

117TH CONGRESS  
1ST SESSION

# S. 2882

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

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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

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## 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 ACQUI-  
 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(e) of the Bank Hold-  
6           ing Company Act of 1956 (12 U.S.C. 1842(e)) 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-

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

4           “(iv) any other cost of the proposed  
5           transaction that the Board considers pur-  
6           suant to this subsection.”.

7           (2) OTHER TRANSACTIONS OR ACTIVITIES.—

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

11           “(D) ANALYSIS OF COSTS AND BENE-  
12          FITS.—

13           “(i) IN GENERAL.—The Board shall  
14           deny a notice filed pursuant to this sub-  
15           section unless the Board determines that  
16           the public benefits of the proposed trans-  
17           action or activity described in the notice  
18           outweigh the expected costs.

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

23           “(I) the probable effect of the  
24           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 ACTIVITIES.—Section 4(j)(2) of the Bank Holding Com-  
4 pany Act of 1956 (12 U.S.C. 1843(j)(2)), as amend-  
5 ed by section 4, is further amended by adding at the  
6 end the following new subparagraphs:  
7

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(e) of the Bank Hold-  
24                 ing Company Act of 1956 (12 U.S.C. 1842(e)), 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(e) of the Bank Hold-  
3 ing Company Act of 1956 (12 U.S.C. 1842(e)), 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-

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

5 “(C) PUBLICATION.—The Board shall pub-  
6 lish on the website of the Board the disclosure,  
7 certification, and any updates required under  
8 this paragraph within 1 business day of re-  
9 ceipt.”.

10 **SEC. 10. FINANCIAL STABILITY EXCEPTION.**

11 (a) INSURED DEPOSITORY INSTITUTIONS.—Section  
12 18(c) of the Federal Deposit Insurance Act (12 U.S.C.  
13 1828(c)), as amended by section 9, is further amended  
14 by adding at the end the following new paragraph:

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

23 (b) BANK HOLDING COMPANIES.—

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

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

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

13 (2) PROPOSED TRANSACTIONS OR ACTIVI-  
14 TIES.—Section 4(j) of the Bank Holding Company  
15 Act of 1956 (12 U.S.C. 1843(j)), as amended by  
16 section 8, is amended by adding at the end the fol-  
17 lowing new paragraph:

18 “(12) FSOC DETERMINATION.—Notwith-  
19 standing paragraphs (2)(D), (2)(E), (2)(F), (2)(G),  
20 and (8) of this subsection, if the Financial Stability  
21 Oversight Council determines by a  $\frac{2}{3}$  vote that a  
22 proposed transaction or activity under this sub-  
23 section is necessary to preserve the stability of the  
24 United States banking or financial system, the  
25 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(e) 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 pro-  
2 cess.

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 ACQUISI-**  
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



1 capitalized savings and loan holding  
2 companies established by the Board.

3 “(iii) STRESS TESTS.—

4 “(I) IN GENERAL.—If a resulting  
5 company will have total consolidated  
6 assets greater than or equal to  
7 \$100,000,000,000, the Board shall  
8 evaluate the pro forma balance sheet  
9 of the resulting company to determine  
10 whether such resulting company  
11 would have the capital, on a total con-  
12 solidated basis, necessary to absorb  
13 losses as a result of adverse economic  
14 conditions.

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

23 “(F) MANAGERIAL CRITERIA.—

24 “(i) WELL MANAGED REQUIRE-  
25 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)

1 with respect to each of the following geo-  
2 graphic markets:

3 “(I) Each State in which the re-  
4 sulting company would operate.

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

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

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

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

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

21 “(ii) RULE OF CONSTRUCTION.—  
22 Nothing in clause (i) may be construed as  
23 limiting the authority of the Board to  
24 apply higher scrutiny to any markets in  
25 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-

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

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

11          “(C) PUBLICATION.—The Board shall pub-  
12          lish on the website of the Board the disclosure,  
13          certification, and any updates required under  
14          this paragraph within 1 business day of receipt.

15          “(10) FINANCIAL STABILITY EXCEPTION.—Not-  
16          withstanding paragraphs (8)(A), (8)(B), (8)(C), and  
17          (8)(E)(iii) of this subsection, if the Financial Sta-  
18          bility Oversight Council determines by a  $\frac{2}{3}$  vote that  
19          a proposed acquisition, merger, or consolidation  
20          under this subsection is necessary to preserve the  
21          stability of the United States banking or financial  
22          system, the Board may approve such acquisition,  
23          merger, or consolidation.

24          “(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.”.

○