Statement of John G. Finneran, Jr. General Counsel, Capital One Financial Corporation
Before the United States House Subcommittee on Financial Institutions
April 17, 2008

Chairwoman Maloney, Ranking Member Biggert, and members of the Committee, my name is John Finneran. I am the General Counsel of Capital One Financial Corporation. I want to thank you for this opportunity to submit a statement for the record in response to the testimony of Mr. Steven Autrey, who is appearing before your committee today.

At Capital One, we strive to make all of our customer relationships positive ones. When customers are not satisfied with their experience with us, we seek to address their issue, determine why the issue occurred, and make any changes to existing policies that we feel are warranted. Throughout its history, Capital One has worked diligently to establish a high standard of customer sensitivity:

- We do not engage in any form of "Universal Default" repricing.
- We have never done 2-cycle billing.
- We have a single, clear penalty repricing policy. We will impose a penalty rate on a customer only if the customer pays late twice by three or more days in a twelve month period with respect to that specific card. We will provide the customer with a prominent warning on the billing statement after the first infraction. In many cases, we choose not to reprice a customer even if the customer pays us late twice in a twelve month period. If a customer is repriced, but pays us on time for 12 consecutive months, we will take the customer back to the prior rate. This "unrepricing" is automatic.

- We provide 45 days advance notice and an opportunity to opt out of any repricing based on changes to the economy or our cost of funding. Our customers are given the opportunity to reject such repricings, close their accounts, and pay down their outstanding balances at their existing rate over time.
- We provide our customers notice and the ability to opt out of overlimit transactions.

Across our entire portfolio of customers – more than 30 million – we work very hard to provide important notices in plain English that capture attention at critical moments. We do so because we believe – as Chairman Bernanke said to this Committee – that card holders must understand the terms under which they are borrowing, and be empowered to manage their credit wisely, as the overwhelming majority of our customers do.

Madame Chairwoman, we regret that Mr. Autrey is dissatisfied with his recent experience with us. We have one of the largest customer franchises in the United States and our relationships with each of them are the lifeblood of our company's success. Consistent with this philosophy, we believe that Mr. Autrey's circumstances demonstrate the clarity and fairness of our policies. As Mr. Autrey states:

- We were able to provide him with a highly competitive, fixed interest rate of 9.9 percent for seven years, an extraordinarily long period of time for an open-ended, unsecured loan of this kind.

- We held firm on this rate despite the fact that the Prime rate more than doubled during this period of time. Our right to change this rate was clearly disclosed in Mr. Autrey's original offer.
- After seven years, when our funding costs no longer permitted us to offer Mr. Autrey his current rate, we sent Mr. Autrey a clear and simple notice indicating that we were increasing his rate to a variable rate of Prime plus 7.65 percent. At the time, this new rate would have been 15.9 percent, still a competitive rate in the current marketplace. Today, given the Federal Reserve's recent actions, his rate would have been 12.9 percent.
- Contrary to Mr. Autrey's testimony, this notice was sent in a separate, full size mailing, not as a statement insert. The envelope was marked "Important Information Regarding Your Account." A copy of the notice is attached for your reference. No other information of any kind was included in the mailing. The notice itself was clear, simple and prominent. We displayed a copy of a similar notice at Senator Levin's hearing last year, and received several acknowledgements from the Subcommittee regarding the quality and clarity of the communication.
- Mr. Autrey was told that he could choose to accept his new rate, or alternatively, he could choose to opt-out of this change and keep his existing rate. In exchange, he would agree to stop using the card for additional purchases or other transactions, close the account and pay off the balance over time. Unlike some companies, we provided an 800 number for those wishing to exercise this right.

- Again, contrary to Mr. Autrey's testimony, the reason for the increase was provided in the notice directly above the disclosure of his new rate. The reason given was the increasing interest rate environment, which impacts our cost of funding Mr. Autrey's loan. Contrary to his implication that his account behavior might have led to this rate increase, Mr. Autrey's increase was part of a larger effort in July 2007 to reprice accounts in our portfolio whose funding had expired. All of these accounts had had their rates in place for a minimum of three years, and in many cases such as Mr. Autrey's, far longer.
- Consistent with our description of our notice, Mr. Autrey clearly understood the nature of the notice and the terms of the opt-out opportunity we provided. His actions confirm this fact. Mr. Autrey was given 45 days in which to opt out, and he did so well before the deadline.
- As a result of his decision, Mr. Autrey was able to retain his existing rate of 9.9 percent and carries that rate today. The new rate was never imposed upon his account. He can choose to take as long as he likes to pay down his balance, so long as he continues to make the minimum payment on time.
- Mr. Autrey's assertion that credit card issuers are in "collusion" with the Fair Isaac Company regarding individual consumers' credit scores is unfounded. Fair Isaac is an independent company with a proprietary risk scoring model, the continued secrecy of which is critical to its business success. No issuer, including Capital One, knows how different attributes are weighted. More importantly, we have no logical business incentive to have Mr. Autrey close his account, or to see

Mr. Autrey's credit score drop, which only serves to limit the range (and profitability) of products we can offer him.

Mr. Autrey acknowledges that his account history with our company included some missteps, including a late payment and an incidence of going over his credit limit in 2007. Our records indicate that Mr. Autrey paid late in March 2007, and exceeded his credit limit in July and August. In August, Mr. Autrey also had two payments returned to his bank for insufficient funds. During this time, Mr. Autrey also maintained a balance just under his credit limit of $22,000 – a utilization rate of nearly 100% of his available credit. Each such behavior is sufficient to trigger a penalty rate under many issuers' policies. Despite these infractions, however, because of our industry-leading default repricing policy, Capital One did not impose a penalty rate on Mr. Autrey.

At a broader level, Mr. Autrey speaks to the "unilateral" nature of credit card agreements, suggesting that issuers may "change the rules" in their favor at any time. In truth, credit card customers possess significant, "unilateral" rights against credit card issuers.

- Customers may choose to transfer an existing balance to another card without notice and without any ability on the part of the issuer to stop the transaction. In doing so, a customer can unilaterally deprive the issuer of any further revenue on his account, notwithstanding the company's significant investment in acquiring that customer.
- A customer can choose to stop using his account or close it entirely at any time, for any reason. Unlike a mortgage or an auto loan, there is no impediment, legal or practical, to doing so.

- Customers may choose to pay any amount of their balance at any time, including the minimum payment or the entire amount due, again with no ability on our part to compel one behavior or the other. A customer who typically pays his balance in full every month can, without notice, suddenly choose to begin carrying a balance, dramatically altering their risk profile.

Madame Chairwoman, the very nature of unsecured, open-ended credit demands flexibility on both sides of the account relationship. There can be no question that customers and issuers each possess significant and unique rights under existing contracts. We share your desire to ensure that the playing field remains level, but we respectfully submit that it is unwise – especially at this time – to enact broad legislation that sets payment formulas in statute, redefines critical product features, and limits the tools of risk management for consumer credit.

Rather than making the case for legislation, we believe that Mr. Autrey's experience demonstrates that Capital One's industry leading policies are working as intended to provide customers with flexible terms and meaningful choices. Without any legislative intervention, Capital One provided Mr. Autrey with a clear, plain English notice and a simple procedure for choosing to decline a new interest rate. The process worked precisely as it should, with Capital One exercising the flexibility it needed to in order to respond to the higher cost of capital, and Mr. Autry exercising his choice to decline the new rate and pay off his balance at the old one. The whole procedure worked within the context of existing market forces and exactly as Capital One has said consumer choice should work in positions we've advocated before this subcommittee and before the relevant regulators.

Capital One must therefore oppose H.R. 5244 and we do so for three fundamental reasons:

1. The legislation sets multiple statutory limits on a lender's ability to price for the cost of credit. For example, under the heading of eliminating "double cycle billing," the bill actually redefines the concept of "grace period" and arbitrarily expands the degree to which all issuers--even those that don't engage in double cycle billing--must extend credit interest-free. Similarly, the bill mandates a formula for allocating a customer's payments for different types of borrowing in a way that will certainly result in reducing the availability of deeply discounted introductory and balance transfer rates. Other provisions also raise the specter of price controls.
2. The consequence of so sweeping a bill would be to force the industry to raise the cost of credit for everyone, including those who present less risk of default to the lender, and reduce the availability of credit for those customers who present a greater risk of default.
3. This result would be exactly the wrong policy prescription, particularly in this economic environment. As the mortgage crisis has unfolded, we've had a progressive tightening in the credit markets and many believe we are near or in a recession. To ease the impact of a slow-down in our economy, the Fed has aggressively lowered the federal funds rate and the Congress has passed a bipartisan stimulus package. H.R. 5244 could significantly counteract the positive effects of both of those policy initiatives.

Madame Chairwoman, that would be especially unfortunate since the regulators – those policy makers uniquely positioned to evaluate the complex and dynamic credit card industry – are poised to address all of the issues targeted by H.R. 5244.

Under its new Reg Z rule, the Fed proposes a 45-day notice period before all types of repricing. The new rule also offers improved disclosure requirements for payment allocation, minimum payment, and "fixed" and introductory interest rates. And that's just a partial list.

Equally important, Chairman Bernanke has confirmed before this Committee that the Fed will soon supplement its Reg Z rule with new credit card rules under its UDAP authority. It seems likely that those rules will go to the core of the Committee's concerns. We believe that such rules may provide the best, safest and most direct road to reform.

Capital One has publicly called for balanced, reasoned change that can be implemented quickly, would improve disclosure and enhance consumer choice. We have also sought to work cooperatively with you and the Committee. Though we must respectfully disagree about the impact of H.R. 5244, I want to thank you for this opportunity to express our views.

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