

117TH CONGRESS
1ST SESSION

S. 2882

To amend certain banking laws to establish requirements for bank mergers,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2021

Ms. WARREN introduced the following bill; which was read twice and referred
to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend certain banking laws to establish requirements
for bank mergers, 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,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Bank Merger Review Modernization Act of 2021”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Compliance with Federal consumer financial laws.
- Sec. 3. Cost-benefit analysis for merger transactions.
- Sec. 4. Community Reinvestment Act performance.
- Sec. 5. Financial stability considerations for merger transactions.
- Sec. 6. Financial criteria for certain merger transactions.
- Sec. 7. Managerial criteria for certain merger transactions.

Sec. 8. Competitive effects.

Sec. 9. Transparency in merger review.

Sec. 10. Financial stability exception.

Sec. 11. Prior approval requirements.

Sec. 12. Citizen standing.

Sec. 13. Savings and loan holding company acquisitions and merger transactions.

1 **SEC. 2. COMPLIANCE WITH FEDERAL CONSUMER FINAN-**
 2 **CIAL LAWS.**

3 (a) APPLICATION FOR MERGERS OR ACQUISI-
 4 TIONS.—

5 (1) IN GENERAL.—Not later than 180 days
 6 after the date of the enactment of this Act, the Di-
 7 rector of the Bureau of Consumer Financial Protec-
 8 tion shall establish procedures for a covered appli-
 9 cant to submit an application to directly or indirectly
 10 merge with, or directly or indirectly acquire, a per-
 11 son that offers or provides consumer financial prod-
 12 ucts or services (as defined in section 1002 of the
 13 Consumer Financial Protection Act of 2010 (12
 14 U.S.C. 5481(14))).

15 (2) PUBLIC COMMENT.—The Director shall
 16 allow a period of at least 30 days for public com-
 17 ment on applications submitted under paragraph
 18 (1).

19 (b) PROHIBITION.—It shall be unlawful for a covered
 20 applicant to directly or indirectly merge with, or directly
 21 or indirectly acquire, a person that offers or provides con-
 22 sumer financial products or services (as defined in section

1 1002 of the Consumer Financial Protection Act of 2010
 2 (12 U.S.C. 5481(14))) without the prior written approval
 3 of the Director.

4 (c) CONSIDERATIONS.—In considering an application
 5 under subsection (a), the Director shall—

6 (1) consider the records of the covered appli-
 7 cant and the person with respect to compliance with
 8 the Federal consumer financial laws; and

9 (2) deny such application if the resulting insti-
 10 tution would not have adequate systems in place to
 11 ensure compliance with the Federal consumer finan-
 12 cial laws.

13 (d) COVERED APPLICANT DEFINED.—In this section,
 14 the term “covered applicant” means an insured depository
 15 institution (as defined in section 3 of the Federal Deposit
 16 Insurance Act (12 U.S.C. 1813)) or a depository institu-
 17 tion holding company (as defined in such section) with
 18 more than \$10,000,000,000 in total assets.

19 **SEC. 3. COST-BENEFIT ANALYSIS FOR MERGER TRANS-**
 20 **ACTIONS.**

21 (a) INSURED DEPOSITORY INSTITUTIONS.—Section
 22 18(c) of the Federal Deposit Insurance Act (12 U.S.C.
 23 1828(c)) is amended by adding at the end the following
 24 new paragraph:

25 “(14) ANALYSIS OF COSTS AND BENEFITS.—

1 “(A) IN GENERAL.—The responsible agen-
2 cy shall not approve any proposed merger
3 transaction under this subsection unless the re-
4 sponsible agency determines that the public
5 benefits of the merger transaction outweigh the
6 expected costs.

7 “(B) EVALUATION.—In evaluating the ex-
8 pected costs of the proposed merger transaction
9 under subparagraph (A), the responsible agency
10 shall consider—

11 “(i) the probable effect of the pro-
12 posed merger transaction on the cost and
13 availability of financial products and serv-
14 ices;

15 “(ii) the probable effect of branch clo-
16 sures on customers of each bank or savings
17 association involved in the proposed merger
18 transaction;

19 “(iii) the probable effect of the pro-
20 posed merger transaction on relevant local
21 economies, including employment losses re-
22 lating to branch closures and impacts on
23 job quality; and

24 “(iv) any other cost of the proposed
25 merger transaction that the responsible

1 agency considers pursuant to this sub-
2 section.”.

3 (b) BANK HOLDING COMPANIES.—

4 (1) PROPOSED ACQUISITIONS, MERGERS, OR
5 CONSOLIDATIONS.—Section 3(c) of the Bank Hold-
6 ing Company Act of 1956 (12 U.S.C. 1842(c)) is
7 amended by adding at the end the following new
8 paragraph:

9 “(8) ANALYSIS OF COSTS AND BENEFITS.—

10 “(A) IN GENERAL.—The Board may not
11 approve an application under this section unless
12 the Board determines that the public benefits of
13 the proposed transaction outweigh the expected
14 costs.

15 “(B) EVALUATION.—In evaluating the ex-
16 pected costs of the proposed transaction under
17 subparagraph (A), the Board shall consider—

18 “(i) the probable effect of the pro-
19 posed transaction on the cost and avail-
20 ability of financial products and services;

21 “(ii) the probable effect of branch clo-
22 sures on customers of each company in-
23 volved in the proposed transaction;

24 “(iii) the probable effect of the pro-
25 posed transaction on relevant local econo-

mies, including employment losses relating to branch closures and impacts on job quality; and

“(iv) any other cost of the proposed transaction that the Board considers pursuant to this subsection.”.

(2) OTHER TRANSACTIONS OR ACTIVITIES.—

Section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)) is amended by adding at the end the following new subparagraph:

“(D) ANALYSIS OF COSTS AND BENEFITS.—

“(i) IN GENERAL.—The Board shall deny a notice filed pursuant to this subsection unless the Board determines that the public benefits of the proposed transaction or activity described in the notice outweigh the expected costs.

“(ii) EVALUATION.—In evaluating the expected costs of the proposed transaction under subparagraph (A), the Board shall consider—

“(I) the probable effect of the proposed transaction or activity on

1 the cost and availability of financial
2 products and services;

3 “(II) the probable effect of
4 branch closures on customers of each
5 company involved in the proposed
6 transaction or activity;

7 “(III) the probable effect of the
8 proposed transaction or activity on
9 relevant local economies, including
10 employment losses relating to branch
11 closures and impacts on job quality;
12 and

13 “(IV) any other cost of the pro-
14 posed transaction or activity that the
15 Board considers pursuant to this
16 paragraph.”.

17 **SEC. 4. COMMUNITY REINVESTMENT ACT PERFORMANCE.**

18 (a) INSURED DEPOSITORY INSTITUTIONS.—Section
19 18(c) of the Federal Deposit Insurance Act (12 U.S.C.
20 1828(c)), as amended by section 3, is further amended
21 by adding at the end the following new paragraphs:

22 “(15) COMMUNITY REINVESTMENT ACT PER-
23 FORMANCE.—The responsible agency shall not ap-
24 prove a proposed merger transaction under this sec-
25 tion if the largest insured depository institution that

1 is party to such transaction, based on a comparison
 2 of the average total risk-weighted assets controlled
 3 by each insured depository institution that is party
 4 to such transaction during the previous 12-month
 5 period, has received a rating lower than ‘outstanding
 6 record of meeting community credit needs’ on—

7 “(A) two out of the three most recent writ-
 8 ten evaluations required under section 807 of
 9 the Community Reinvestment Act of 1977 (12
 10 U.S.C. 2906); or

11 “(B) if three such evaluations are not
 12 available, the most recent written evaluation re-
 13 quired under such section.

14 “(16) COMMUNITY BENEFITS PLAN.—

15 “(A) IN GENERAL.—In reviewing any ap-
 16 plication filed under this paragraph, the respon-
 17 sible agency shall require—

18 “(i) submission to the appropriate
 19 Federal financial supervisory agency of a
 20 community benefits plan;

21 “(ii) that the insured depository insti-
 22 tution consult with community-based orga-
 23 nizations and other community stake-
 24 holders in developing the community bene-
 25 fits plan; and

1 “(iii) a public hearing to be held if
 2 any insured depository institution involved
 3 in the transaction has received a ‘substan-
 4 tial noncompliance in meeting community
 5 credit needs’ or ‘needs to improve record of
 6 meeting community credit needs’ rating in
 7 any assessment area during the last exam-
 8 ination of such institution conducted pur-
 9 suant to the Community Reinvestment Act
 10 of 1977.

11 “(B) DEFINITION.—For purposes of this
 12 paragraph, ‘community benefits plan’ means a
 13 plan that provides measurable goals for future
 14 amounts of safe and sound loans, investments,
 15 services, and other financial products for low-
 16 and moderate-income communities and other
 17 distressed or underserved communities.”.

18 (b) BANK HOLDING COMPANIES.—

19 (1) PROPOSED ACQUISITIONS, MERGERS, OR
 20 CONSOLIDATIONS.—Section 3(e) of the Bank Hold-
 21 ing Company Act of 1956 (12 U.S.C. 1842(e)), as
 22 amended by section 3, is further amended by adding
 23 at the end the following new paragraphs:

24 “(9) COMMUNITY REINVESTMENT ACT PER-
 25 FORMANCE.—The Board shall deny an application

1 under this section if either the lead insured deposi-
 2 tory institution of the applicant or the insured de-
 3 pository institution that would be the lead insured
 4 depository institution of the resulting company fol-
 5 lowing consummation of the proposed transaction
 6 has received a rating lower than ‘outstanding record
 7 of meeting community credit needs’ on—

8 “(A) two out of the three most recent writ-
 9 ten evaluations required under section 807 of
 10 the Community Reinvestment Act of 1977 (12
 11 U.S.C. 2906); or

12 “(B) if three such evaluations are not
 13 available, the most recent written evaluation re-
 14 quired under such section.

15 “(10) COMMUNITY BENEFITS PLAN.—

16 “(A) IN GENERAL.—In reviewing any ap-
 17 plication filed under this paragraph, the Board
 18 shall require—

19 “(i) submission to the appropriate
 20 Federal financial supervisory agency of a
 21 community benefits plan;

22 “(ii) that the company consult with
 23 community-based organizations and other
 24 community stakeholders in developing the
 25 community benefits plan; and

1 “(iii) a public hearing to be held if
 2 any bank that would be controlled by the
 3 resulting company has received a ‘substan-
 4 tial noncompliance in meeting community
 5 credit needs’ or ‘needs to improve record of
 6 meeting community credit needs’ rating in
 7 any assessment area during the last exam-
 8 ination of such institution conducted pur-
 9 suant to the Community Reinvestment Act
 10 of 1977.

11 “(B) DEFINITION.—For purposes of this
 12 paragraph, ‘community benefits plan’ means a
 13 plan that provides measurable goals for future
 14 amounts of safe and sound loans, investments,
 15 services, and other financial products for low-
 16 and moderate-income communities and other
 17 distressed or underserved communities.”.

18 (2) OTHER TRANSACTIONS OR ACTIVITIES.—
 19 Section 4(j)(2) of the Bank Holding Company Act
 20 of 1956 (12 U.S.C. 1843(j)(2)), as amended by sec-
 21 tion 3, is further amended by adding at the end the
 22 following new subparagraphs:

23 “(E) COMMUNITY REINVESTMENT ACT
 24 PERFORMANCE.—The Board shall deny a notice
 25 filed pursuant to this subsection if the lead in-

1 sured depository institution of the applicant or
 2 the insured depository institution that would be
 3 the lead insured depository institution of the re-
 4 sulting company following consummation of the
 5 proposed transaction or activity has received a
 6 rating lower than ‘outstanding record of meet-
 7 ing community credit needs’ on—

8 “(i) two out of the three most recent
 9 written evaluations required under section
 10 807 of the Community Reinvestment Act
 11 of 1977 (12 U.S.C. 2906); or

12 “(ii) if three such evaluations are not
 13 available, the most recent written evalua-
 14 tion required under such section.

15 “(F) COMMUNITY BENEFITS PLAN.—

16 “(i) IN GENERAL.—In reviewing any
 17 application filed under this paragraph, the
 18 Board shall require—

19 “(I) submission to the appro-
 20 priate Federal financial supervisory
 21 agency of a community benefits plan;

22 “(II) that the company consult
 23 with community-based organizations
 24 and other community stakeholders in

1 developing the community benefits
2 plan; and

3 “(III) a public hearing to be held
4 if any bank that would be controlled
5 by the resulting company has received
6 a ‘substantial noncompliance in meet-
7 ing community credit needs’ or ‘needs
8 to improve record of meeting commu-
9 nity credit needs’ rating in any assess-
10 ment area during the last examination
11 of such institution conducted pursuant
12 to the Community Reinvestment Act
13 of 1977.

14 “(ii) DEFINITION.—For purposes of
15 this paragraph, ‘community benefits plan’
16 means a plan that provides measurable
17 goals for future amounts of safe and sound
18 loans, investments, services, and other fi-
19 nancial products for low- and moderate-in-
20 come communities and other distressed or
21 underserved communities.”.

22 (c) COMMUNITY REINVESTMENT ACT AMEND-
23 MENT.—Section 804 of the Community Reinvestment Act
24 of 1977 (12 U.S.C. 2903) is amended by adding at the
25 end the following new subsection:

1 “(e) COMMUNITY BENEFITS PLAN.—In assessing
 2 and taking into account, under subsection (a), the record
 3 of a financial institution, the appropriate Federal financial
 4 supervisory agency shall consider as a factor the financial
 5 institution’s record of compliance with any community
 6 benefits plan pursuant to section 3(c)(10) or 4(j)(2)(F)
 7 of the Bank Holding Company Act of 1956 or section
 8 18(c)(16) of the Federal Deposit Insurance Act, as appli-
 9 cable.”.

10 (d) FAIR LENDING ASSESSMENT.—Section 807(b)(1)
 11 of the Community Reinvestment Act of 1977 (12 U.S.C.
 12 2906(b)(1)) is amended—

13 (1) in subparagraph (A)—

14 (A) in clause (ii), by striking “and” at the
 15 end;

16 (B) by redesignating clause (iii) as clause
 17 (iv); and

18 (C) by inserting after clause (ii) the fol-
 19 lowing new clause:

20 “(iii) contain statistical analyses of the in-
 21 stitution’s fair lending performance using data
 22 reported under the Home Mortgage Disclosure
 23 Act; and”; and

1 (2) in subparagraph (B), by striking “clauses
2 (i) and (ii)” and inserting “clauses (i), (ii), and
3 (iii)”.

4 **SEC. 5. FINANCIAL STABILITY CONSIDERATIONS FOR**
5 **MERGER TRANSACTIONS.**

6 (a) **INSURED DEPOSITORY INSTITUTIONS.**—Section
7 18(c) of the Federal Deposit Insurance Act (12 U.S.C.
8 1828(c)), as amended by section 4, is further amended—

9 (1) in paragraph (5)—

10 (A) in subparagraph (A), by striking “or”
11 at the end;

12 (B) in subparagraph (B), by striking the
13 period at the end and inserting “, or”; and

14 (C) by inserting after subparagraph (B)
15 the following new subparagraph:

16 “(C) any proposed merger transaction for which
17 the resulting insured depository institution would re-
18 ceive a score greater than 25 on the assessment de-
19 scribed in paragraph (17)(B).”; and

20 (2) by adding at the end the following new
21 paragraph:

22 “(17) **FINANCIAL STABILITY.**—In considering
23 the risk to the stability of the United States banking
24 or financial system under paragraph (5), the respon-
25 sible agency shall—

1 “(A) take into account—

2 “(i) the insured depository institutions
3 or bank holding companies that might ac-
4 quire the applicant insured depository in-
5 stitution if the resulting insured depository
6 institution were to fail after consummation
7 of the proposed merger; and

8 “(ii) whether such an acquisition
9 would result in greater or more con-
10 centrated risks to the stability of the
11 United States banking or financial system;
12 and

13 “(B) use the assessment methodology de-
14 veloped by the Basel Committee on Banking
15 Supervision for assessing global systemically
16 important banks.”.

17 (b) BANK HOLDING COMPANIES.—

18 (1) PROPOSED ACQUISITIONS, MERGERS, OR
19 CONSOLIDATIONS.—Section 3(c)(7) of the Bank
20 Holding Company Act of 1956 (12 U.S.C.
21 1842(c)(7)), as amended by section 4, is further
22 amended—

23 (A) by striking “In every case,” and in-
24 serting the following:

25 “(A) IN GENERAL.—In every case,”; and

1 (B) by adding at the end the following new
 2 subparagraphs:

3 “(B) CONSIDERATIONS.—The Board shall
 4 not approve an application under this section
 5 for which the resulting company would receive
 6 a score greater than 25 on the assessment de-
 7 scribed in subparagraph (C)(ii).

8 “(C) FINANCIAL STABILITY.—In consid-
 9 ering the risk to the stability of the United
 10 States banking or financial system, the Board
 11 shall—

12 “(i) take into account—

13 “(I) the insured depository insti-
 14 tutions or bank holding companies
 15 that might acquire the resulting com-
 16 pany if it were to fail after con-
 17 summation of the proposed trans-
 18 action; and

19 “(II) whether such an acquisition
 20 would result in greater or more con-
 21 centrated risks to the stability of the
 22 United States banking or financial
 23 system; and

24 “(ii) use the assessment methodology
 25 developed by the Basel Committee on

1 Banking Supervision for assessing global
2 systemically important banks.”.

3 (2) PROPOSED TRANSACTIONS OR ACTIVI-
4 TIES.—Section 4(j)(2) of the Bank Holding Com-
5 pany Act of 1956 (12 U.S.C. 1843(j)(2)), as amend-
6 ed by section 4, is further amended by adding at the
7 end the following new subparagraphs:

8 “(G) CONSIDERATIONS.—The Board shall
9 deny a notice filed pursuant to this subsection
10 if the resulting company would receive a score
11 greater than 25 on the assessment described in
12 subparagraph (H)(ii).

13 “(H) ASSESSMENT OF FINANCIAL STA-
14 BILITY.—In considering the risk to the stability
15 of the United States banking or financial sys-
16 tem, the Board shall—

17 “(i) take into account—

18 “(I) the insured depository insti-
19 tutions or bank holding companies
20 that might acquire the applicant bank
21 holding company if the resulting com-
22 pany were to fail after consummation
23 of the proposed proposal; and

24 “(II) whether such an acquisition
25 would result in greater or more con-

1 centrated risks to the stability of the
 2 United States banking or financial
 3 system; and

4 “(ii) use the assessment methodology
 5 developed by the Basel Committee on
 6 Banking Supervision for assessing global
 7 systemically important banks.”.

8 **SEC. 6. FINANCIAL CRITERIA FOR CERTAIN MERGER**
 9 **TRANSACTIONS.**

10 (a) STRESS TESTS.—

11 (1) PROPOSED ACQUISITIONS, MERGERS, OR
 12 CONSOLIDATIONS.—Section 3(c) of the Bank Hold-
 13 ing Company Act of 1956 (12 U.S.C. 1842(c)), as
 14 amended by section 5, is further amended by adding
 15 at the end the following new paragraphs:

16 “(11) STRESS TESTS.—

17 “(A) IN GENERAL.—If a resulting com-
 18 pany will have total consolidated assets greater
 19 than or equal to \$100,000,000,000, the Board
 20 shall evaluate the pro forma balance sheet of
 21 the resulting company to assess whether such
 22 resulting company would have the capital, on a
 23 total consolidated basis, necessary to absorb
 24 losses as a result of adverse economic condi-
 25 tions.

1 “(B) CONSIDERATIONS.—The Board shall
 2 not approve an application under this section
 3 unless the resulting company would remain at
 4 least adequately capitalized in severely adverse
 5 economic conditions under the evaluation de-
 6 scribed in subparagraph (A).”.

7 (2) PROPOSED TRANSACTIONS OR ACTIVI-
 8 TIES.—Section 4(j) of the Bank Holding Company
 9 Act of 1956 (12 U.S.C. 1843(j)), as amended by
 10 section 5, is further amended by adding at the end
 11 the following new paragraphs:

12 “(8) STRESS TESTS.—

13 “(A) IN GENERAL.—If a resulting com-
 14 pany will have total consolidated assets greater
 15 than or equal to \$100,000,000,000, the Board
 16 shall evaluate the pro forma balance sheet of
 17 the resulting company to determine whether
 18 such resulting company would have the capital,
 19 on a total consolidated basis, necessary to ab-
 20 sorb losses as a result of adverse economic con-
 21 ditions.

22 “(B) CONSIDERATIONS.—The Board shall
 23 deny a notice submitted pursuant to this sub-
 24 section if the resulting company would not re-
 25 main at least adequately capitalized in severely

1 adverse economic conditions under the evalua-
2 tion described in subparagraph (A).”.

3 (b) WELL CAPITALIZED THRESHOLDS.—

4 (1) DEFINITION OF WELL CAPITALIZED FOR
5 INTERSTATE BANK MERGERS.—Section 44(g) of the
6 Federal Deposit Insurance Act (12 U.S.C.
7 1831u(g)) is amended by adding at the end the fol-
8 lowing new paragraph:

9 “(12) WELL CAPITALIZED.—The term ‘well
10 capitalized’ means, with respect to an insured depos-
11 itory institution with total consolidated assets of
12 \$10,000,000,000 or more, that such institution ex-
13 ceeds the required minimum level for each relevant
14 capital measure to be considered adequately capital-
15 ized (as determined under section 38) by at least 50
16 percent of such minimum.”.

17 (2) BANK HOLDING COMPANIES.—Section
18 2(o)(B)(ii) of the Bank Holding Company Act of
19 1956 (12 U.S.C. 1841(o)(B)(ii)) is amended to read
20 as follows:

21 “(ii) WELL CAPITALIZED.—A bank
22 holding company is ‘well capitalized’ if—

23 “(I) with respect to a company
24 that has total consolidated assets of
25 \$10,000,000,000 or more, it exceeds

1 the required minimum level for each
 2 relevant capital measure (as deter-
 3 mined by the Board) by at least 50
 4 percent of such minimum; and

5 “(II) with respect to a company
 6 that has total consolidated assets of
 7 less than \$10,000,000,000, it meets
 8 the required capital levels for well
 9 capitalized bank holding companies
 10 established by the Board.”.

11 **SEC. 7. MANAGERIAL CRITERIA FOR CERTAIN MERGER**
 12 **TRANSACTIONS.**

13 (a) INSURED DEPOSITORY INSTITUTIONS.—Section
 14 18(c) of the Federal Deposit Insurance Act (12 U.S.C.
 15 1828(c)), as amended by sections 3(a), 4(a), and 5(a) of
 16 this Act, is amended by adding at the end the following:

17 “(18)(A) In this paragraph, the term ‘covered trans-
 18 action’ means a merger transaction in which the resulting
 19 company would have more than \$100,000,000,000 in total
 20 assets.

21 “(B) An application for approval of a covered trans-
 22 action shall include the name of each individual who will
 23 serve on the board of directors or serve as a senior execu-
 24 tive officer of the resulting company.

1 “(C) The responsible agency shall make a written
 2 evaluation of the competence, experience, character, and
 3 integrity of each individual described in subparagraph (B).

4 “(D) The responsible agency shall not approve a cov-
 5 ered transaction if the responsible agency determines that
 6 the competence, experience, character, or integrity of any
 7 individual described in subparagraph (B) indicates that it
 8 would not be in the best interests of the depositors of the
 9 depository institution or in the best interests of the public
 10 to permit the individual to be employed by, or associated
 11 with, the resulting company.

12 “(E) The responsible agency shall make any written
 13 evaluation described in subparagraph (C) publicly avail-
 14 able after the date on which the responsible agency ap-
 15 proves or denies a covered transaction.”.

16 (b) BANK HOLDING COMPANIES.—

17 (1) ACQUISITION OF BANK SHARES OR AS-
 18 SETS.—Section 3(c) of the Bank Holding Company
 19 Act of 1956 (12 U.S.C. 1842(c)), as amended by
 20 sections 3(b)(1), 4(b)(1), and 6(a)(1) of this Act, is
 21 amended by adding at the end the following:

22 “(12) COVERED TRANSACTIONS.—

23 “(A) DEFINITION.—In this paragraph, the
 24 term ‘covered transaction’ means an acquisi-
 25 tion, merger, or consolidation under this section

1 in which the resulting company would have
2 more than \$100,000,000,000 in total assets.

3 “(B) LISTING OF MEMBERS OF THE
4 BOARD OF DIRECTORS AND SENIOR EXECUTIVE
5 OFFICERS.—

6 “(i) IN GENERAL.—An application for
7 approval of a covered transaction shall in-
8 clude the name of each individual who will
9 serve on the board of directors or serve as
10 a senior executive officer of the resulting
11 company.

12 “(ii) WRITTEN EVALUATION.—The
13 Board shall make a written evaluation of
14 the competence, experience, character, and
15 integrity of each individual described in
16 clause (i).

17 “(iii) BEST INTERESTS.—The Board
18 shall not approve a covered transaction if
19 the Board determines that the competence,
20 experience, character, or integrity of any
21 individual described in clause (i) indicates
22 that it would not be in the best interests
23 of the shareholders of the bank holding
24 company or in the best interests of the
25 public to permit the individual to be em-

1 employed by, or associated with, the resulting
2 company.

3 “(iv) PUBLICLY AVAILABLE.—The
4 Board shall make any written evaluation
5 described in clause (ii) publicly available
6 after the date on which the Board ap-
7 proves or denies a covered transaction.”.

8 (2) INTERESTS IN NONBANKING ORGANIZA-
9 TIONS.—Section 4(j) of the Bank Holding Company
10 Act of 1956 (12 U.S.C. 1843(j)), as amended by
11 section 6(a)(2) of this Act, is amended by adding at
12 the end the following:

13 “(9) COVERED TRANSACTIONS.—

14 “(A) DEFINITION.—In this paragraph, the
15 term ‘covered transaction’ means a transaction
16 under this subsection in which the resulting
17 company would have more than
18 \$100,000,000,000 in total assets.

19 “(B) LISTING OF MEMBERS OF THE
20 BOARD OF DIRECTORS AND SENIOR EXECUTIVE
21 OFFICERS.—

22 “(i) IN GENERAL.—Notice for ap-
23 proval of a covered transaction shall in-
24 clude the name of each individual who will
25 serve on the board of directors or serve as

1 a senior executive officer of the resulting
2 company.

3 “(ii) WRITTEN EVALUATION.—The
4 Board shall make a written evaluation of
5 the competence, experience, character, and
6 integrity of each individual described in
7 clause (i).

8 “(iii) BEST INTERESTS.—The Board
9 shall deny a proposed covered transaction
10 if the Board determines that the com-
11 petence, experience, character, or integrity
12 of any individual described in clause (i) in-
13 dicates that it would not be in the best in-
14 terests of the shareholders of the bank
15 holding company or in the best interests of
16 the public to permit the individual to be
17 employed by, or associated with, the result-
18 ing company.

19 “(iv) PUBLICLY AVAILABLE.—The
20 Board shall make any written evaluation
21 described in clause (ii) publicly available
22 after the date on which the Board ap-
23 proves or denies a covered transaction.”.

1 **SEC. 8. COMPETITIVE EFFECTS.**

2 (a) INSURED DEPOSITORY INSTITUTIONS.—Section
3 18(c) of the Federal Deposit Insurance Act (12 U.S.C.
4 1828(c)), as amended by section 7, is further amended
5 by adding at the end the following new paragraph:

6 “(19) COMPETITIVE EFFECTS.—

7 “(A) PRODUCT MARKETS.—In every case,
8 the responsible agency shall consider the com-
9 petitive effects of the proposed transaction on
10 the market for—

11 “(i) the cluster of commercial banking
12 products and services, as described in
13 United States v. Philadelphia National
14 Bank, 374 U.S. 321 (1963);

15 “(ii) commercial deposits;

16 “(iii) loans to small businesses, using
17 data reported under the Community Rein-
18 vestment Act of 1977 for loans to small
19 businesses with less than \$1,000,000 in
20 gross annual revenue, and any other data
21 the responsible agency deems appropriate
22 to collect for this purpose;

23 “(iv) home mortgage loans, using data
24 reported under the Home Mortgage Disclo-
25 sure Act of 1975 for first-lien mortgage
26 loans for single family homes, and any

1 other data the responsible agency deems
2 appropriate to collect for this purpose; and

3 “(v) any other financial product that
4 comprises a substantial portion of the ac-
5 tivities of each bank or savings association
6 involved in the proposed merger trans-
7 action, as determined by the responsible
8 agency.

9 “(B) GEOGRAPHIC MARKETS.—The re-
10 sponsible agency shall consider the competitive
11 effects of the proposed transaction on the prod-
12 uct markets identified in subparagraph (A) with
13 respect to each of the following geographic mar-
14 kets as defined by the United States Census
15 Bureau:

16 “(i) Each State in which the resulting
17 company would operate.

18 “(ii) Each core-based statistical area
19 in which the resulting company would op-
20 erate.

21 “(iii) Each county in which the result-
22 ing company would operate.

23 “(iv) Any other geographic area the
24 responsible agency deems appropriate.

1 “(C) HERFINDAHL-HIRSCHMAN INDEX
2 THRESHOLD FOR HEIGHTENED SCRUTINY.—

3 “(i) IN GENERAL.—When evaluating
4 the competitive effects of the proposed
5 transaction, the responsible agency shall
6 apply higher scrutiny to any markets in
7 which the transaction would result in a
8 Herfindahl-Hirschman Index over 1800
9 and an increase of more than 200.

10 “(ii) RULE OF CONSTRUCTION.—
11 Nothing in clause (i) may be construed as
12 limiting the authority of the responsible
13 agency to apply higher scrutiny to any
14 markets in which the transaction would re-
15 sult in an Herfindahl-Hirschman Index
16 under 1800 or an increase of less than
17 200.

18 “(D) ADDITIONAL CONSIDERATIONS.—
19 When evaluating the competitive effects of the
20 proposed transaction, the responsible agency
21 shall consider the extent to which—

22 “(i) the resulting institution could re-
23 ceive a ‘too big to fail’ subsidy;

24 “(ii) the proposed transaction could
25 create or intensify conflicts of interest;

1 “(iii) the proposed transaction could
2 diminish product quality, including con-
3 sumer privacy and access to branch offices;

4 “(iv) the proposed transaction could
5 lead to the exploitation of consumers’ data;

6 “(v) the proposed transaction could
7 impair the resilience of the United States
8 or global financial systems;

9 “(vi) common ownership of firms in
10 the relevant markets could impair competi-
11 tion;

12 “(vii) the proposed transaction could
13 impact wages and working standards in
14 the relevant markets;

15 “(viii) the proposed transaction could
16 create or amplify existing climate and envi-
17 ronmental risks; and

18 “(ix) any other factors that the re-
19 sponsible agency deems appropriate could
20 impair competition.”.

21 (b) BANK HOLDING COMPANIES.—

22 (1) PROPOSED ACQUISITIONS, MERGERS, OR
23 CONSOLIDATIONS.—Section 3(c) of the Bank Hold-
24 ing Company Act of 1956 (12 U.S.C. 1842(c)), as

1 amended by section 7, is further amended by adding
 2 at the end the following new paragraph:

3 “(13) COMPETITIVE EFFECTS.—

4 “(A) PRODUCT MARKETS.—In every case,
 5 the Board shall consider the competitive effects
 6 of the proposed transaction on the market for—

7 “(i) the cluster of commercial banking
 8 products and services, as described in
 9 United States v. Philadelphia National
 10 Bank, 374 U.S. 321 (1963);

11 “(ii) commercial deposits;

12 “(iii) loans to small businesses, using
 13 data reported under the Community Rein-
 14 vestment Act of 1977 for loans to small
 15 businesses with less than \$1,000,000 in
 16 gross annual revenue, and any other data
 17 the Board deems appropriate to collect for
 18 this purpose;

19 “(iv) home mortgage loans, using data
 20 reported under the Home Mortgage Disclo-
 21 sure Act of 1975 for first-lien mortgage
 22 loans for single family homes, and any
 23 other data the Board deems appropriate to
 24 collect for this purpose; and

1 “(v) any other financial product that
 2 comprises a substantial portion of the ac-
 3 tivities of each bank or savings association
 4 involved in the proposed merger trans-
 5 action, as determined by the Board.

6 “(B) GEOGRAPHIC MARKETS.—The Board
 7 shall consider the competitive effects of the pro-
 8 posed transaction on the product markets iden-
 9 tified in subparagraph (A) with respect to each
 10 of the following geographic markets:

11 “(i) Each State in which the resulting
 12 company would operate.

13 “(ii) Each core-based statistical area
 14 in which the resulting company would op-
 15 erate.

16 “(iii) Each county in which the result-
 17 ing company would operate.

18 “(iv) Any other geographic area the
 19 Board deems appropriate.

20 “(C) HERFINDAHL-HIRSCHMAN INDEX
 21 THRESHOLD FOR HEIGHTENED SCRUTINY.—

22 “(i) IN GENERAL.—When evaluating
 23 the competitive effects of the proposed
 24 transaction, the responsible agency shall
 25 apply higher scrutiny to any markets in

1 which the transaction would result in a
 2 Herfindahl-Hirschman Index over 1800
 3 and an increase of more than 200.

4 “(ii) RULE OF CONSTRUCTION.—
 5 Nothing in clause (i) may be construed as
 6 limiting the authority of the responsible
 7 agency to apply higher scrutiny to any
 8 markets in which the transaction would re-
 9 sult in an Herfindahl-Hirschman Index
 10 under 1800 or an increase of less than
 11 200.

12 “(D) ADDITIONAL CONSIDERATIONS.—
 13 When evaluating the competitive effects of the
 14 proposed transaction, the responsible agency
 15 shall consider the extent to which—

16 “(i) the resulting institution could re-
 17 ceive a ‘too big to fail’ subsidy;

18 “(ii) the proposed transaction could
 19 create or intensify conflicts of interest;

20 “(iii) the proposed transaction could
 21 diminish product quality, including con-
 22 sumer privacy and access to branch offices;

23 “(iv) the proposed transaction could
 24 lead to the exploitation of consumers’ data;

1 “(v) the proposed transaction could
 2 impair the resilience of the United States
 3 or global financial systems;

4 “(vi) common ownership of firms in
 5 the relevant markets could impair competi-
 6 tion;

7 “(vii) the proposed transaction could
 8 impact wages and working standards in
 9 the relevant markets;

10 “(viii) the proposed transaction could
 11 create or amplify existing climate and envi-
 12 ronmental risks; and

13 “(ix) any other factors that the re-
 14 sponsible agency deems appropriate could
 15 impair competition.”.

16 (2) PROPOSED TRANSACTIONS OR ACTIVI-
 17 TIES.—Section 4(j) of the Bank Holding Company
 18 Act of 1956 (12 U.S.C. 1843(j)) as amended by sec-
 19 tion 7, is further amended is amended by adding at
 20 the end the following new paragraph:

21 “(10) COMPETITIVE EFFECTS.—

22 “(A) PRODUCT MARKETS.—In every case,
 23 the Board shall consider the competitive effects
 24 of the proposed transaction on the market for—

25 “(i) commercial deposits;

1 “(ii) loans to small businesses, using
2 data reported under the Community Rein-
3 vestment Act of 1977 for loans to small
4 businesses with less than \$1,000,000 in
5 gross annual revenue, and any other data
6 the Board deems appropriate to collect for
7 this purpose;

8 “(iii) home mortgage loans, using
9 data reported under the Home Mortgage
10 Disclosure Act of 1975 for first-lien mort-
11 gage loans for single family homes, and
12 any other data the Board deems appro-
13 priate to collect for this purpose; and

14 “(iv) any other financial product that
15 comprises a substantial portion of the ac-
16 tivities of each bank or savings association
17 involved in the proposed merger trans-
18 action, as determined by the Board.

19 “(B) GEOGRAPHIC MARKETS.—The Board
20 shall consider the competitive effects of the pro-
21 posed transaction on the product markets iden-
22 tified in subparagraph (A) with respect to each
23 of the following geographic markets:

24 “(i) Each State in which the resulting
25 company would operate.

1 “(ii) Each core-based statistical area
2 in which the resulting company would op-
3 erate.

4 “(iii) Each county in which the result-
5 ing company would operate.

6 “(iv) Any other geographic area the
7 Board deems appropriate.

8 “(C) HERFINDAHL-HIRSCHMAN INDEX
9 THRESHOLD FOR HEIGHTENED SCRUTINY.—

10 “(i) IN GENERAL.—When evaluating
11 the competitive effects of the proposed
12 transaction, the responsible agency shall
13 apply higher scrutiny to any markets in
14 which the transaction would result in a
15 Herfindahl-Hirschman Index over 1800
16 and an increase of more than 200.

17 “(ii) RULE OF CONSTRUCTION.—
18 Nothing in clause (i) may be construed as
19 limiting the authority of the responsible
20 agency to apply higher scrutiny to any
21 markets in which the transaction would re-
22 sult in an Herfindahl-Hirschman Index
23 under 1800 or an increase of less than
24 200.

1 “(D) ADDITIONAL CONSIDERATIONS.—

2 When evaluating the competitive effects of the
3 proposed transaction, the responsible agency
4 shall consider the extent to which—

5 “(i) the resulting institution could re-
6 ceive a ‘too big to fail’ subsidy;

7 “(ii) the proposed transaction could
8 create or intensify conflicts of interest;

9 “(iii) the proposed transaction could
10 diminish product quality, including con-
11 sumer privacy and access to branch offices;

12 “(iv) the proposed transaction could
13 lead to the exploitation of consumers’ data;

14 “(v) the proposed transaction could
15 impair the resilience of the United States
16 or global financial systems;

17 “(vi) common ownership of firms in
18 the relevant markets could impair competi-
19 tion;

20 “(vii) the proposed transaction could
21 impact wages and working standards in
22 the relevant markets;

23 “(viii) the proposed transaction could
24 create or amplify existing climate and envi-
25 ronmental risks; and

1 “(ix) any other factors that the re-
 2 sponsible agency deems appropriate could
 3 impair competition.”.

4 **SEC. 9. TRANSPARENCY IN MERGER REVIEW.**

5 (a) INSURED DEPOSITORY INSTITUTIONS.—Section
 6 18(c) of the Federal Deposit Insurance Act (12 U.S.C.
 7 1828(c)), as amended by section 8, is further amended
 8 by adding at the end the following new paragraph:

9 “(20) TRANSPARENCY.—

10 “(A) IN GENERAL.—In any application
 11 under this section—

12 “(i) an insured depository institution
 13 shall—

14 “(I) disclose whether any persons
 15 employed by, representing, or acting
 16 on behalf of the depository institution
 17 have had verbal or written commu-
 18 nications with the responsible agency,
 19 a Federal reserve bank, or any other
 20 Federal regulatory agency regarding
 21 the proposed merger transaction; and

22 “(II) identify the dates and the
 23 names of individuals involved in, and
 24 the content of, all communications de-
 25 scribed in subclause (I); and

1 “(ii) the chief executive officer and
2 chief legal officer of an insured depository
3 institution shall certify that no persons em-
4 ployed by, representing, or acting on behalf
5 of the depository institution asked for or
6 received assurances from the responsible
7 agency, a Federal reserve bank, or any
8 other Federal regulatory agency that the
9 proposed merger transaction would be ap-
10 proved of that there would be no barriers
11 to such approval.

12 “(B) UPDATES.—An insured depository in-
13 stitution shall update the disclosure and certifi-
14 cation described in subparagraph (A) as needed
15 within 2 business days of any communication
16 that occurs before the responsible agency makes
17 a final decision on a proposed merger trans-
18 action.

19 “(C) PUBLICATION.—The responsible
20 agency shall publish on the website of such
21 agency the disclosure, certification, and any up-
22 dates required under this paragraph within 1
23 business day of receipt.”.

24 (b) BANK HOLDING COMPANIES.—

1 (1) PROPOSED ACQUISITIONS, MERGERS, OR
 2 CONSOLIDATIONS.—Section 3(c) of the Bank Hold-
 3 ing Company Act of 1956 (12 U.S.C. 1842(c)), as
 4 amended by section 8, is further amended by adding
 5 at the end the following new paragraph:

6 “(14) TRANSPARENCY.—

7 “(A) IN GENERAL.—In any application
 8 under this section—

9 “(i) a bank holding company shall—

10 “(I) disclose whether any persons
 11 employed by, representing, or acting
 12 on behalf of the bank holding com-
 13 pany have had verbal or written com-
 14 munications with the Board, a Fed-
 15 eral reserve bank, or any other Fed-
 16 eral regulatory agency regarding the
 17 proposal; and

18 “(II) identify the dates and the
 19 names of individuals involved in, and
 20 the content of, all communications de-
 21 scribed in subclause (I); and

22 “(ii) the chief executive officer and
 23 chief legal officer of a bank holding com-
 24 pany shall certify that no persons em-
 25 ployed by, representing, or acting on behalf

1 of the bank holding company asked for or
 2 received assurances from the Board, a
 3 Federal reserve bank, or any other Federal
 4 regulatory agency that the proposal would
 5 be approved of that there would be no bar-
 6 riers to such approval.

7 “(B) UPDATES.—A bank holding company
 8 shall update the disclosure and certification de-
 9 scribed in subparagraph (A) as needed within 2
 10 business days of any communication that occurs
 11 before the Board makes a final decision on a
 12 proposal.

13 “(C) PUBLICATION.—The Board shall pub-
 14 lish on the website of the Board the disclosure,
 15 certification, and any updates required under
 16 this paragraph within 1 business day of re-
 17 ceipt.”.

18 (2) PROPOSED TRANSACTIONS OR ACTIVI-
 19 TIES.—Section 4(j) of the Bank Holding Company
 20 Act of 1956 (12 U.S.C. 1843(j)) as amended by sec-
 21 tion 8, is further amended by adding at the end the
 22 following new paragraph:

23 “(11) TRANSPARENCY.—

24 “(A) IN GENERAL.—In any notice under
 25 this section—

1 “(i) a bank holding company shall—

2 “(I) disclose whether any persons
3 employed by, representing, or acting
4 on behalf of the bank holding com-
5 pany have had verbal or written com-
6 munications with the Board, a Fed-
7 eral reserve bank, or any other Fed-
8 eral regulatory agency regarding the
9 proposal; and

10 “(II) identify the dates and the
11 names of individuals involved in, and
12 the content of, all communications de-
13 scribed in subclause (I); and

14 “(ii) the chief executive officer and
15 chief legal officer of a bank holding com-
16 pany shall certify that no persons em-
17 ployed by, representing, or acting on behalf
18 of the bank holding company asked for or
19 received assurances from the Board, a
20 Federal reserve bank, or any other Federal
21 regulatory agency that the proposal would
22 be approved of that there would be no bar-
23 riers to such approval.

24 “(B) UPDATES.—A bank holding company
25 shall update the disclosure and certification de-

scribed in subparagraph (A) as needed within 2 business days of any communication that occurs before the Board makes a final decision on a proposal.

“(C) PUBLICATION.—The Board shall publish on the website of the Board the disclosure, certification, and any updates required under this paragraph within 1 business day of receipt.”.

SEC. 10. FINANCIAL STABILITY EXCEPTION.

(a) INSURED DEPOSITORY INSTITUTIONS.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), as amended by section 9, is further amended by adding at the end the following new paragraph:

“(21) FSOC DETERMINATION.—Notwithstanding paragraphs (5)(c), (14), (15), (16), and (17) of this subsection, if the Financial Stability Oversight Council determines by a $\frac{2}{3}$ vote that a proposed merger transaction under this subsection is necessary to preserve the stability of the United States banking or financial system, the responsible agency may approve such transaction.”.

(b) BANK HOLDING COMPANIES.—

(1) PROPOSED ACQUISITIONS, MERGERS, OR CONSOLIDATIONS.—Section 3(c) of the Bank Hold-

ing Company Act of 1956 (12 U.S.C. 1842(c)), as amended by section 9, is further amended by adding at the end the following new paragraph:

“(15) FSOC DETERMINATION.—Notwithstanding paragraphs (7)(B), (8), (9), (10), and (11) of this subsection, if the Financial Stability Oversight Council determines by a $\frac{2}{3}$ vote that a proposed acquisition, merger, or consolidation under this subsection is necessary to preserve the stability of the United States banking or financial system, the Board may approve such acquisition, merger, or consolidation.”.

(2) PROPOSED TRANSACTIONS OR ACTIVITIES.—Section 4(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)), as amended by section 8, is amended by adding at the end the following new paragraph:

“(12) FSOC DETERMINATION.—Notwithstanding paragraphs (2)(D), (2)(E), (2)(F), (2)(G), and (8) of this subsection, if the Financial Stability Oversight Council determines by a $\frac{2}{3}$ vote that a proposed transaction or activity under this subsection is necessary to preserve the stability of the United States banking or financial system, the Board may approve such transaction or activity.”.

1 **SEC. 11. PRIOR APPROVAL REQUIREMENTS.**

2 (a) NONBANKING TRANSACTIONS OR ACTIVITIES.—

3 (1) BANK HOLDING COMPANY ACT OF 1956.—

4 (A) IN GENERAL.—Section 4(k)(6) of the
5 Bank Holding Company Act of 1956 (12
6 U.S.C. 1843(k)(6) is amended by striking sub-
7 paragraph (B) and inserting the following:

8 “(B) APPROVAL REQUIRED.—

9 “(i) IN GENERAL.—A financial hold-
10 ing company may not commence any activ-
11 ity, or acquire any company, pursuant to
12 paragraph (4) or any regulation prescribed
13 or order issued under paragraph (5) with-
14 out prior approval of the Board.

15 “(ii) NOTICE PROCEDURES.—The pro-
16 cedures set forth in subsection (j)(1) shall
17 apply to a notice pursuant to clause (i).

18 “(iii) STANDARDS FOR REVIEW.—The
19 standards provided in subsection (j)(2)
20 shall apply to a notice pursuant to clause
21 (i).

22 “(iv) HART-SCOTT-RODINO FILING RE-
23 QUIREMENT.—Solely for purposes of sec-
24 tion 7A(c)(8) of the Clayton Act (15
25 U.S.C. 18a(c)(8)), the transactions subject
26 to the requirements of this paragraph shall

1 be treated as if the approval of the Board
2 is not required.”.

3 (B) TECHNICAL AND CONFORMING AMEND-
4 MENTS.—Section 4(j) of the Bank Holding
5 Company Act of 1956 (12 U.S.C. 1843(j)) is
6 amended by striking paragraphs (3) through
7 (7).

8 (2) FINANCIAL STABILITY ACT OF 2010.—Sec-
9 tion 163 of the Financial Stability Act of 2010 (12
10 U.S.C. 5363) is amended by striking subsection (b)
11 and inserting the following:

12 “(b) ACQUISITION OF NONBANK COMPANIES.—

13 “(1) PRIOR NOTICE.—A nonbank financial com-
14 pany supervised by the Board of Governors shall not
15 acquire direct or indirect ownership or control of any
16 voting shares of any company (other than an insured
17 depository institution) that is engaged in activities
18 described in section 4(k) of the Bank Holding Com-
19 pany Act of 1956 without providing written notice to
20 the Board of Governors in advance of the trans-
21 action.

22 “(2) NOTICE PROCEDURES.—The notice proce-
23 dures set forth in section 4(j)(1) of the Bank Hold-
24 ing Company Act of 1956 (12 U.S.C. 1843(j)(1))
25 shall apply to an acquisition of any company (other

1 than an insured depository institution) by a nonbank
 2 financial company supervised by the Board of Gov-
 3 ernors, as described in paragraph (1), including any
 4 company engaged in activities described in section
 5 4(k) of that Act.

6 “(3) STANDARDS FOR REVIEW.—The standards
 7 provided in section 4(j)(2) of the Bank Holding
 8 Company Act of 1956 (12 U.S.C. 1843(j)(2)) shall
 9 apply to an acquisition of any company (other than
 10 insured depository institution) by a nonbank finan-
 11 cial company supervised by the Board of Governors,
 12 as described in paragraph (1).

13 “(4) HART-SCOTT-RODINO FILING REQUIRE-
 14 MENT.—Solely for purposes of section 7A(c)(8) of
 15 the Clayton Act (15 U.S.C. 18a(c)(8)), the trans-
 16 actions subject to the requirements of paragraph (1)
 17 shall be treated as if Board of Governors approval
 18 is not required.”.

19 (b) INTERNATIONAL ACQUISITIONS BY U.S. BANK-
 20 ING ORGANIZATIONS.—

21 (1) SPECIFIC CONSENT REQUIRED.—A direct or
 22 indirect investment by a U.S. banking organization
 23 in a foreign organization shall require the specific
 24 consent of the Board of Governors of the Federal
 25 Reserve System.

1 (2) REGULATIONS.—Not later than 180 days
 2 after the date of enactment of this Act, the Board
 3 of Governors of the Federal Reserve System shall
 4 issue regulations implementing paragraph (1).

5 **SEC. 12. CITIZEN STANDING.**

6 (a) INSURED DEPOSITORY INSTITUTIONS.—Section
 7 18(c) of the Federal Deposit Insurance Act (12 U.S.C.
 8 1828(c)), as amended by section 10, is further amended
 9 by adding at the end the following new paragraph:

10 “(22) CITIZEN STANDING.—

11 “(A) IN GENERAL.—Not later than 10
 12 days after the approval of a merger transaction
 13 by the responsible agency under this subsection
 14 or the denial of a request for reconsideration of
 15 an application for a merger transaction, an in-
 16 dividual may file a civil action in the appro-
 17 priate United States district court to review
 18 such approval, regardless of whether the indi-
 19 vidual submitted a comment or otherwise par-
 20 ticipated in the application process for approval
 21 of the merger transaction.

22 “(B) CONSIDERATION.—In any such ac-
 23 tion, the court shall review de novo the issues
 24 presented, consider the matter on an expedited
 25 basis, and issue a decision within 30 days.

1 “(C) COSTS.—An individual who files a
2 civil action under this paragraph may not be re-
3 quired to pay the costs of the responsible agen-
4 cy or any party to the merger transaction that
5 is the subject of the civil action.

6 “(D) EFFECT ON MERGER TRANS-
7 ACTION.—The proposed merger transaction
8 that is the subject of a civil action under this
9 paragraph may not be consummated until the
10 court issues a final decision in such action.”.

11 (b) BANK HOLDING COMPANIES.—

12 (1) PROPOSED ACQUISITIONS, MERGERS, OR
13 CONSOLIDATIONS.—Section 3(c) of the Bank Hold-
14 ing Company Act of 1956 (12 U.S.C. 1842(c)), as
15 amended by section 10, is further amended by add-
16 ing at the end the following new paragraph:

17 “(16) CITIZEN STANDING.—

18 “(A) IN GENERAL.—Not later than 10
19 days after the approval of an application under
20 this section by the Board, or the denial of a re-
21 quest for reconsideration of such an application
22 by the Board, an individual may file a civil ac-
23 tion in the appropriate United States district
24 court to review such approval, regardless of
25 whether the individual submitted a comment or

1 otherwise participated in the application proc-
 2 ess.

3 “(B) CONSIDERATION.—In any such ac-
 4 tion, the court shall review de novo the issues
 5 presented, consider the matter on an expedited
 6 basis, and issue a decision within 30 days.

7 “(C) COSTS.—An individual who files a
 8 civil action under this paragraph may not be re-
 9 quired to pay the costs of the Board or any
 10 party to the application that is the subject of
 11 the civil action.

12 “(D) EFFECT ON APPLICATION.—The pro-
 13 posed acquisition, merger, or consolidation that
 14 is the subject of a civil action under this para-
 15 graph may not be consummated until the court
 16 issues a final decision in such action.”.

17 (2) OTHER TRANSACTIONS OR ACTIVITIES.—
 18 Section 4(j)(2) of the Bank Holding Company Act
 19 of 1956 (12 U.S.C. 1843(j)(2)), as amended by sec-
 20 tion 5, is further amended by adding at the end the
 21 following new subparagraph:

22 “(I) CITIZEN STANDING.—

23 “(i) IN GENERAL.—Not later than 10
 24 days after the approval of a notice under
 25 this subsection by the Board, or the denial

1 of a request for reconsideration of such no-
2 tice by the Board, an individual may file a
3 civil action in the appropriate United
4 States district court to review such ap-
5 proval, regardless of whether the individual
6 submitted a comment or otherwise partici-
7 pated in the notice process.

8 “(ii) CONSIDERATION.—In any such
9 action, the court shall review de novo the
10 issues presented, consider the matter on an
11 expedited basis, and issue a decision within
12 30 days.

13 “(iii) COSTS.—An individual who files
14 a civil action under this subparagraph may
15 not be required to pay the costs of the
16 Board or any party to the notice that is
17 the subject of the civil action.

18 “(iv) EFFECT ON NOTICE.—The pro-
19 posed transaction or activity that is the
20 subject of a civil action under this sub-
21 paragraph may not be commenced or con-
22 sumed until the court issues a final de-
23 cision in such action.”.

1 **SEC. 13. SAVINGS AND LOAN HOLDING COMPANY ACQUIS-**
 2 **TIONS AND MERGER TRANSACTIONS.**

3 (a) Section 10(e) of the Home Owners' Loan Act (12
 4 U.S.C. 1467a(e)) is amended by adding at the end the
 5 following:

6 “(8) **ADDITIONAL CONSIDERATIONS.**—

7 “(A) **ANALYSIS OF COSTS AND BENE-**
 8 **FITS.**—

9 “(i) **IN GENERAL.**—The Board may
 10 not approve an application under this sec-
 11 tion unless the Board determines that the
 12 public benefits of the proposed transaction
 13 outweigh the expected costs.

14 “(ii) **EVALUATION.**—In evaluating the
 15 expected costs of the proposed transaction
 16 under subparagraph (A), the Board shall
 17 consider—

18 “(I) the probable effect of the
 19 proposed transaction on the cost and
 20 availability of financial products and
 21 services;

22 “(II) the probable effect of
 23 branch closures on customers of each
 24 company involved in the proposed
 25 transaction;

1 “(III) the probable effect of the
2 proposed transaction on relevant local
3 economies, including employment
4 losses relating to branch closures and
5 impacts on job quality; and

6 “(IV) any other cost of the pro-
7 posed transaction that the Board con-
8 siders pursuant to this subsection.

9 “(B) COMMUNITY REINVESTMENT ACT
10 PERFORMANCE.—The Board shall deny an ap-
11 plication under this section if either the lead in-
12 sured depository institution of the applicant or
13 the insured depository institution that would be
14 the lead insured depository institution of the re-
15 sulting company following consummation of the
16 proposed transaction has received a rating
17 lower than ‘outstanding record of meeting com-
18 munity credit needs’ on—

19 “(i) two out of the three most recent
20 written evaluations required under section
21 807 of the Community Reinvestment Act
22 of 1977 (12 U.S.C. 2906); or

23 “(ii) if three such evaluations are not
24 available, the most recent written evalua-
25 tion required under such section.

1 “(C) COMMUNITY BENEFITS PLAN.—

2 “(i) IN GENERAL.—In reviewing any
3 application filed under this paragraph, the
4 Board shall require—

5 “(I) submission to the appro-
6 priate Federal financial supervisory
7 agency of a community benefits plan;

8 “(II) that the company consult
9 with community-based organizations
10 and other community stakeholders in
11 developing the community benefits
12 plan; and

13 “(III) a public hearing to be held
14 if any bank that would be controlled
15 by the resulting company has received
16 a ‘substantial noncompliance in meet-
17 ing community credit needs’ or ‘needs
18 to improve record of meeting commu-
19 nity credit needs’ rating in any assess-
20 ment area during the last examination
21 of such institution conducted pursuant
22 to the Community Reinvestment Act
23 of 1977.

24 “(ii) DEFINITION.—For purposes of
25 this paragraph, ‘community benefits plan’

1 means a plan that provides measurable
2 goals for future amounts of safe and sound
3 loans, investments, services, and other fi-
4 nancial products for low- and moderate-in-
5 come communities and other distressed or
6 underserved communities.

7 “(D) FINANCIAL STABILITY.—

8 “(i) IN GENERAL.—In every case, the
9 Board shall take into consideration the ex-
10 tent to which a proposed acquisition, merg-
11 er, or consolidation would result in greater
12 or more concentrated risks to the stability
13 of the United States banking or financial
14 system.

15 “(ii) In considering the risk to the
16 stability of the United States banking or
17 financial system, the Board shall take into
18 account—

19 “(I) the insured depository insti-
20 tutions or bank holding companies
21 that might acquire the resulting com-
22 pany if it were to fail after con-
23 summation of the proposed trans-
24 action; and

1 “(II) whether such an acquisition
2 would result in greater or more con-
3 centrated risks to the stability of the
4 United States banking or financial
5 system.

6 “(E) FINANCIAL CRITERIA.—

7 “(i) WELL CAPITALIZED REQUIRE-
8 MENT.—The Board shall not approve any
9 proposed acquisition, merger, or consolida-
10 tion unless the company is well capitalized
11 and would remain well capitalized upon
12 consummation of the proposed transaction.

13 “(ii) DEFINITION.—A company is
14 ‘well capitalized’ if—

15 “(I) with respect to a company
16 that has total consolidated assets of
17 \$10,000,000,000 or more, it exceeds
18 the required minimum level for each
19 relevant capital measure (as deter-
20 mined by the Board) by at least 50
21 percent of such minimum; and

22 “(II) with respect to a company
23 that has total consolidated assets of
24 less than \$10,000,000,000, it meets
25 the required capital levels for well

capitalized savings and loan holding
companies established by the Board.

“(iii) STRESS TESTS.—

“(I) IN GENERAL.—If a resulting
company will have total consolidated
assets greater than or equal to
\$100,000,000,000, the Board shall
evaluate the pro forma balance sheet
of the resulting company to determine
whether such resulting company
would have the capital, on a total con-
solidated basis, necessary to absorb
losses as a result of adverse economic
conditions.

“(II) CONSIDERATIONS.—The
Board shall deny a notice submitted
pursuant to this subsection if the re-
sulting company would not remain at
least adequately capitalized in severely
adverse economic conditions under the
evaluation described in subparagraph
(A).

“(F) MANAGERIAL CRITERIA.—

“(i) WELL MANAGED REQUIRE-
MENT.—The Board shall not approve any

1 proposed acquisition, merger, or consolida-
 2 tion unless the company is well managed
 3 and would remain well managed upon con-
 4 summation of the proposed transaction.

5 “(ii) COVERED TRANSACTIONS.—

6 “(I) DEFINITION.—In this para-
 7 graph, the term ‘covered transaction’
 8 means an acquisition, merger, or con-
 9 solidation under this section in which
 10 the resulting company would have
 11 more than \$100,000,000,000 in total
 12 assets.

13 “(G) LISTING OF MEMBERS OF THE
 14 BOARD OF DIRECTORS AND SENIOR EXECUTIVE
 15 OFFICERS.—

16 “(i) IN GENERAL.—An application for
 17 approval of a covered transaction shall in-
 18 clude the name of each individual who will
 19 serve on the board of directors or serve as
 20 a senior executive officer of the resulting
 21 company.

22 “(ii) WRITTEN EVALUATION.—The
 23 Board shall make a written evaluation of
 24 the competence, experience, character, and

1 integrity of each individual described in
2 clause (i).

3 “(iii) BEST INTERESTS.—The Board
4 shall not approve a covered transaction if
5 the Board determines that the competence,
6 experience, character, or integrity of any
7 individual described in clause (i) indicates
8 that it would not be in the best interests
9 of the shareholders of the bank holding
10 company or in the best interests of the
11 public to permit the individual to be em-
12 ployed by, or associated with, the resulting
13 company.

14 “(iv) PUBLICLY AVAILABLE.—The
15 Board shall make any written evaluation
16 described in clause (ii) publicly available
17 after the date on which the Board ap-
18 proves or denies a covered transaction.

19 “(H) COMPETITIVE EFFECTS.—

20 “(i) PRODUCT MARKETS.—In every
21 case, the Board shall consider the competi-
22 tive effects of the proposed transaction on
23 the market for—

24 “(I) savings association deposits;

1 “(II) loans to small businesses,
2 using data reported under the Com-
3 munity Reinvestment Act of 1977 for
4 loans to small businesses with less
5 than \$1,000,000 in gross annual rev-
6 enue, and any other data the Board
7 deems appropriate to collect for this
8 purpose;

9 “(III) home mortgage loans,
10 using data reported under the Home
11 Mortgage Disclosure Act of 1975 for
12 first-lien mortgage loans for single
13 family homes, and any other data the
14 Board deems appropriate to collect for
15 this purpose; and

16 “(IV) any other financial product
17 that comprises a substantial portion
18 of the activities of each bank or sav-
19 ings association involved in the pro-
20 posed merger transaction, as deter-
21 mined by the Board.

22 “(ii) GEOGRAPHIC MARKETS.—The
23 Board shall consider the competitive ef-
24 fects of the proposed transaction on the
25 product markets identified in clause (i)

with respect to each of the following geographic markets:

“(I) Each State in which the resulting company would operate.

“(II) Each core-based statistical area in which the resulting company would operate.

“(III) Each county in which the resulting company would operate.

“(IV) Any other geographic area the Board deems appropriate.

“(I) HERFINDAHL-HIRSCHMAN INDEX
THRESHOLD FOR HEIGHTENED SCRUTINY.—

“(i) IN GENERAL.—When evaluating the competitive effects of the proposed transaction, the Board shall apply higher scrutiny to any markets in which the transaction would result in a Herfindahl-Hirschman Index over 1800 and an increase of more than 200.

“(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) may be construed as limiting the authority of the Board to apply higher scrutiny to any markets in which the transaction would result in an

1 Herfindahl-Hirschman Index under 1800
 2 or an increase of less than 200.

3 “(J) ADDITIONAL CONSIDERATIONS.—

4 When evaluating the competitive effects of the
 5 proposed transaction, the Board shall consider
 6 the extent to which—

7 “(i) the resulting institution could re-
 8 ceive a ‘too big to fail’ subsidy;

9 “(ii) the proposed transaction could
 10 create or intensify conflicts of interest;

11 “(iii) the proposed transaction could
 12 diminish product quality, including con-
 13 sumer privacy and access to branch offices;

14 “(iv) the proposed transaction could
 15 lead to the exploitation of consumers’ data;

16 “(v) the proposed transaction could
 17 impair the resilience of the United States
 18 or global financial systems;

19 “(vi) common ownership of firms in
 20 the relevant markets could impair competi-
 21 tion;

22 “(vii) the proposed transaction could
 23 impact wages and working standards in
 24 the relevant markets;

1 “(viii) the proposed transaction could
2 create or amplify existing climate and envi-
3 ronmental risks; and

4 “(ix) any other factors that the Board
5 deems appropriate could impair competi-
6 tion.

7 “(9) TRANSPARENCY.—

8 “(A) IN GENERAL.—In any application
9 under this section—

10 “(i) a company shall—

11 “(I) disclose whether any persons
12 employed by, representing, or acting
13 on behalf of the company have had
14 verbal or written communications with
15 the Board, a Federal reserve bank, or
16 any other Federal regulatory agency
17 regarding the proposal; and

18 “(II) identify the dates and the
19 names of individuals involved in, and
20 the content of, all communications in
21 described in subclause (I); and

22 “(ii) the chief executive officer and
23 chief legal officer of a company shall cer-
24 tify that no persons employed by, rep-
25 resenting, or acting on behalf of the com-

pany asked for or received assurances from the Board, a Federal reserve bank, or any other Federal regulatory agency that the proposal would be approved of that there would be no barriers to such approval.

“(B) UPDATES.—A company shall update the disclosure and certification described in subparagraph (A) as needed within 2 business days of any communication that occurs before the Board makes a final decision on a proposal.

“(C) PUBLICATION.—The Board shall publish on the website of the Board the disclosure, certification, and any updates required under this paragraph within 1 business day of receipt.

“(10) FINANCIAL STABILITY EXCEPTION.—Notwithstanding paragraphs (8)(A), (8)(B), (8)(C), and (8)(E)(iii) of this subsection, if the Financial Stability Oversight Council determines by a $\frac{2}{3}$ vote that a proposed acquisition, merger, or consolidation under this subsection is necessary to preserve the stability of the United States banking or financial system, the Board may approve such acquisition, merger, or consolidation.

“(11) CITIZEN STANDING.—

1 “(A) IN GENERAL.—Not later than 10
2 days after the approval of an application under
3 this section by the Board, or the denial of a re-
4 quest for reconsideration of such an application
5 by the Board, an individual may file a civil ac-
6 tion in the appropriate United States district
7 court to review such approval, regardless of
8 whether the individual submitted a comment or
9 otherwise participated in the application proc-
10 ess.

11 “(B) CONSIDERATION.—In any such ac-
12 tion, the court shall review de novo the issues
13 presented, consider the matter on an expedited
14 basis, and issue a decision within 30 days.

15 “(C) COSTS.—An individual who files a
16 civil action under this paragraph may not be re-
17 quired to pay the costs of the Board or any
18 party to the application that is the subject of
19 the civil action.

20 “(D) EFFECT ON APPLICATION.—The pro-
21 posed acquisition, merger, or consolidation that
22 is the subject of a civil action under this para-
23 graph may not be consummated until the court
24 issues a final decision in such action.”.

○