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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)—

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
19 or in danger of default and the responsible agency
20 determines, based on clear and convincing evidence,
21 that consummation of the proposed interstate merg-
22 er transaction is necessary to prevent significant
23 economic disruption or significant adverse effects on
24 financial stability, and the Corporation has not re-
25 ceived any qualified bid from a company that is not
26 subject to the prohibition in subparagraph (A); or

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

11 (ii) in subparagraph (C)—

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

14 (II) in clause (ii), by striking the
15 period at the end and inserting a
16 semicolon; and

17 (III) by adding at the end the
18 following:

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

22 “(I) if applicable, the company, any affil-
23 iate insured depository institution, and any af-
24 filiate depository institution holding company is
25 well capitalized and well managed, as of the

1 date of the application, proposed application, or
2 bid; and

3 “(II) upon consummation of the trans-
4 action, the resulting insured depository institu-
5 tion is well capitalized;

6 “(iv) the term ‘well capitalized’—

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

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

14 “(III) with respect to a savings and loan
15 holding company, has the meaning given such
16 term in section 238.2 of title 12, Code of Fed-
17 eral Regulations; and

18 “(IV) with respect to a company that is
19 not an insured depository institution, bank
20 holding company, or savings and loan holding
21 company, means maintaining equity capital that
22 the Corporation determines is commensurate
23 with the capital maintained by an insured de-
24 pository institution that is well capitalized; and

1 “(v) the term ‘well managed’ has the meaning
2 given such term in section 2(o)(9) of the Bank
3 Holding Company Act of 1956 (12 U.S.C.
4 1841(o)(9)).”; and

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

7 “(e) EXCEPTION FOR BANKS IN DEFAULT OR IN
8 DANGER OF DEFAULT.—

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

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

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

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

1 “(A) the merger transaction involves 1 or
2 more banks in default or in danger of default
3 and the responsible agency determines, based
4 on clear and convincing evidence, that con-
5 summation of the proposed interstate merger
6 transaction is necessary to prevent significant
7 economic disruption or significant adverse ef-
8 fects on financial stability, and the Corporation
9 has not received any qualified bid from another
10 institution that is not subject to the prohibition
11 in subsection (b)(2); or

12 “(B) the Corporation provides assistance
13 under section 13(c) to facilitate such merger
14 transaction and the responsible agency deter-
15 mines, based on clear and convincing evidence,
16 that consummation of the proposed interstate
17 merger transaction is necessary to prevent sig-
18 nificant economic disruption or significant ad-
19 verse effects on financial stability, and the Cor-
20 poration has not received any qualified bid from
21 another institution that is not subject to the
22 prohibition in subsection (b)(2).

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

1 (2) BANK HOLDING COMPANY ACT OF 1956.—
2 The Bank Holding Company Act of 1956 (12 U.S.C.
3 1841 et seq.) is amended—

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

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

8 “(A) GENERAL EXCEPTION.—The Board
9 may, without regard to subparagraph (B) or
10 (D) of paragraph (1) or paragraph (3), approve
11 an application pursuant to paragraph (1)(A)
12 if—

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

16 “(ii) the application is for an acquisi-
17 tion with respect to which assistance is
18 provided under section 13(c) of the Fed-
19 eral Deposit Insurance Act.

20 “(B) CONCENTRATION LIMIT EXCEP-
21 TION.—The Board may, without regard to
22 paragraph (2), approve an application pursuant
23 to paragraph (1)(A) if—

24 “(i) the application is for the acquisi-
25 tion of 1 or more banks in default or in

1 danger of default and the Board deter-
2 mines, based on clear and convincing evi-
3 dence, that consummation of the proposed
4 acquisition is necessary to prevent signifi-
5 cant economic disruption or significant ad-
6 verse effects on financial stability, and the
7 Corporation has not received any qualified
8 bid from another institution that is not
9 subject to the prohibition in paragraph (2);
10 or

11 “(ii) the application is for an acquisi-
12 tion with respect to which assistance is
13 provided under section 13(c) of the Fed-
14 eral Deposit Insurance Act and the Board
15 determines, based on clear and convincing
16 evidence, that consummation of the pro-
17 posed acquisition is necessary to prevent
18 significant economic disruption or signifi-
19 cant adverse effects on financial stability,
20 and the Corporation has not received any
21 qualified bid from another institution that
22 is not subject to the prohibition in para-
23 graph (2).

24 “(C) QUALIFIED BID DEFINED.—In this
25 paragraph, the term ‘qualified bid’ has the

1 meaning given that term in section
2 18(c)(13)(C) of the Federal Deposit Insurance
3 Act.”; and

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

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

8 “(i) such acquisition involves an in-
9 sured depository institution in default or in
10 danger of default and the Board deter-
11 mines, based on clear and convincing evi-
12 dence, that consummation of the proposed
13 acquisition is necessary to prevent signifi-
14 cant economic disruption or significant ad-
15 verse effects on financial stability, and the
16 Corporation has not received any qualified
17 bid (as defined in section 18(c)(13)(C) of
18 the Federal Deposit Insurance Act) from
19 another institution that is not subject to
20 the prohibition in paragraph (2); or

21 “(ii) the Federal Deposit Insurance
22 Corporation provides assistance under sec-
23 tion 13 of the Federal Deposit Insurance
24 Act to facilitate such acquisition and the
25 Board determines, based on clear and con-

1 vincing evidence, that consummation of the
2 proposed acquisition is necessary to pre-
3 vent significant economic disruption or sig-
4 nificant adverse effects on financial sta-
5 bility, and the Corporation has not received
6 any qualified bid (as defined in section
7 18(c)(13)(C) of the Federal Deposit Insur-
8 ance Act) from another institution that is
9 not subject to the prohibition in paragraph
10 (2).”.

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

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

19 “(1) IN GENERAL.—With the”; and

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

21 “(2) LIMITATION.—The Board may provide
22 written consent for an acquisition described in para-
23 graph (1)(A) or in paragraph (1)(B) only if the
24 Board determines, based on clear and convincing
25 evidence, that consummation of the proposed acqui-

1 sition is necessary to prevent significant economic
2 disruption or significant adverse effects on financial
3 stability, and the Corporation has not received any
4 qualified bid (as defined in section 18(c)(13)(C) of
5 the Federal Deposit Insurance Act) from another in-
6 stitution that is not subject to the prohibition in
7 subsection (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.

1 **SEC. 4. LIMITATION ON CONSIDERING BAD FAITH BIDS IN**
2 **LEAST COST DETERMINATION.**

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

6 “(I) LIMITATION ON CONSIDERING BAD
7 FAITH BIDS.—In making a determination under
8 this paragraph of whether an exercise of au-
9 thority is the least costly to the Deposit Insur-
10 ance Fund, the Corporation may not consider
11 any application, proposed application, or bid
12 from a company, if such application, proposed
13 application, or bid would result in violation of—
14 “(i) section 18(c)(13) or 44(b)(2); or
15 “(ii) section 3(d)(2), 4(i)(8), or 14 of
16 the Bank Holding Company Act of 1956.”.