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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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Failing Bank Acquisi-
3 tion Fairness Act”.

4 **SEC. 2. CONCENTRATION LIMIT EXCEPTIONS ONLY AVAIL-**
5 **ABLE TO AVOID SERIOUS ADVERSE ECO-**
6 **NOMIC OR FINANCIAL EFFECTS.**

7 (a) CONCENTRATION LIMITS WITH RESPECT TO DE-
8 POSITS.—

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

12 (A) in section 18(c)(13), by amending sub-
13 paragraph (B) to read as follows:

14 “(B) Subparagraph (A) shall not apply to
15 an interstate merger transaction if—

16 “(i) such interstate merger trans-
17 action involves 1 or more insured deposi-
18 tory institutions in default or in danger of
19 default and the responsible agency deter-
20 mines, based on clear and convincing evi-
21 dence, that consummation of the proposed
22 interstate merger transaction is necessary
23 to prevent significant economic disruption
24 or significant adverse effects on financial
25 stability, and the Corporation has not re-
26 ceived any other applications, proposed ap-

1 applications, or bids from other institutions
2 that are not subject to the prohibition in
3 subparagraph (A) that could be approved
4 in a timely manner in compliance with ap-
5 plicable law (without regard to any appli-
6 cations, proposed applications, or bids
7 from any institution subject to the prohibi-
8 tion in subparagraph (A)); or

9 “(ii) the Corporation provides assist-
10 ance under section 13 to facilitate such
11 interstate merger transaction and the re-
12 sponsible agency determines, based on
13 clear and convincing evidence, that con-
14 summation of the proposed interstate
15 merger transaction is necessary to prevent
16 significant economic disruption or signifi-
17 cant adverse effects on financial stability,
18 and the Corporation has not received any
19 other applications, proposed applications,
20 or bids from other institutions that are not
21 subject to the prohibition in subparagraph
22 (A) that could be approved in a timely
23 manner in compliance with applicable law
24 (without regard to any applications, pro-
25 posed applications, or bids from any insti-

1 tution subject to the prohibition in sub-
2 paragraph (A)).”; and

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

5 “(e) EXCEPTION FOR BANKS IN DEFAULT OR IN
6 DANGER OF DEFAULT.—

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

13 “(A) the merger transaction involves 1 or
14 more banks in default or in danger of default;
15 or

16 “(B) the Corporation provides assistance
17 under section 13(c) to facilitate such merger
18 transaction.

19 “(2) CONCENTRATION LIMIT EXCEPTION.—The
20 responsible agency may, without regard to sub-
21 section (b)(2), approve an application under sub-
22 section (a)(1) for approval of a merger transaction
23 if—

24 “(A) the merger transaction involves 1 or
25 more banks in default or in danger of default

1 and the responsible agency determines, based
2 on clear and convincing evidence, that con-
3 summation of the proposed interstate merger
4 transaction is necessary to prevent significant
5 economic disruption or significant adverse ef-
6 fects on financial stability, and the Corporation
7 has not received any other applications, pro-
8 posed applications, or bids from other institu-
9 tions that are not subject to the prohibition in
10 subparagraph (A) that could be approved in a
11 timely manner in compliance with applicable
12 law (without regard to any applications, pro-
13 posed applications, or bids from any institution
14 subject to the prohibition in subparagraph (A));
15 or

16 “(B) the Corporation provides assistance
17 under section 13(c) to facilitate such merger
18 transaction and the responsible agency deter-
19 mines, based on clear and convincing evidence,
20 that consummation of the proposed interstate
21 merger transaction is necessary to prevent sig-
22 nificant economic disruption or significant ad-
23 verse effects on financial stability, and the Cor-
24 poration has not received any other applica-
25 tions, proposed applications, or bids from other

1 institutions that are not subject to the prohibi-
2 tion in subparagraph (A) that could be ap-
3 proved in a timely manner in compliance with
4 applicable law (without regard to any applica-
5 tions, proposed applications, or bids from any
6 institution subject to the prohibition in sub-
7 paragraph (A)).”.

8 (2) BANK HOLDING COMPANY ACT OF 1956.—
9 The Bank Holding Company Act of 1956 (12 U.S.C.
10 1841 et seq.) is amended—

11 (A) in section 3(d), by amending para-
12 graph (5) to read as follows:

13 “(5) EXCEPTION FOR BANKS IN DEFAULT OR
14 IN DANGER OF DEFAULT.—

15 “(A) GENERAL EXCEPTION.—The Board
16 may, without regard to subparagraph (B) or
17 (D) of paragraph (1) or paragraph (3), approve
18 an application pursuant to paragraph (1)(A)
19 if—

20 “(i) the application is for an acquisi-
21 tion of 1 or more banks in default or in
22 danger of default; or

23 “(ii) the application is for an acquisi-
24 tion with respect to which assistance is

1 provided under section 13(c) of the Fed-
2 eral Deposit Insurance Act.

3 “(B) CONCENTRATION LIMIT EXCEP-
4 TION.—The Board may, without regard to
5 paragraph (2), approve an application pursuant
6 to paragraph (1)(A) if—

7 “(i) the application is for the acquisi-
8 tion of 1 or more banks in default or in
9 danger of default and the Board deter-
10 mines, based on clear and convincing evi-
11 dence, that consummation of the proposed
12 acquisition is necessary to prevent signifi-
13 cant economic disruption or significant ad-
14 verse effects on financial stability, and the
15 Corporation has not received any other ap-
16 plications, proposed applications, or bids
17 from other institutions that are not subject
18 to the prohibition in paragraph (2) that
19 could be approved in a timely manner in
20 compliance with applicable law (without re-
21 gard to any applications, proposed applica-
22 tions, or bids from any institution subject
23 to the prohibition in paragraph (2); or

24 “(ii) the application is for an acquisi-
25 tion with respect to which assistance is

1 provided under section 13(c) of the Fed-
2 eral Deposit Insurance Act and the Board
3 determines, based on clear and convincing
4 evidence, that consummation of the pro-
5 posed acquisition is necessary to prevent
6 significant economic disruption or signifi-
7 cant adverse effects on financial stability,
8 and the Corporation has not received any
9 other applications, proposed applications,
10 or bids from other institutions that are not
11 subject to the prohibition in paragraph (2)
12 that could be approved in a timely manner
13 in compliance with applicable law (without
14 regard to any applications, proposed appli-
15 cations, or bids from any institution sub-
16 ject to the prohibition in paragraph (2).”;
17 and

18 (B) in section 4(i)(8), by amending sub-
19 section (B) to read as follows:

20 “(B) EXCEPTION.—Subparagraph (A)
21 shall not apply to an acquisition if—

22 “(i) such acquisition involves an in-
23 sured depository institution in default or in
24 danger of default and the Board deter-
25 mines, based on clear and convincing evi-

1 dence, that consummation of the proposed
2 acquisition is necessary to prevent signifi-
3 cant economic disruption or significant ad-
4 verse effects on financial stability, and the
5 Corporation has not received any other ap-
6 plications, proposed applications, or bids
7 from other institutions that are not subject
8 to the prohibition in paragraph (2) that
9 could be approved in a timely manner in
10 compliance with applicable law (without re-
11 gard to any applications, proposed applica-
12 tions, or bids from any institution subject
13 to the prohibition in paragraph (2); or

14 “(ii) the Federal Deposit Insurance
15 Corporation provides assistance under sec-
16 tion 13 of the Federal Deposit Insurance
17 Act to facilitate such acquisition and the
18 Board determines, based on clear and con-
19 vincing evidence, that consummation of the
20 proposed acquisition is necessary to pre-
21 vent significant economic disruption or sig-
22 nificant adverse effects on financial sta-
23 bility, and the Corporation has not received
24 any other applications, proposed applica-
25 tions, or bids from other institutions that

1 are not subject to the prohibition in para-
2 graph (2) that could be approved in a
3 timely manner in compliance with applica-
4 ble law (without regard to any applica-
5 tions, proposed applications, or bids from
6 any institution subject to the prohibition in
7 paragraph (2).”.

8 (b) CONCENTRATION LIMIT WITH RESPECT TO CON-
9 SOLIDATED LIABILITIES.—Section 14(c) of the Bank
10 Holding Company Act of 1956 (12 U.S.C. 1852(c)) is
11 amended—

12 (1) by redesignating paragraphs (1), (2), and
13 (3) as subparagraphs (A), (B), and (C), respectively;
14 (2) by striking “With the” and inserting the
15 following:

16 “(1) IN GENERAL.—With the”; and

17 (3) by adding at the end the following:

18 “(2) LIMITATION.—The Board may provide
19 written consent for an acquisition described in para-
20 graph (1)(A) or in paragraph (1)(B) only if the
21 Board determines, based on clear and convincing
22 evidence, that consummation of the proposed acqui-
23 sition is necessary to prevent significant economic
24 disruption or significant adverse effects on financial
25 stability, and the Corporation has not received any

1 other applications, proposed applications, or bids
2 from other institutions that are not subject to the
3 prohibition in subparagraph (b) that could be ap-
4 proved in a timely manner in compliance with appli-
5 cable law (without regard to any applications, pro-
6 posed applications, or bids from any institution sub-
7 ject to the prohibition in subparagraph (b)).”.

8 **SEC. 3. CONGRESSIONAL NOTIFICATION AND JUSTIFICA-**
9 **TION FOR WAIVERS.**

10 (a) IN GENERAL.—Whenever the Board of Governors
11 of the Federal Reserve System, the Comptroller of the
12 Currency, or the Federal Deposit Insurance Corporation
13 waives a concentration limit under section 18(c)(13)(B)
14 or section 44(e) of the Federal Deposit Insurance Act or
15 under section 3(d)(5), section 4(i)(8)(B), or section
16 14(c)(2) of the Bank Holding Company Act of 1956, in
17 connection with the acquisition of a bank or insured depos-
18 itory institution in default or in danger of default, or in
19 connection with an acquisition with respect to which the
20 Federal Deposit Insurance Corporation provides assist-
21 ance under section 13 of the Federal Deposit Insurance
22 Act, the waiving agency and the Federal Deposit Insur-
23 ance Corporation, jointly, shall, not later than 30 days
24 after such waiver, submit a written report to the Com-
25 mittee on Financial Services of the House of Representa-

1 tives and the Committee on Banking, Housing, and Urban
2 Affairs in the Senate containing—

3 (1) a justification for the waiver, including an
4 analysis of why it was necessary to prevent signifi-
5 cant economic disruption or significant adverse ef-
6 fects on financial stability;

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

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

12 (4) any recommendations for legislative or regu-
13 latory changes to improve competition in future in-
14 sured depository institution resolutions.

15 (b) PUBLIC DISCLOSURE.—The waiving agency sub-
16 mitting a report under subsection (a) and the Federal De-
17 posit Insurance Corporation shall make the report publicly
18 available on their respective websites, subject to redactions
19 for confidential supervisory information and any other in-
20 formation described under section 552(b) of title 5, United
21 States Code.