



October 27, 2014

**CRA Decision #164  
November 2014**

Mr. Nigel D. Morris  
Senior Manager, Project Management  
Capital One, National Association  
7933 Preston Road  
ATTN: 31064-0320  
Plano, Texas 75024-2359

RE: Application by Capital One, National Association to relocate a branch to Cedar Park,  
Texas  
OCC Control No.: 2014-NE-Relocation-137407

Dear Mr. Morris:

The Office of the Comptroller of the Currency (OCC) hereby approves the application by Capital One, National Association, McLean, VA (Capital One or Bank) to change the location of the “Avery Ranch” branch, Branch No. 138082A from 1495 Avery Ranch, Austin, Williamson County, Texas 78717 to 2910 S. Lakeline Boulevard, Cedar Park, Williamson County, Texas 78613. This approval is granted based on a thorough review of the application, other materials the Bank and its representatives supplied, and additional information available to the OCC, including the representations and commitments made in the application and by the Bank’s representatives.

## **I. The Transaction**

Capital One seeks to change the location of the “Avery Ranch” branch from 1495 Avery Ranch, Austin, Texas to 2910 S. Lakeline Boulevard, Cedar Park, Texas (the Application). Capital One is a wholly owned subsidiary of Capital One Financial Corporation, McLean, Virginia, a multi-bank holding company. Capital One is a national bank that operates 879 branches throughout the United States, including Texas.

## **II. Legal Authority for the Transaction**

Capital One has applied to the OCC for approval under 12 U.S.C. § 36(c) to relocate an existing branch within Williamson County, Texas. Under section 36(c), a national bank may establish branches at any point within the state in which the national bank is situated, if such establishment is authorized by the state for its own state banks. Because Capital One has branches in Texas, it is situated in Texas for purposes of section 36(c). Texas permits statewide branching by Texas-chartered banks. Texas Finance Code § 32.203. Texas also permits an out-of-state bank that has

established or acquired a branch in Texas to establish or acquire additional branches in Texas to the same extent that a Texas-chartered bank may establish or acquire a branch in Texas. Texas Finance Code §§ 203.003(a) and 203.006. Thus, Capital One's proposed relocation of the existing branch within Williamson County (from Austin to Cedar Park), Texas, is authorized under 12 U.S.C. § 36(c) and applicable branching laws of Texas, as applied to national banks under section 36(c).

The OCC is guided by the four following principles in determining whether to approve an application to relocate a branch: maintaining a sound banking system; encouraging a national bank to help meet the credit needs of its entire community; relying on the marketplace as generally the best regulator of economic activity; and encouraging healthy competition to promote efficiency and better service to customers. 12 C.F.R. § 5.30(e)(1)-(4). The OCC has determined that the proposed relocation satisfies these four principles.

### **III. Community Reinvestment Act**

The Community Reinvestment Act (CRA) requires the OCC to take into account the record of the institution's performance in helping to meet the credit needs of its communities, including low- and moderate-income neighborhoods, when evaluating applications for the relocation of a branch. In reviewing the Application to relocate the Avery Ranch branch, the OCC considered Capital One's CRA performance evaluation (PE).

Capital One's most recent PE, dated April 4, 2011, assigned to Capital One an overall "Outstanding" CRA rating. In the PE, Capital One received an "Outstanding" overall rating for the lending test, an "Outstanding" overall rating for the investment test, and a "High Satisfactory" overall rating for the service test.<sup>1</sup> The major factors supporting Capital One's overall "Outstanding" rating include: (i) good lending activity; (ii) excellent distribution of loans among geographies of different income levels; (iii) adequate distribution of loans among borrowers of different income levels; (iv) the significantly positive impact of community development lending on the lending test; (v) the positive impact of product innovation and flexibility on the lending test; (vi) an excellent level of community development investments including prior evaluation periods, which are responsive to the assessment areas' (AAs) needs; (vii) the Bank's demonstration of leadership through the use of an innovative and complex method to continue investing in Low Income Housing Tax Credits; (viii) accessibility of the Bank's branches to geographies and individuals of different income levels given consideration of bordering branches in middle- and upper-income geographies; and (ix) community development services that were responsive to the needs of the Bank's AAs. In addition, the PE notes that the evaluation was not impacted by fair lending issues.

---

<sup>1</sup> Capital One's overall "Outstanding" rating was based partially on an overall "Outstanding" rating for the State of Texas. Capital One's overall "Outstanding" rating in the State of Texas was based on a full scope review of the Houston assessment area (AA).

A review of this record, information provided by Capital One in response to public comments received in connection with this Application, and other information available to the OCC as a result of its supervisory responsibilities, indicates that the Bank's record of helping meet the credit needs of its communities is consistent with approval of the Application.

#### **IV. Public Comments**

The OCC received sixteen public comments from the same commenter in connection with the Application to relocate the Avery Ranch branch to 2910 S. Lakeline Boulevard, Cedar Park, Texas.<sup>2</sup> In all of the comment letters, the commenter expresses concerns about alleged redlining and discrimination against African Americans in certain zip codes in the Houston area. Some of the concerns expressed by the commenter are that Capital One does not have a sufficient branch presence in certain zip codes with large African American populations and, consequently, has insufficient advertising, small business and commercial lending, and bank-financed developments in those neighborhoods. The commenter asserts that Capital One has engaged in continuing violations of numerous laws including, "CRA, FHA, FTC Act – Section 5, Title VIII – 1968 Civil Rights Act and the Equal Protection Clause – 14<sup>th</sup> Amendment – US Constitution." In addition, the commenter asserts that Capital One should be subject to a series of enforcement actions to reverse the effects of the alleged discrimination and inhibit future discrimination. In the comment letters related to the Application, the commenter did not demonstrate a link between the proposed branch relocation, which is in the Austin-Round Rock Metropolitan Statistical Area (Austin MSA), and the commenter's general concerns about branch distribution and lending in the Houston area.

The OCC has carefully considered the commenter's concerns, as well as Capital One's record as it relates to these comments and the statutory and regulatory factors considered by the OCC when reviewing a bank's application to relocate a branch. The OCC's consideration of Capital One's record as it relates to the Application and response to the commenter's concerns are summarized below.<sup>3</sup>

##### **A. Applicant Response to Public Comments**

Capital One submitted a letter regarding the commenter's concerns related to its branch strategy and efforts to serve minority individuals and neighborhoods. Capital One represented that its branching strategy is to provide convenient service to its customers, taking into consideration population density, traffic patterns, and retail developments, along with many other factors to

---

<sup>2</sup> The Avery Ranch branch and the proposed new location at 2910 S. Lakeline Boulevard, Cedar Park, Texas are located in the Austin metropolitan statistical area (MSA).

<sup>3</sup> The commenter's most recent comment letter, dated October 1, 2014, includes a reference to Dallas, Texas; however, the comment letter does not raise any specific concerns about Capital One's performance in Dallas or connect that reference to the Application.

find opportunities to better serve the Bank's communities. Since entering the Houston market in 2007, Capital One represented that it has worked extensively to develop a network that better serves the community. Capital One represented that of the 15 branches that it has opened in Houston since 2007, 12 are in minority census tracts,<sup>4</sup> of which eight are in heavily minority census tracts.<sup>5</sup>

In addition to serving minority individuals and communities through its branch presence, Capital One represented that it participates in outreach to minority neighborhoods through programs such as: (i) "Getting Down to Business," which is a free seven-month technical assistance program for small businesses with annual revenues of less than \$1 million; (ii) "Straight Talk," a workshop series for small businesses; and (iii) "Debt Boot Camp," which the bank characterized as its flagship program that promotes sound money management and credit education to ensure that the bank effectively connects to communities of color. With regard to advertising, Capital One represented that it employs a broad, cross-cultural approach to advertising its products and services.<sup>6</sup> Capital One further responded to the commenter's concerns by asserting that it did not engage in illegal discrimination in the marketing of small business loans, commercial loans, and bank-financed developments.

## **B. OCC Consideration of Public Comments**

In determining whether to approve a Bank's application to relocate a branch, among the principles by which the OCC is guided are "[e]ncouraging a national bank to help meet the credit needs of its entire community" and, "[e]ncouraging healthy competition to promote efficiency and better service to customers." 12 C.F.R. § 5.30(e)(2), (4). In responding to the commenter's concerns, Capital One represented that the proposed relocation will help the Bank better align its branch network with current retail developments and more conveniently serve the broader market in the Austin MSA. Capital One further represented that the proposed relocation does not adversely affect the Bank's ability to serve low- and moderate-income neighborhoods. Specifically, Capital One represented that the branch relocation is from one middle-income census tract to a second middle-income census tract that is closer in proximity to moderate-income census tracts than the prior location at Avery Ranch. Furthermore, the OCC's review concluded that the proposed relocation would likely have a neutral impact on minority communities.

---

<sup>4</sup> Defined as greater than 50 percent minority.

<sup>5</sup> Defined as greater than 75 percent minority.

<sup>6</sup> For example, Capital One stated that it works closely with the Houston Defender, described on the publication's website as Houston's leading Black information source, and the Houston Forward Times, described on the publication's website as the **South's largest and only independently owned and published African-American newspaper**, as editorial and sponsorship opportunities arise.

Mr. Nigel D. Morris  
OCC Control No.: 2014-NE-Relocation-137407  
October 27, 2014

In addition, the PE sets forth the basis for Capital One's overall "Outstanding" CRA performance in the State of Texas. Capital One's overall "Outstanding" rating in the State of Texas was based on a full scope review of the Houston AA. In the State of Texas, Capital One received an overall "Outstanding" rating on the lending test, an overall "Outstanding" rating on the investment test, and an overall "High Satisfactory" rating on the service test. With regard to branch distribution, the PE indicates that Capital One's branches are accessible to geographies and individuals of different income levels given the level of branches located in low- and moderate-income geographies and the proximity of other branches to low- and moderate-income geographies.

The OCC conducts annual fair lending risk assessments, periodic fair lending examinations, and coordinates with the Consumer Financial Protection Bureau (CFPB) regarding matters over which the CFPB has exclusive examination authority.<sup>7</sup> The OCC's recent supervisory activities and the CFPB's recent fair lending examinations have not resulted in findings of discrimination related to the commenter's allegations regarding Capital One's small business lending, commercial lending, or bank-financed developments in the Houston area. The Bank's record of performance under the CRA, including consideration of the effect of evidence of discriminatory or other illegal credit practices, is consistent with approval of the Application.

Accordingly, based upon our review of the Application, the public comments and CONA's response to those comments, CONA's response to the OCC's additional information requests, and supervisory materials and other information available to the OCC as part of its regulatory responsibilities, the Application is approved.

## **V. Consummation Requirements**

Within 10 days after opening, the Northeastern District Office must be advised in writing of the branch opening date, and confirmation of its popular name, so the OCC may complete its records. If the branch is not opened within 18 months from this approval date, the approval automatically terminates, unless the OCC grants an extension.

If the branch is subsequently closed, a 90-day advance notice of proposed branch closing must be submitted to the OCC pursuant to 12 U.S.C. § 1831r-1. Following the closing of the branch office, a final closing notice should also be submitted to this office.

---

<sup>7</sup> Effective July 2011, section 1025 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) assigned to the CFPB exclusive examination authority and primary enforcement authority to ensure compliance with "Federal consumer financial laws" (as that term is defined by the Dodd-Frank Act) by banks and Federal savings associations with more than \$10 billion in assets. Since July 2011, the OCC and the CFPB have shared jurisdiction for fair lending matters at Capital One, as the CFPB has exclusive supervisory and primary enforcement authority for the Equal Credit Opportunity Act and the OCC has supervisory and enforcement authority for the Fair Housing Act.

Mr. Nigel D. Morris  
OCC Control No.: 2014-NE-Relocation-137407  
October 27, 2014

This approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. Our approval is based on the Bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

All correspondence regarding this application should reference the application control number, and be directed to Licensing Analyst Ankit Shah at (720) 475-7650 or [ankit.shah@occ.treas.gov](mailto:ankit.shah@occ.treas.gov).

Sincerely,

*signed*

Stephen A. Lybarger  
Deputy Comptroller for Licensing