

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6556
OFFERED BY MR. LYNCH OF MASSACHUSETTS

Strike all after the enacting clause and insert the following:

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)—

13 (i) by amending subparagraph (B) to
14 read as follows:

15 “(B) Subparagraph (A) shall not apply to an inter-
16 state merger transaction if—

17 “(i) such interstate merger transaction involves
18 1 or more insured depository institutions in default

1 or in danger of default and the responsible agency
2 determines, based on clear and convincing evidence,
3 that consummation of the proposed interstate merg-
4 er transaction is necessary to prevent significant
5 economic disruption or significant adverse effects on
6 financial stability, and the Corporation has not re-
7 ceived any qualified bid from a company that is not
8 subject to the prohibition in subparagraph (A); or

9 “(ii) the Corporation provides assistance under
10 section 13 to facilitate such interstate merger trans-
11 action and the responsible agency determines, based
12 on clear and convincing evidence, that consummation
13 of the proposed interstate merger transaction is nec-
14 essary to prevent significant economic disruption or
15 significant adverse effects on financial stability, and
16 the Corporation has not received any qualified bid
17 from a company that is not subject to the prohibi-
18 tion in subparagraph (A).”; and

19 (ii) in subparagraph (C)—

20 (I) in clause (i), by striking
21 “and” at the end;

22 (II) in clause (ii), by striking the
23 period at the end and inserting a
24 semicolon; and

1 (III) by adding at the end the
2 following:

3 “(iii) the term ‘qualified bid’ means an applica-
4 tion, proposed application, or bid from a company
5 where—

6 “(I) if applicable, the company, any affil-
7 iate insured depository institution, and any af-
8 filiate depository institution holding company is
9 well capitalized and well managed, as of the
10 date of the application, proposed application, or
11 bid; and

12 “(II) upon consummation of the trans-
13 action, the resulting insured depository institu-
14 tion is well capitalized;

15 “(iv) the term ‘well capitalized’—

16 “(I) with respect to an insured depository
17 institution, has the meaning given such term in
18 section 38(b) (12 U.S.C. 1831o(b));

19 “(II) with respect to a bank holding com-
20 pany, has the meaning given such term in sec-
21 tion 2(o)(1)(B) of the Bank Holding Company
22 Act of 1956 (12 U.S.C. 1841(o)(1)(B));

23 “(III) with respect to a savings and loan
24 holding company, has the meaning given such

1 term in section 238.2 of title 12, Code of Fed-
2 eral Regulations; and

3 “(IV) with respect to a company that is
4 not an insured depository institution, bank
5 holding company, or savings and loan holding
6 company, means maintaining equity capital that
7 the Corporation determines is commensurate
8 with the capital maintained by an insured de-
9 pository institution that is well capitalized; and

10 “(v) the term ‘well managed’ has the meaning
11 given such term in section 2(o)(9) of the Bank
12 Holding Company Act of 1956 (12 U.S.C.
13 1841(o)(9)).”; and

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

16 “(e) EXCEPTION FOR BANKS IN DEFAULT OR IN
17 DANGER OF DEFAULT.—

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

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

4 “(B) the Corporation provides assistance
5 under section 13(c) to facilitate such merger
6 transaction.

7 “(2) CONCENTRATION LIMIT EXCEPTION.—The
8 responsible agency may, without regard to sub-
9 section (b)(2), approve an application under sub-
10 section (a)(1) for approval of a merger transaction
11 if—

12 “(A) the merger transaction involves 1 or
13 more banks in default or in danger of default
14 and the responsible agency determines, based
15 on clear and convincing evidence, that con-
16 summation of the proposed interstate merger
17 transaction is necessary to prevent significant
18 economic disruption or significant adverse ef-
19 fects on financial stability, and the Corporation
20 has not received any qualified bid from another
21 institution that is not subject to the prohibition
22 in subsection (b)(2); or

23 “(B) the Corporation provides assistance
24 under section 13(c) to facilitate such merger
25 transaction and the responsible agency deter-

1 mines, based on clear and convincing evidence,
2 that consummation of the proposed interstate
3 merger transaction is necessary to prevent sig-
4 nificant economic disruption or significant ad-
5 verse effects on financial stability, and the Cor-
6 poration has not received any qualified bid from
7 another institution that is not subject to the
8 prohibition in subsection (b)(2).

9 “(3) QUALIFIED BID DEFINED.—In this sub-
10 section, the term ‘qualified bid’ has the meaning
11 given that term in section 18(c)(13)(C).”.

12 (2) BANK HOLDING COMPANY ACT OF 1956.—
13 The Bank Holding Company Act of 1956 (12 U.S.C.
14 1841 et seq.) is amended—

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

17 “(5) EXCEPTION FOR BANKS IN DEFAULT OR
18 IN DANGER OF DEFAULT.—

19 “(A) GENERAL EXCEPTION.—The Board
20 may, without regard to subparagraph (B) or
21 (D) of paragraph (1) or paragraph (3), approve
22 an application pursuant to paragraph (1)(A)
23 if—

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

4 “(ii) the application is for an acquisi-
5 tion with respect to which assistance is
6 provided under section 13(c) of the Fed-
7 eral Deposit Insurance Act.

8 “(B) CONCENTRATION LIMIT EXCEP-
9 TION.—The Board may, without regard to
10 paragraph (2), approve an application pursuant
11 to paragraph (1)(A) if—

12 “(i) the application is for the acquisi-
13 tion of 1 or more banks in default or in
14 danger of default and the Board deter-
15 mines, based on clear and convincing evi-
16 dence, that consummation of the proposed
17 acquisition is necessary to prevent signifi-
18 cant economic disruption or significant ad-
19 verse effects on financial stability, and the
20 Corporation has not received any qualified
21 bid from another institution that is not
22 subject to the prohibition in paragraph (2);
23 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 qualified bid from another institution that
10 is not subject to the prohibition in para-
11 graph (2).

12 “(C) QUALIFIED BID DEFINED.—In this
13 paragraph, the term ‘qualified bid’ has the
14 meaning given that term in section
15 18(c)(13)(C) of the Federal Deposit Insurance
16 Act.”; and

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

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

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

1 acquisition is necessary to prevent signifi-
2 cant economic disruption or significant ad-
3 verse effects on financial stability, and the
4 Corporation has not received any qualified
5 bid (as defined in section 18(c)(13)(C) of
6 the Federal Deposit Insurance Act) from
7 another institution that is not subject to
8 the prohibition in paragraph (2); or

9 “(ii) the Federal Deposit Insurance
10 Corporation provides assistance under sec-
11 tion 13 of the Federal Deposit Insurance
12 Act to facilitate such acquisition and the
13 Board determines, based on clear and con-
14 vincing evidence, that consummation of the
15 proposed acquisition is necessary to pre-
16 vent significant economic disruption or sig-
17 nificant adverse effects on financial sta-
18 bility, and the Corporation has not received
19 any qualified bid (as defined in section
20 18(c)(13)(C) of the Federal Deposit Insur-
21 ance Act) from another institution that is
22 not subject to the prohibition in paragraph
23 (2).”.

24 (b) CONCENTRATION LIMIT WITH RESPECT TO CON-

25 SOLIDATED LIABILITIES.—Section 14(c) of the Bank

1 Holding Company Act of 1956 (12 U.S.C. 1852(c)) is
2 amended—

3 (1) by redesignating paragraphs (1), (2), and
4 (3) as subparagraphs (A), (B), and (C), respectively;
5 (2) by striking “With the” and inserting the
6 following:

7 “(1) IN GENERAL.—With the”; and

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

9 “(2) LIMITATION.—The Board may provide
10 written consent for an acquisition described in para-
11 graph (1)(A) or in paragraph (1)(B) only if the
12 Board determines, based on clear and convincing
13 evidence, that consummation of the proposed acqui-
14 sition is necessary to prevent significant economic
15 disruption or significant adverse effects on financial
16 stability, and the Corporation has not received any
17 qualified bid (as defined in section 18(c)(13)(C) of
18 the Federal Deposit Insurance Act) from another in-
19 stitution that is not subject to the prohibition in
20 subsection (b).”.

21 **SEC. 3. CONGRESSIONAL NOTIFICATION AND JUSTIFICA-**
22 **TION FOR WAIVERS.**

23 (a) IN GENERAL.—Whenever the Board of Governors
24 of the Federal Reserve System, the Comptroller of the
25 Currency, or the Federal Deposit Insurance Corporation

1 waives a concentration limit under section 18(c)(13)(B)
2 or section 44(e) of the Federal Deposit Insurance Act or
3 under section 3(d)(5), section 4(i)(8)(B), or section
4 14(c)(2) of the Bank Holding Company Act of 1956, in
5 connection with the acquisition of a bank or insured depos-
6 itory institution in default or in danger of default, or in
7 connection with an acquisition with respect to which the
8 Federal Deposit Insurance Corporation provides assist-
9 ance under section 13 of the Federal Deposit Insurance
10 Act, the waiving agency and the Federal Deposit Insur-
11 ance Corporation, jointly, shall, not later than 30 days
12 after such waiver, submit a written report to the Com-
13 mittee on Financial Services of the House of Representa-
14 tives and the Committee on Banking, Housing, and Urban
15 Affairs in the Senate containing—

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

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

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

1 (4) any recommendations for legislative or regu-
2 latory changes to improve competition in future in-
3 sured depository institution resolutions.

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

11 **SEC. 4. LIMITATION ON CONSIDERING BAD FAITH BIDS IN**
12 **LEAST COST DETERMINATION.**

13 Section 13(c)(4) of the Federal Deposit Insurance
14 Act (12 U.S.C. 1823(c)(4)) is amended by adding at the
15 end the following:

16 “(I) LIMITATION ON CONSIDERING BAD
17 FAITH BIDS.—In making a determination under
18 this paragraph of whether an exercise of au-
19 thority is the least costly to the Deposit Insur-
20 ance Fund, the Corporation may not consider
21 any application, proposed application, or bid
22 from a company, if such application, proposed
23 application, or bid would result in violation of—
24 “(i) section 18(c)(13) or 44(b)(2); or

1 “(ii) section 3(d)(2), 4(i)(8), or 14 of
2 the Bank Holding Company Act of 1956.”.

