthly basis, by the senior manager responsible for conducting the monitoring and testing required by Paragraph (1)(f) of this Article, the findings from the monitoring and testing to a specified risk manager who is independent of that particular line of business.
- (h) A system of ongoing monitoring and testing by Corporate Compliance to:
  - (i) ensure the Bank's compliance, across all lines of business, with the SCRA and the SCRA Compliance Program; and
  - (ii) verify that the policies and procedures described in Paragraphs (1)(a) through (1)(g) of this Article are being followed and are effective in detecting and preventing violations of the SCRA.
- (i) Periodic reporting of the results of the internal monitoring and testing to the ARC.
- (j) Measures to ensure that policies, procedures, and processes are

updated on an ongoing basis as necessary to incorporate any changes in the SCRA or applicable state laws.

(2) Upon receipt of a determination of supervisory non-objection to the SCRA Compliance Program submitted pursuant to Paragraph (1) of this Article, the Board shall adopt, and thereafter ensure that the Bank implements and adheres to, the SCRA Compliance Program. Any proposed changes to or deviations from the approved SCRA Compliance Program shall be submitted in writing to the Deputy Comptroller for prior supervisory review and non-objection.

(3) Within thirty (30) days of receiving a supervisory non-objection to the SCRA Compliance Program, the Bank shall develop a written program to ensure that all Covered Bank Employees, as defined herein, receive training on the requirements of the SCRA, all applicable state laws, and the SCRA Compliance Program as well as on identifying violations of the SCRA (“SCRA Training Program”). For the purpose of this Paragraph, “Covered Bank Employees” refers to all Bank employees responsible for developing, implementing, and/or ensuring adherence to, the SCRA Compliance Program, including employees who are responsible for conducting the monitoring and testing required by Paragraphs (1)(f) and (1)(h) of this Article and Bank employees involved in providing customer service to servicemembers in connection with the servicing of their Accounts or in servicing the Accounts. At a minimum, the SCRA Training Program shall require that:

- (a) The training is provided by individuals or an entity with the requisite knowledge and expertise.
- (b) The training is conducted:

- (i) on at least an annual basis for all Covered Bank Employees whose responsibilities have not substantially changed since his or her previous SCRA training and who are not new hires;
  - (ii) within a reasonable time frame from the date of hire for a new hire who is a Covered Bank Employee; and
  - (iii) within a reasonable time frame from the date of change in responsibilities for any Covered Bank Employee whose responsibilities have substantially changed such that his or her previous SCRA training is not specific to his or her new responsibilities.
- (c) The training is specific to the Covered Bank Employee's responsibilities.
- (d) Enhanced training is provided to Covered Bank Employees in the Bank's Legal, Internal Audit, and Compliance units, and to senior management in each line of business.
- (4) The Board shall ensure that there is oversight of the SCRA Compliance Program required by this Article by the Bank's senior risk managers, senior management, and the Board.

## ARTICLE V

### THIRD-PARTY MANAGEMENT

- (1) Within ninety (90) days of this Order, the Bank shall develop written policies and procedures applicable to outsourcing to third parties (hereinafter "Third-

Party Providers”) banking functions, including, but not limited to: (i) servicing and subservicing of accounts, including Accounts; and (ii) the marketing, sales, delivery, servicing, and/or fulfillment of services for Bank financial products, including but not limited to, credit card accounts, and other products. The Board shall approve and submit the third-party management policies and procedures to the Deputy Comptroller for prior determination of supervisory non-objection. At a minimum, these policies and procedures shall require:

- (a) appropriate oversight to ensure that Third-Party Providers comply with all applicable laws and regulations, including, but not limited to the SCRA, and all applicable supervisory guidance and Bank policies and procedures;
- (b) measures to ensure that the Bank retains imaged copies of material documents sent to Third-Party Providers;
- (c) measures to ensure that the Third-Party Provider has effectively implemented adequate policies and procedures for maintaining complete and accurate documentation evidencing its compliance with all applicable laws and regulations, supervisory guidance, and Bank policies and procedures;
- (d) processes to perform appropriate due diligence on potential and current Third-Party Provider qualifications, expertise, capacity, reputation, complaints, information security, documentation practices, business continuity, and financial

viability, and to ensure adequacy of Third-Party Provider staffing levels, training, work quality, and workload balance;

- (e) processes to ensure that contracts provide for adequate oversight, including requiring Third-Party Provider adherence to applicable Bank policies and procedures, measures to enforce Third-Party Provider contractual obligations, and processes to ensure timely action with respect to Third-Party performance failures;
- (f) processes to ensure periodic reviews of Third-Party Provider work for timeliness, competence, completeness, and compliance with all applicable laws and regulations, supervisory guidance, and Bank policies and procedures; and
- (g) processes to review customer complaints about Third-Party Provider.

(2) Upon receipt of a determination of supervisory non-objection to the Third-Party Provider policies and procedures submitted pursuant to Paragraph (1) of this Article, the Board shall adopt, and thereafter ensure that the Bank implements and adheres to, these policies and procedures. Any proposed changes to or deviations from the approved Third-Party Provider policies and procedures shall be submitted in writing to the Deputy Comptroller for prior supervisory review and non-objection.

## ARTICLE VI

### INTERNAL AUDIT

- (1) Within ninety (90) days of this Order, the Bank shall develop a written

SCRA Audit Program. The Board shall approve and cause the Bank to submit this SCRA Audit Program to the Deputy Comptroller for prior supervisory non-objection. At a minimum, the SCRA Audit Program shall include:

- (a) Written policies and procedures for conducting audits of the Bank's compliance with the SCRA and the SCRA Compliance Program required by Article IV of this Order. These policies and procedures shall specify the frequency, scope and depth of these audits.
- (b) A written plan for testing the calculations used by the Bank or a Third-Party Provider for calculating the amount of the SCRA benefits that the Bank has provided to servicemembers eligible for the benefits under 50 U.S.C. app. § 527.
- (c) A written plan for testing whether SCRA benefits were timely applied, as required by 50 U.S.C. app. §§ 516 and 527.
- (d) A written plan for testing the Bank's default judgment processes for compliance with the newly instituted military status verification procedures to ensure that sufficient documentation is created and maintained.
- (e) Written policies and procedures for expanding its sampling when exceptions based on potential violations of the SCRA are detected.
- (f) Comprehensive written procedures for providing the training required by the SCRA Training Program required by Article IV of

this Order to all Covered Bank Employees, as defined in Paragraph 3 of Article IV of this Order, in Internal Audit.

(2) Upon receipt of a determination of supervisory non-objection to the Audit Program submitted pursuant to Paragraph (1) of this Article, the Board shall adopt, and thereafter ensure that the Bank implements and adheres to, the SCRA Internal Audit Program. Any proposed changes to or deviations from the SCRA Internal Audit Program shall be submitted in writing to the Examiner-in-Charge for prior supervisory review and non-objection.

## ARTICLE VII

### INDEPENDENT REVIEW OF ACCOUNTS

(1) For purposes of this Article, “Enrolled” describes Accounts that the Bank or the servicer has identified in its systems as being eligible to receive the SCRA benefits as requested by the borrower or eligible for SCRA protection.

(2) Within fifteen (15) days of this Order, the Bank shall retain an Independent Consultant, subject to supervisory non-objection, to review the Accounts for compliance with the SCRA (“SCRA Review”).

(3) Within thirty (30) days of this Order, the Bank shall submit the Independent Consultant’s plan for conducting the SCRA Review (“SCRA Review Plan”) to the Deputy Comptroller and the Examiner-in-Charge for prior determination of supervisory non-objection. The SCRA Review Plan shall include:

(a) a full description of any proposed sampling techniques;



- (b) a full description of the statistical basis for the sampling methods chosen, as well as procedures to increase the size of the sample depending on the results of the initial sampling;
- (c) expertise and resources to be dedicated to this review; and
- (d) a written commitment that any workpapers associated with the SCRA Review shall be made available to the OCC immediately upon request.

(4) The purpose of the SCRA Review shall be to identify SCRA-Protected Servicemembers eligible for restitution (“Eligible SCRA-Protected Servicemembers”) and consist of a review of:

- (a) Credit card default judgments obtained between July 15, 2006 and the effective date of this Order to evaluate whether the judgments were obtained against any SCRA-Protected Servicemembers.
- (b) Accounts that were enrolled, between July 15, 2006 and the effective date of this Order, for SCRA benefits to evaluate whether the calculation of the benefits provided was in compliance with 50 U.S.C. app. § 527.
- (c) Accounts where a borrower, between July 15, 2006 and the effective date of this Order, submitted a request for SCRA benefits, but the Account was not enrolled, to evaluate whether the Bank complied with 50 U.S.C. app. § 527.

(5) Upon receipt of a supervisory non-objection to the SCRA Review Plan

submitted pursuant to Paragraph (3) of this Article, the Board shall ensure that the SCRA Review is conducted in accordance with the SCRA Review Plan to which a supervisory non-objection has been provided. Any proposed changes to or deviations from the approved SCRA Review Plan shall be submitted to the Deputy Comptroller for prior supervisory review and non-objection.

(6) The Bank's Internal Audit shall periodically conduct an assessment of the SCRA Review Plan and the SCRA Review to ensure the procedures and methodology used are adequate to identify Eligible SCRA-Protected Servicemembers. Such assessments shall occur at appropriate intervals during the development and the execution of the SCRA Review Plan and the SCRA Review, and the findings shall be memorialized in writing. Within ten (10) days of completing each assessment, Internal Audit shall provide its written findings to the ARC, the Deputy Comptroller, and the Examiner-in-Charge.

(7) The independent consultant shall prepare a written report detailing the findings of the SCRA Review ("SCRA Review Report"), which shall be completed within thirty (30) days of completion of the SCRA Review. Immediately upon completion, the SCRA Review Report shall be submitted to the Deputy Comptroller, Examiner-in-Charge, and the Board.

## ARTICLE VIII

### REMEDATION FOR ELIGIBLE SCRA-PROTECTED SERVICEMEMBERS

(1) Within thirty (30) days of the submission of the SCRA Review Report to the Deputy Comptroller, the Examiner-in-Charge, and the Board, as required by Article VII of this Order, the Bank shall develop a remediation plan, approved by its Board, and

submit it to the Deputy Comptroller for prior determination of supervisory non-objection.

The Remediation Plan shall include the following:

- (a) A description of the methods to be used and the time necessary to compile a list of Eligible SCRA-Protected Servicemembers and their addresses.
- (b) A description of the procedures used to remediate financial injury and make restitution to each Eligible SCRA-Protected Servicemember as required by Paragraph (3) of this Article.
- (c) A description of the methods used to calculate the amount of restitution to be paid to each Eligible SCRA-Protected Servicemember as required by Paragraph (3) of this Article.
- (d) A description of the procedures for issuance and tracking of restitution payments to Eligible SCRA-Protected Servicemembers.
- (e) A description of procedures for requesting that:
  - (i) all three (3) major credit bureaus delete trade lines or remove negative entries, as appropriate, for Eligible SCRA-Protected Servicemembers that are attributable specifically to wrongful foreclosure, repossession, default judgment, or interest overcharges; and
  - (ii) with regard to Accounts sold to unaffiliated third parties, such third parties request that all three (3) major credit bureaus delete trade lines or remove negative entries, as appropriate, for Eligible SCRA-Protected Servicemembers

that are attributable specifically to wrongful foreclosure, repossession, default judgment, or interest overcharges.

(f) A description of the procedures for monitoring compliance with the Remediation Plan.

(3) The Bank shall remediate financial injury and make restitution to each Eligible SCRA-Protected Servicemember in accordance with the Remediation Plan required by Paragraph (1) of this Article.

(4) The Bank's Internal Audit shall periodically conduct an assessment of the Remediation Plan and the methodology used to determine the amount of restitution for each Eligible SCRA-Protected Servicemember, the procedures used to issue and track restitution payments, and the procedures used for requesting the removal of negative entries at the credit reporting agencies. Such assessments shall occur at appropriate intervals during the development and execution of the Remediation Plan and within thirty (30) days of completion of the remediation and restitution, and the findings shall be memorialized in writing. Within ten (10) days of completing each assessment, Internal Audit shall provide its written findings to the ARC, the Deputy Comptroller, and the Examiner-in-Charge.

(5) Upon receipt of a determination of supervisory non-objection to the Remediation Plan submitted pursuant to Paragraph (1) of this Article, the Board shall adopt, and thereafter ensure that the Bank implements and adheres to, the Remediation Plan. Any proposed changes to or deviations from the approved Remediation Plan shall be submitted in writing to the Deputy Comptroller for prior supervisory review and non-objection.

## ARTICLE IX

### SCRA REPORTS

(1) In addition to the reporting requirements of Article II of this Order, within ninety (90) days of this Order, and quarterly thereafter, the Bank shall monitor and report, in writing, to the ARC:

- (a) the number of denials of SCRA benefit requests received (“SCRA requests”);
- (b) discussion of trends in the level of the denials of SCRA requests;
- (c) the volume of SRCA benefits, in terms of dollar amounts; and
- (d) the volume of customer complaints involving the SCRA.

(2) Within ten (10) days of receiving the written reports required by Paragraph (1) of this Article, the ARC shall forward copies of the reports to the Examiner-in-Charge.

## ARTICLE X

### EXTENSTIONS OF TIME

If the Bank requires an extension of any timeframe within this Order, the Bank shall submit a written request to the Deputy Comptroller asking for relief. Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that require an extension of a timeframe within this Order.

## ARTICLE XI

### OTHER PROVISIONS

(1) Although this Order requires the Bank to submit certain actions, plans, programs, policies, and procedures for the review or prior written determination of

supervisory non-objection by the Deputy Comptroller or the Examiner-in-Charge, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) In each instance in this Order in which the Board is required to ensure adherence to, or undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (c) follow-up on any material non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any material non-compliance with such actions.

(3) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(4) This Order is and shall become effective upon its execution by the Comptroller, through his authorized representative whose hand appears below. The Order shall remain effective and enforceable, except to the extent that, and until such time as, any provision of this Order shall be amended, suspended, waived, or terminated in writing by the Comptroller.

(5) Any time limitations imposed by this Order shall begin to run from the effective date of this Order, as shown below, unless the Order specifies otherwise.

(6) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States. Nothing in this Order shall affect any action against the Bank or its institution-affiliated parties by a bank regulatory agency, the United States Department of Justice, or any other law enforcement agency, to the extent permitted under applicable law.

(7) The terms of this Order, including this Paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

IT IS SO ORDERED, this 25<sup>th</sup> day of July, 2012.

\_\_\_\_\_/s/\_\_\_\_\_  
Vance S. Price  
Deputy Comptroller  
Large Bank Supervision

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

**In the Matter of:**

Capital One Bank (USA), N.A.  
Glen Allen, Virginia

AA-EC-2012-101

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”) intends to impose a cease and desist order on Capital One Bank (USA), N.A., Glen Allen, Virginia (“Bank”) pursuant to 12 U.S.C. § 1818(b), for its violations of the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. app. 50 §§ 501-597b, and deficiencies in its compliance with the SCRA.

The Bank, in the interest of compliance and cooperation, enters into this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation”) and consents to the issuance of a Consent Order, dated July 25, 2012 (“Consent Order”).

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, stipulate and agree to the following:

**ARTICLE I**

**JURISDICTION**

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).



(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

(4) For purposes of, and within the meaning of 12 C.F.R. §§ 5.3(g)(4), 5.51(c)(6), and 24.2(e)(4), this Consent Order shall not be construed to be a “cease and desist order” or “consent order,” unless the OCC informs the Bank otherwise in writing.

## ARTICLE II

### CONSENT

(1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the Consent Order by the Comptroller.

(2) The Bank consents and agrees that the Consent Order shall be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).

(3) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(4) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of his supervisory responsibilities.

(5) The terms and provisions of the Stipulation and the Consent Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Stipulation or the Consent Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Stipulation or the Consent Order.

### ARTICLE III

#### WAIVERS

- (1) The Bank, by consenting to this Stipulation, waives:
- (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) any and all procedural rights available in connection with the issuance of the Consent Order;
  - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (h), 12 C.F.R. Part 19;
  - (d) all rights to seek any type of administrative or judicial review of the Consent Order;
  - (e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Consent Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
  - (f) any and all rights to challenge or contest the validity of the Consent Order.

## ARTICLE IV

### CLOSING

(1) The provisions of this Stipulation shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.

(2) Nothing in this Stipulation shall preclude any proceedings brought by the Comptroller to enforce the terms of this Consent Order, and nothing in this Stipulation constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice, to bring other actions deemed appropriate.

(3) The OCC releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the OCC based on the banking practices described in the Comptroller's Findings set forth in Article I of the Consent Order, to the extent known to the OCC as of the effective date of the Consent Order. However, the banking practices alleged in Article I of the Consent Order may be utilized by the OCC in other future enforcement actions against the Bank or its institution-affiliated parties, including, without limitation, to assess civil money penalties or to establish a pattern or practice of violations or the continuation of a pattern or practice of violations. This release shall not preclude or affect any right of the OCC to determine and ensure compliance with the terms and provisions of this Stipulation or the Consent Order.



