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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. ______

To prohibit the use of certain concentration limit exceptions with respect to mergers involving a failed bank unless the applicable agency determines such use is necessary to prevent significant economic disruption or significant adverse effects on financial stability, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. LYNCH introduced the following bill; which was referred to the Committee on ______________________________

A BILL

To prohibit the use of certain concentration limit exceptions with respect to mergers involving a failed bank unless the applicable agency determines such use is necessary to prevent significant economic disruption or significant adverse effects on financial stability, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Failing Bank Acquisition Fairness Act".

SEC. 2. CONCENTRATION LIMIT EXCEPTIONS ONLY AVAILABLE TO AVOID SERIOUS ADVERSE ECONOMIC OR FINANCIAL EFFECTS.

(a) CONCENTRATION LIMITS WITH RESPECT TO DEPOSITS.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(A) in section 18(c)(13), by amending subparagraph (B) to read as follows:

"(B) Subparagraph (A) shall not apply to an interstate merger transaction if—

"(i) such interstate merger transaction involves 1 or more insured depository institutions in default or in danger of default and the responsible agency determines, based on clear and convincing evidence, that consummation of the proposed interstate merger transaction is necessary to prevent significant economic disruption or significant adverse effects on financial stability, and the Corporation has not received any other applications, proposed applications, or bids from other institutions that are not subject to the prohibition in subparagraph (A) that could be approved in a timely manner in compliance with applicable law (without regard to any applications, proposed applications, or bids from any institution subject to the prohibition in subparagraph (A)); or

"(ii) the Corporation provides assistance under section 13 to facilitate such interstate merger transaction and the responsible agency determines, based on clear and convincing evidence, that consummation of the proposed interstate merger transaction is necessary to prevent significant economic disruption or significant adverse effects on financial stability, and the Corporation has not received any other applications, proposed applications, or bids from other institutions that are not subject to the prohibition in subparagraph (A) that could be approved in a timely manner in compliance with applicable law (without regard to any applications, proposed applications, or bids from any institution subject to the prohibition in subparagraph (A)).''; and

(B) in section 44, by amending subsection (e) to read as follows:

''(e) EXCEPTION FOR BANKS IN DEFAULT OR IN DANGER OF DEFAULT.—

''(1) GENERAL EXCEPTION.—The responsible agency, may without regard to paragraph (1), (3), (4), or (5) of subsection (b) or paragraph (2), (4), or (5) of subsection (a), approve an application under subsection (a)(1) for approval of a merger transaction if—

''(A) the merger transaction involves 1 or more banks in default or in danger of default; or

''(B) the Corporation provides assistance under section 13(c) to facilitate such merger transaction.

''(2) CONCENTRATION LIMIT EXCEPTION.—The responsible agency may, without regard to subsection (b)(2), approve an application under subsection (a)(1) for approval of a merger transaction if—

''(A) the merger transaction involves 1 or more banks in default or in danger of default and the responsible agency determines, based on clear and convincing evidence, that consummation of the proposed interstate merger transaction is necessary to prevent significant economic disruption or significant adverse effects on financial stability, and the Corporation has not received any other applications, proposed applications, or bids from other institutions that are not subject to the prohibition in subparagraph (A) that could be approved in a timely manner in compliance with applicable law (without regard to any applications, proposed applications, or bids from any institution subject to the prohibition in subparagraph (A)); or

"(B) the Corporation provides assistance under section 13(c) to facilitate such merger transaction and the responsible agency determines, based on clear and convincing evidence, that consummation of the proposed interstate merger transaction is necessary to prevent significant economic disruption or significant adverse effects on financial stability, and the Corporation has not received any other applications, proposed applications, or bids from other institutions that are not subject to the prohibition in subparagraph (A) that could be approved in a timely manner in compliance with applicable law (without regard to any applications, proposed applications, or bids from any institution subject to the prohibition in subparagraph (A).".

(2) BANK HOLDING COMPANY ACT OF 1956.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended—

(A) in section 3(d), by amending paragraph (5) to read as follows:

"(5) EXCEPTION FOR BANKS IN DEFAULT OR IN DANGER OF DEFAULT.—

"(A) GENERAL EXCEPTION.—The Board may, without regard to subparagraph (B) or (D) of paragraph (1) or paragraph (3), approve an application pursuant to paragraph (1)(A) if—

"(i) the application is for an acquisition of 1 or more banks in default or in danger of default; or

"(ii) the application is for an acquisition with respect to which assistance is provided under section 13(c) of the Federal Deposit Insurance Act.

"(B) CONCENTRATION LIMIT EXCEPTION.—The Board may, without regard to paragraph (2), approve an application pursuant to paragraph (1)(A) if—

"(i) the application is for the acquisition of 1 or more banks in default or in danger of default and the Board determines, based on clear and convincing evidence, that consummation of the proposed acquisition is necessary to prevent significant economic disruption or significant adverse effects on financial stability, and the Corporation has not received any other applications, proposed applications, or bids from other institutions that are not subject to the prohibition in paragraph (2) that could be approved in a timely manner in compliance with applicable law (without regard to any applications, proposed applications, or bids from any institution subject to the prohibition in paragraph (2); or

"(ii) the application is for an acquisition with respect to which assistance is provided under section 13(c) of the Federal Deposit Insurance Act and the Board determines, based on clear and convincing evidence, that consummation of the proposed acquisition is necessary to prevent significant economic disruption or significant adverse effects on financial stability, and the Corporation has not received any other applications, proposed applications, or bids from other institutions that are not subject to the prohibition in paragraph (2) that could be approved in a timely manner in compliance with applicable law (without regard to any applications, proposed applications, or bids from any institution subject to the prohibition in paragraph (2).''; and

(B) in section 4(i)(8), by amending subsection (B) to read as follows:

``(B) EXCEPTION.—Subparagraph (A) shall not apply to an acquisition if—

``(i) such acquisition involves an insured depository institution in default or in danger of default and the Board determines, based on clear and convincing evidence, that consummation of the proposed acquisition is necessary to prevent significant economic disruption or significant adverse effects on financial stability, and the Corporation has not received any other applications, proposed applications, or bids from other institutions that are not subject to the prohibition in paragraph (2) that could be approved in a timely manner in compliance with applicable law (without regard to any applications, proposed applications, or bids from any institution subject to the prohibition in paragraph (2); or

"(ii) the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act to facilitate such acquisition and the Board determines, based on clear and convincing evidence, that consummation of the proposed acquisition is necessary to prevent significant economic disruption or significant adverse effects on financial stability, and the Corporation has not received any other applications, proposed applications, or bids from other institutions that are not subject to the prohibition in paragraph (2) that could be approved in a timely manner in compliance with applicable law (without regard to any applications, proposed applications, or bids from any institution subject to the prohibition in paragraph (2).''.

(b) CONCENTRATION LIMIT WITH RESPECT TO CONSOLIDATED LIABILITIES.—Section 14(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1852(c)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by striking ''With the'' and inserting the following:

''(1) IN GENERAL.—With the''; and

(3) by adding at the end the following:

''(2) LIMITATION.—The Board may provide written consent for an acquisition described in paragraph (1)(A) or in paragraph (1)(B) only if the Board determines, based on clear and convincing evidence, that consummation of the proposed acquisition is necessary to prevent significant economic disruption or significant adverse effects on financial stability, and the Corporation has not received any other applications, proposed applications, or bids from other institutions that are not subject to the prohibition in subparagraph (b) that could be approved in a timely manner in compliance with applicable law (without regard to any applications, proposed applications, or bids from any institution subject to the prohibition in subparagraph (b)).".

SEC. 3. CONGRESSIONAL NOTIFICATION AND JUSTIFICATION FOR WAIVERS.

(a) IN GENERAL.—Whenever the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation waives a concentration limit under section 18(c)(13)(B) or section 44(e) of the Federal Deposit Insurance Act or under section 3(d)(5), section 4(i)(8)(B), or section 14(c)(2) of the Bank Holding Company Act of 1956, in connection with the acquisition of a bank or insured depository institution in default or in danger of default, or in connection with an acquisition with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act, the waiving agency and the Federal Deposit Insurance Corporation, jointly, shall, not later than 30 days after such waiver, submit a written report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs in the Senate containing—

(1) a justification for the waiver, including an analysis of why it was necessary to prevent significant economic disruption or significant adverse effects on financial stability;

(2) a description of alternative bids or outcomes considered, including efforts to solicit and encourage bids from entities that would not require a waiver;

(3) an explanation of why alternative bids were not selected, if applicable; and

(4) any recommendations for legislative or regulatory changes to improve competition in future insured depository institution resolutions.

(b) PUBLIC DISCLOSURE.—The waiving agency submitting a report under subsection (a) and the Federal Deposit Insurance Corporation shall make the report publicly available on their respective websites, subject to redactions for confidential supervisory information and any other information described under section 552(b) of title 5, United States Code.