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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2021

Mr. García of Illinois introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Bank Merger Review Modernization Act of 2021”.

(b) Table of Contents.—The table of contents for 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 FINANCIAL LAWS.

(a) APPLICATION FOR Mergers or Acquisitions.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Bureau of Consumer Financial Protection shall establish procedures for a covered applicant to submit an application to directly or indirectly merge with, or directly or indirectly acquire, a person that offers or provides consumer financial products or services (as defined in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481(14))).

(2) PUBLIC COMMENT.—The Director shall allow a period of at least 30 days for public comment on applications submitted under paragraph (1).

(b) PROHIBITION.—It shall be unlawful for a covered applicant to directly or indirectly merge with, or directly or indirectly acquire, a person that offers or provides consumer financial products or services (as defined in section...
1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481(14))) without the prior written approval of the Director.

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

(1) consider the records of the covered applicant and the person with respect to compliance with the Federal consumer financial laws; and

(2) deny such application if the resulting institution would not have adequate systems in place to ensure compliance with the Federal consumer financial laws.

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

SEC. 3. COST-BENEFIT ANALYSIS FOR MERGER ACTIONS.

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

“(14) ANALYSIS OF COSTS AND BENEFITS.—
“(A) IN GENERAL.—The responsible agency shall not approve any proposed merger transaction under this subsection unless the responsible agency determines that the public benefits of the merger transaction outweigh the expected costs.

“(B) EVALUATION.—In evaluating the expected costs of the proposed merger transaction under subparagraph (A), the responsible agency shall consider—

“(i) the probable effect of the proposed merger transaction on the cost and availability of financial products and services;

“(ii) the probable effect of branch closures on customers of each bank or savings association involved in the proposed merger transaction;

“(iii) the probable effect of the proposed merger transaction on relevant local economies, including employment losses relating to branch closures and impacts on job quality; and

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

(b) Bank Holding Companies.—

(1) Proposed acquisitions, mergers, or consolidations.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following new paragraph:

“(8) Analysis of costs and benefits.—

“(A) In general.—The Board may not approve an application under this section unless the Board determines that the public benefits of the proposed transaction outweigh the expected costs.

“(B) 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 on the cost and availability of financial products and services;

“(ii) the probable effect of branch closures on customers of each company involved in the proposed transaction;

“(iii) the probable effect of the proposed 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 pur-
suant 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 add-
ing at the end the following new subparagraph:

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

“(i) IN GENERAL.—The Board shall
deny a notice filed pursuant to this sub-
section unless the Board determines that
the public benefits of the proposed trans-
action 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
the cost and availability of financial products and services;

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

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

and

“(IV) any other cost of the proposed transaction or activity that the Board considers pursuant to this paragraph.”.

SEC. 4. COMMUNITY REINVESTMENT ACT PERFORMANCE.

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

“(15) COMMUNITY REINVESTMENT ACT PERFORMANCE.—The responsible agency shall not approve a proposed merger transaction under this section if the largest insured depository institution that
is party to such transaction, based on a comparison of the average total risk-weighted assets controlled by each insured depository institution that is party to such transaction during the previous 12-month period, has received a rating lower than ‘outstanding record of meeting community credit needs’ on—

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

“(B) if three such evaluations are not available, the most recent written evaluation required under such section.

“(16) COMMUNITY BENEFITS PLAN.—

“(A) IN GENERAL.—In reviewing any application filed under this paragraph, the responsible agency shall require—

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

“(ii) that the insured depository institution consult with community-based organizations and other community stakeholders in developing the community benefits plan; and
“(iii) a public hearing to be held if any insured depository institution involved in the transaction has received a ‘substantial nonecompliance in meeting community credit needs’ or ‘needs to improve record of meeting community credit needs’ rating in any assessment area during the last examination of such institution conducted pursuant to the Community Reinvestment Act of 1977.

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

(b) BANK HOLDING COMPANIES.—

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

“(9) COMMUNITY REINVESTMENT ACT PERFORMANCE.—The Board shall deny an application
under this section if either the lead insured depository institution of the applicant or the insured depository institution that would be the lead insured depository institution of the resulting company following consummation of the proposed transaction has received a rating lower than ‘outstanding record of meeting community credit needs’ on—

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

“(B) if three such evaluations are not available, the most recent written evaluation required under such section.

“(10) COMMUNITY BENEFITS PLAN.—

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

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

“(ii) that the company consult with community-based organizations and other community stakeholders in developing the community benefits plan; and
“(iii) a public hearing to be held if any bank that would be controlled by the resulting company has received a ‘substantial nonecompliance in meeting community credit needs’ or ‘needs to improve record of meeting community credit needs’ rating in any assessment area during the last examination of such institution conducted pursuant to the Community Reinvestment Act of 1977.

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

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

“(E) COMMUNITY REINVESTMENT ACT PERFORMANCE.—The Board shall deny a notice filed pursuant to this subsection if the lead in-
sured depository institution of the applicant or
the insured depository institution that would be
the lead insured depository institution of the re-
sulting company following consummation of the
proposed transaction or activity has received a
rating lower than ‘outstanding record of meet-
ing community credit needs’ on—

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

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

“(F) COMMUNITY BENEFITS PLAN.—

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

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

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

“(III) a public hearing to be held if any bank that would be controlled by the resulting company has received a ‘substantial noncompliance in meeting community credit needs’ or ‘needs to improve record of meeting community credit needs’ rating in any assessment area during the last examination of such institution conducted pursuant to the Community Reinvestment Act of 1977.

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

(c) COMMUNITY REINVESTMENT ACT AMENDMENT.—Section 804 of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by adding at the end the following new subsection:
“(e) Community Benefits Plan.—In assessing and taking into account, under subsection (a), the record of a financial institution, the appropriate Federal financial supervisory agency shall consider as a factor the financial institution’s record of compliance with any community benefits plan pursuant to section 3(c)(10) or 4(j)(2)(F) of the Bank Holding Company Act of 1956 or section 18(c)(16) of the Federal Deposit Insurance Act, as applicable.”.

(d) Fair Lending Assessment.—Section 807(b)(1) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(1)) is amended—

(1) in subparagraph (A)—

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

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

(C) by inserting after clause (ii) the following new clause:

“(iii) contain statistical analyses of the institution’s fair lending performance using data reported under the Home Mortgage Disclosure Act; and”;}
(2) in subparagraph (B), by striking “clauses (i) and (ii)” and inserting “clauses (i), (ii), and (iii)”.

SEC. 5. FINANCIAL STABILITY CONSIDERATIONS FOR MERGER TRANSACTIONS.

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

(1) in paragraph (5)—

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

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

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

“(C) any proposed merger transaction for which the resulting insured depository institution would receive a score greater than 25 on the assessment described in paragraph (17)(B).”; and

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

“(17) FINANCIAL STABILITY.—In considering the risk to the stability of the United States banking or financial system under paragraph (5), the responsible agency shall—
“(A) take into account—

“(i) the insured depository institutions or bank holding companies that might acquire the applicant insured depository institution if the resulting insured depository institution were to fail after consummation of the proposed merger; and

“(ii) whether such an acquisition would result in greater or more concentrated risks to the stability of the United States banking or financial system; and

“(B) use the assessment methodology developed by the Basel Committee on Banking Supervision for assessing global systemically important banks.”.

(b) BANK HOLDING COMPANIES.—

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

(A) by striking “In every case,” and inserting the following:

“(A) IN GENERAL.—In every case,”; and
(B) by adding at the end the following new subparagraphs:

“(B) CONSIDERATIONS.—The Board shall not approve an application under this section for which the resulting company would receive a score greater than 25 on the assessment described in subparagraph (C)(ii).

“(C) FINANCIAL STABILITY.—In considering the risk to the stability of the United States banking or financial system, the Board shall—

“(i) take into account—

“(I) the insured depository institutions or bank holding companies that might acquire the resulting company if it were to fail after consummation of the proposed transaction; and

“(II) whether such an acquisition would result in greater or more concentrated risks to the stability of the United States banking or financial system; and

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

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

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

“(H) ASSESSMENT OF FINANCIAL STABILITY.—In considering the risk to the stability of the United States banking or financial system, the Board shall—

“(i) take into account—

“(I) the insured depository institutions or bank holding companies that might acquire the applicant bank holding company if the resulting company were to fail after consummation of the proposed proposal; and

“(II) whether such an acquisition would result in greater or more con-
centrated risks to the stability of the
United States banking or financial
system; and
“(ii) use the assessment methodology
developed by the Basel Committee on
Banking Supervision for assessing global
systemically important banks.”.

SEC. 6. FINANCIAL CRITERIA FOR CERTAIN MERGER
TRANSACTIONS.

(a) Stress Tests.—

(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 5, is further amended by adding
at the end the following new paragraphs:

“(11) Stress Tests.—

“(A) In general.—If a resulting com-
pany 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 assess whether such
resulting company would have the capital, on a
total consolidated basis, necessary to absorb
losses as a result of adverse economic condi-
tions.
“(B) CONSIDERATIONS.—The Board shall not approve an application under this section unless the resulting company would remain at least adequately capitalized in severely adverse economic conditions under the evaluation described in subparagraph (A).”.

(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 5, is further amended by adding at the end the following new paragraphs:

“(8) STRESS TESTS.—

“(A) 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 consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

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

(b) WELL CAPITALIZED THRESHOLDS.—

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

“(12) WELL CAPITALIZED.—The term ‘well capitalized’ means, with respect to an insured depository institution with total consolidated assets of $10,000,000,000 or more, that such institution exceeds the required minimum level for each relevant capital measure to be considered adequately capitalized (as determined under section 38) by at least 50 percent of such minimum.”.

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

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

“(I) with respect to a company that has total consolidated assets of $10,000,000,000 or more, it exceeds
the required minimum level for each relevant capital measure (as determined by the Board) by at least 50 percent of such minimum; and

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

SEC. 7. MANAGERIAL CRITERIA FOR CERTAIN MERGER TRANSACTIONS.

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

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

“(B) An application for approval of a covered transaction shall include the name of each individual who will serve on the board of directors or serve as a senior executive officer of the resulting company.
“(C) The responsible agency shall make a written evaluation of the competence, experience, character, and integrity of each individual described in subparagraph (B).

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

“(E) The responsible agency shall make any written evaluation described in subparagraph (C) publicly available after the date on which the responsible agency approves or denies a covered transaction.”.

(b) Bank Holding Companies.—

(1) Acquisition of Bank Shares or Assets.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)), as amended by sections 3(b)(1), 4(b)(1), and 6(a)(1) of this Act, is amended by adding at the end the following:

“(12) COVERED TRANSACTIONS.—

“(A) DEFINITION.—In this paragraph, the term ‘covered transaction’ means an acquisition, merger, or consolidation under this section

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

“(B) Listing of members of the
board of directors and senior executive
officers.—

“(i) In general.—An application for
approval of a covered transaction shall in-
clude the name of each individual who will
serve on the board of directors or serve as
a senior executive officer of the resulting
company.

“(ii) Written evaluation.—The
Board shall make a written evaluation of
the competence, experience, character, and
integrity of each individual described in
clause (i).

“(iii) Best interests.—The Board
shall not approve a covered transaction if
the Board determines that the competence,
experience, character, or integrity of any
individual described in clause (i) indicates
that it would not be in the best interests
of the shareholders of the bank holding
company or in the best interests of the
public to permit the individual to be em-
ployed by, or associated with, the resulting company.

“(iv) PUBLICLY AVAILABLE.—The Board shall make any written evaluation described in clause (ii) publicly available after the date on which the Board approves or denies a covered transaction.”.

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

“(9) COVERED TRANSACTIONS.—

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

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

“(i) IN GENERAL.—Notice for approval of a covered transaction shall include the name of each individual who will serve on the board of directors or serve as
a senior executive officer of the resulting company.

“(ii) Written Evaluation.—The Board shall make a written evaluation of the competence, experience, character, and integrity of each individual described in clause (i).

“(iii) Best Interests.—The Board shall deny a proposed covered transaction if the Board determines that the competence, experience, character, or integrity of any individual described in clause (i) indicates that it would not be in the best interests of the shareholders of the bank holding company or in the best interests of the public to permit the individual to be employed by, or associated with, the resulting company.

“(iv) Publicly Available.—The Board shall make any written evaluation described in clause (ii) publicly available after the date on which the Board approves or denies a covered transaction.”.
SEC. 8. COMPETITIVE EFFECTS.

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

“(19) COMPETITIVE EFFECTS.—

“(A) PRODUCT MARKETS.—In every case, the responsible agency shall consider the competitive effects of the proposed transaction on the market for—

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

“(ii) commercial deposits;

“(iii) loans to small businesses, using data reported under the Community Reinvestment Act of 1977 for loans to small businesses with less than $1,000,000 in gross annual revenue, and any other data the responsible agency deems appropriate to collect for this purpose;

“(iv) home mortgage loans, using data reported under the Home Mortgage Disclosure Act of 1975 for first-lien mortgage loans for single family homes, and any
other data the responsible agency deems appropriate to collect for this purpose; and

“(v) any other financial product that comprises a substantial portion of the activities of each bank or savings association involved in the proposed merger transaction, as determined by the responsible agency.

“(B) GEOGRAPHIC MARKETS.—The responsible agency shall consider the competitive effects of the proposed transaction on the product markets identified in subparagraph (A) with respect to each of the following geographic markets as defined by the United States Census Bureau:

“(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 responsible agency deems appropriate.
“(C) HERFINDAHL-HIRSCHMAN INDEX

THRESHOLD FOR HEIGHTENED SCRUTINY.—

“(i) IN GENERAL.—When evaluating the competitive effects of the proposed transaction, the responsible agency 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 responsible agency to apply higher scrutiny to any markets in which the transaction would result in an Herfindahl-Hirschman Index under 1800 or an increase of less than 200.

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

“(i) the resulting institution could receive a ‘too big to fail’ subsidy;

“(ii) the proposed transaction could create or intensify conflicts of interest;
“(iii) the proposed transaction could diminish product quality, including consumer privacy and access to branch offices;

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

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

“(vi) common ownership of firms in the relevant markets could impair competition;

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

“(viii) the proposed transaction could create or amplify existing climate and environmental risks; and

“(ix) any other factors that the responsible agency deems appropriate could impair competition.”.

(b) Bank Holding Companies.—

(1) Proposed Acquisitions, Mergers, or Consolidations.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)), as
amended by section 7, is further amended by adding at the end the following new paragraph:

“(13) COMPETITIVE EFFECTS.—

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

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

“(ii) commercial deposits;

“(iii) loans to small businesses, using data reported under the Community Reinvestment Act of 1977 for loans to small businesses with less than $1,000,000 in gross annual revenue, and any other data the Board deems appropriate to collect for this purpose;

“(iv) home mortgage loans, using data reported under the Home Mortgage Disclosure Act of 1975 for first-lien mortgage loans for single family homes, and any other data the Board deems appropriate to collect for this purpose; and
“(v) any other financial product that comprises a substantial portion of the activities of each bank or savings association involved in the proposed merger transaction, as determined by the Board.

“(B) GEOGRAPHIC MARKETS.—The Board shall consider the competitive effects of the proposed transaction on the product markets identified in subparagraph (A) 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.

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

“(i) IN GENERAL.—When evaluating the competitive effects of the proposed transaction, the responsible agency 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 responsible agency to apply higher scrutiny to any markets in which the transaction would result in an Herfindahl-Hirschman Index under 1800 or an increase of less than 200.

“(D) Additional considerations.—When evaluating the competitive effects of the proposed transaction, the responsible agency shall consider the extent to which—

“(i) the resulting institution could receive a ‘too big to fail’ subsidy;

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

“(iii) the proposed transaction could diminish product quality, including consumer privacy and access to branch offices;

“(iv) the proposed transaction could lead to the exploitation of consumers’ data;
“(v) the proposed transaction could impair the resilience of the United States or global financial systems;
“(vi) common ownership of firms in the relevant markets could impair competition;
“(vii) the proposed transaction could impact wages and working standards in the relevant markets;
“(viii) the proposed transaction could create or amplify existing climate and environmental risks; and
“(ix) any other factors that the responsible agency deems appropriate could impair competition.”.

(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 7, is further amended by adding at the end the following new paragraph:

“(10) COMPETITIVE EFFECTS.—
“(A) PRODUCT MARKETS.—In every case, the Board shall consider the competitive effects of the proposed transaction on the market for—
“(i) commercial deposits;
“(ii) loans to small businesses, using data reported under the Community Reinvestment Act of 1977 for loans to small businesses with less than $1,000,000 in gross annual revenue, and any other data the Board deems appropriate to collect for this purpose;

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

“(iv) any other financial product that comprises a substantial portion of the activities of each bank or savings association involved in the proposed merger transaction, as determined by the Board.

“(B) GEOGRAPHIC MARKETS.—The Board shall consider the competitive effects of the proposed transaction on the product markets identified in subparagraph (A) 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.

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

“(i) IN GENERAL.—When evaluating the competitive effects of the proposed transaction, the responsible agency 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 responsible agency to apply higher scrutiny to any markets in which the transaction would result in an Herfindahl-Hirschman Index under 1800 or an increase of less than 200.
“(D) ADDITIONAL CONSIDERATIONS.—

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

“(i) the resulting institution could receive a ‘too big to fail’ subsidy;

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

“(iii) the proposed transaction could diminish product quality, including consumer privacy and access to branch offices;

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

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

“(vi) common ownership of firms in the relevant markets could impair competition;

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

“(viii) the proposed transaction could create or amplify existing climate and environmental risks; and
“(ix) any other factors that the responsible agency deems appropriate could impair competition.”.

SEC. 9. TRANSPARENCY IN MERGER REVIEW.

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

“(20) TRANSPARENCY.—

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

“(i) an insured depository institution shall—

“(I) disclose whether any persons employed by, representing, or acting on behalf of the depository institution have had verbal or written communications with the responsible agency, a Federal reserve bank, or any other Federal regulatory agency regarding the proposed merger transaction; and

“(II) identify the dates and the names of individuals involved in, and the content of, all communications described in subclause (I); and
“(ii) the chief executive officer and chief legal officer of an insured depository institution shall certify that no persons employed by, representing, or acting on behalf of the depository institution asked for or received assurances from the responsible agency, a Federal reserve bank, or any other Federal regulatory agency that the proposed merger transaction would be approved of that there would be no barriers to such approval.

“(B) Updates.—An insured depository institution shall update the disclosure and certification described in subparagraph (A) as needed within 2 business days of any communication that occurs before the responsible agency makes a final decision on a proposed merger transaction.

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

(b) Bank Holding Companies.—
(1) **PROPOSED ACQUISITIONS, MERGERS, OR CONSOLIDATIONS.**—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)), as amended by section 8, is further amended by adding at the end the following new paragraph:

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“(14) TRANSPARENCY.—

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

“(i) a bank holding company shall—

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

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

“(ii) the chief executive officer and chief legal officer of a bank holding company shall certify that no persons employed by, representing, or acting on behalf
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of the bank holding company 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 bar-
rriers to such approval.

“(B) UPDATES.—A bank holding company
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 pub-
lish on the website of the Board the disclosure,
certification, and any updates required under
this paragraph within 1 business day of re-
ceipt.”.

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

“(11) TRANSPARENCY.—

“(A) IN GENERAL.—In any notice under
this section—
“(i) a bank holding company shall—

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

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

“(ii) the chief executive officer and chief legal officer of a bank holding company shall certify that no persons employed by, representing, or acting on behalf of the bank holding company 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 bank holding company 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 pub-
lish on the website of the Board the disclosure,
certification, and any updates required under
this paragraph within 1 business day of re-
ceipt.”.

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.—Notwithstand-
ing paragraphs (5)(c), (14), (15), (16), and (17) of
this subsection, if the Financial Stability Oversight
Council determines by a 2/3 vote that a proposed
merger transaction under this subsection is nec-
essary 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 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 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.”.
SEC. 11. PRIOR APPROVAL REQUIREMENTS.

(a) Nonbanking Transactions or Activities.—

(1) Bank holding company act of 1956.—

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

“(B) Approval required.—

“(i) In general.—A financial holding company may not commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5) without prior approval of the Board.

“(ii) Notice procedures.—The procedures set forth in subsection (j)(1) shall apply to a notice pursuant to clause (i).

“(iii) Standards for review.—The standards provided in subsection (j)(2) shall apply to a notice pursuant to clause (i).

“(iv) Hart-Scott-Rodino filing requirement.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of this paragraph shall
be treated as if the approval of the Board
is not required.”

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

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

“(b) ACQUISITION OF NONBANK COMPANIES.—

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

“(2) NOTICE PROCEDURES.—The notice proce-
dures set forth in section 4(j)(1) of the Bank Hold-
shall apply to an acquisition of any company (other
than an insured depository institution) by a nonbank financial company supervised by the Board of Governors, as described in paragraph (1), including any company engaged in activities described in section 4(k) of that Act.

“(3) Standards for review.—The standards provided in section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)) shall apply to an acquisition of any company (other than insured depository institution) by a nonbank financial company supervised by the Board of Governors, as described in paragraph (1).

“(4) Hart-Scott-Rodino filing requirement.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of paragraph (1) shall be treated as if Board of Governors approval is not required.”.

(b) International Acquisitions by U.S. Banking Organizations.—

(1) Specific consent required.—A direct or indirect investment by a U.S. banking organization in a foreign organization shall require the specific consent of the Board of Governors of the Federal Reserve System.
(2) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall issue regulations implementing paragraph (1).

SEC. 12. CITIZEN STANDING.

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

“(22) CITIZEN STANDING.—

“(A) IN GENERAL.—Not later than 10 days after the approval of a merger transaction by the responsible agency under this subsection or the denial of a request for reconsideration of an application for a merger transaction, an individual may file a civil action in the appropriate United States district court to review such approval, regardless of whether the individual submitted a comment or otherwise participated in the application process for approval of the merger transaction.

“(B) CONSIDERATION.—In any such action, the court shall review de novo the issues presented, consider the matter on an expedited basis, and issue a decision within 30 days.
“(C) Costs.—An individual who files a civil action under this paragraph may not be required to pay the costs of the responsible agency or any party to the merger transaction that is the subject of the civil action.

“(D) Effect on merger transaction.—The proposed merger transaction that is the subject of a civil action under this paragraph may not be consummated until the court issues a final decision in such action.”.

(b) Bank Holding Companies.—

(1) Proposed acquisitions, mergers, or consolidations.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)), as amended by section 10, is further amended by adding at the end the following new paragraph:

“(16) Citizen standing.—

“(A) In general.—Not later than 10 days after the approval of an application under this section by the Board, or the denial of a request for reconsideration of such an application by the Board, an individual may file a civil action in the appropriate United States district court to review such approval, regardless of whether the individual submitted a comment or
otherwise participated in the application process.

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

“(C) COSTS.—An individual who files a civil action under this paragraph may not be required to pay the costs of the Board or any party to the application that is the subject of the civil action.

“(D) EFFECT ON APPLICATION.—The proposed acquisition, merger, or consolidation that is the subject of a civil action under this paragraph may not be consummated until the court issues a final decision in such action.”.

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

“(I) CITIZEN STANDING.—

“(i) IN GENERAL.—Not later than 10 days after the approval of a notice under this subsection by the Board, or the denial
of a request for reconsideration of such no-
tice by the Board, an individual may file a
civil action in the appropriate United
States district court to review such ap-
proval, regardless of whether the individual
submitted a comment or otherwise partici-
pated in the notice process.

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

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

“(iv) EFFECT ON NOTICE.—The pro-
posed transaction or activity that is the
subject of a civil action under this sub-
paragraph may not be commenced or con-
summated until the court issues a final de-
cision in such action.”.
SEC. 13. SAVINGS AND LOAN HOLDING COMPANY ACQUISITIONS AND MERGER TRANSACTIONS.

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

“(8) ADDITIONAL CONSIDERATIONS.—

“(A) Analysis of costs and benefits.—

“(i) In general.—The Board may not approve an application under this section unless the Board determines that the public benefits of the proposed transaction 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 on the cost and availability of financial products and services;

“(II) the probable effect of branch closures on customers of each company involved in the proposed transaction;
“(III) the probable effect of the
proposed transaction on relevant local
economies, including employment
losses relating to branch closures and
impacts on job quality; and

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

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

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

“(ii) if three such evaluations are not
available, the most recent written evalua-
tion required under such section.
“(C) Community Benefits Plan.—

“(i) In General.—In reviewing any application filed under this paragraph, the Board shall require—

“(I) submission to the appropriate Federal financial supervisory agency of a community benefits plan;

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

“(III) a public hearing to be held if any bank that would be controlled by the resulting company has received a ‘substantial noncompliance in meeting community credit needs’ or ‘needs to improve record of meeting community credit needs’ rating in any assessment area during the last examination of such institution conducted pursuant to the Community Reinvestment Act of 1977.

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

“(D) FINANCIAL STABILITY.—

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

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

“(I) the insured depository insti-
tutions or bank holding companies
that might acquire the resulting com-
pany if it were to fail after con-
summation of the proposed trans-
action; and
“(II) whether such an acquisition
would result in greater or more con-
centrated risks to the stability of the
United States banking or financial
system.

“(E) FINANCIAL CRITERIA.—

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

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

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

“(II) with respect to a company
that has total consolidated assets of
less than $10,000,000,000, it meets
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 consolidated 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 resulting 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 requirement.—The Board shall not approve any
proposed acquisition, merger, or consolidation unless the company is well managed and would remain well managed upon consummation of the proposed transaction.

“(ii) COVERED TRANSACTIONS.—

“(I) DEFINITION.—In this paragraph, the term ‘covered transaction’ means an acquisition, merger, or consolidation under this section in which the resulting company would have more than $100,000,000,000 in total assets.

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

“(i) IN GENERAL.—An application for approval of a covered transaction shall include the name of each individual who will serve on the board of directors or serve as a senior executive officer of the resulting company.

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

“(iii) BEST INTERESTS.—The Board shall not approve a covered transaction if the Board determines that the competence, experience, character, or integrity of any individual described in clause (i) indicates that it would not be in the best interests of the shareholders of the bank holding company or in the best interests of the public to permit the individual to be employed by, or associated with, the resulting company.

“(iv) PUBLICLY AVAILABLE.—The Board shall make any written evaluation described in clause (ii) publicly available after the date on which the Board approves or denies a covered transaction.

“(H) COMPETITIVE EFFECTS.—

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

“(I) savings association deposits;
“(II) loans to small businesses, using data reported under the Community Reinvestment Act of 1977 for loans to small businesses with less than $1,000,000 in gross annual revenue, and any other data the Board deems appropriate to collect for this purpose;

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

“(IV) any other financial product that comprises a substantial portion of the activities of each bank or savings association involved in the proposed merger transaction, as determined by the Board.

“(ii) GEOGRAPHIC MARKETS.—The Board shall consider the competitive effects of the proposed transaction on the 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
Herfindahl-Hirschman Index under 1800
or an increase of less than 200.

“(J) ADDITIONAL CONSIDERATIONS.—
When evaluating the competitive effects of the
proposed transaction, the Board shall consider
the extent to which—

“(i) the resulting institution could re-
ceive a ‘too big to fail’ subsidy;
“(ii) the proposed transaction could
create or intensify conflicts of interest;
“(iii) the proposed transaction could
diminish product quality, including con-
sumer privacy and access to branch offices;
“(iv) the proposed transaction could
lead to the exploitation of consumers’ data;
“(v) the proposed transaction could
impair the resilience of the United States
or global financial systems;
“(vi) common ownership of firms in
the relevant markets could impair competi-
tion;
“(vii) the proposed transaction could
impact wages and working standards in
the relevant markets;
“(viii) the proposed transaction could
create or amplify existing climate and envi-
ronmental risks; and
“(ix) any other factors that the Board
dezems appropriate could impair competi-
tion.
“(9) TRANSPARENCY.—
“(A) IN GENERAL.—In any application
under this section—
“(i) a company shall—
“(I) disclose whether any persons
employed by, representing, or acting
on behalf of the company have had
verbal or written communications with
the Board, a Federal reserve bank, or
any other Federal regulatory agency
regarding the proposal; and
“(II) identify the dates and the
names of individuals involved in, and
the content of, all communications in
described in subclause (I); and
“(ii) the chief executive officer and
chief legal officer of a company shall cer-
tify that no persons employed by, rep-
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 sub-
paragraph (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 pub-
lish 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.—Not-
withstanding paragraphs (8)(A), (8)(B), (8)(C), and
(8)(E)(iii) of this subsection, if the Financial Sta-
bility Oversight Council determines by a 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.—
“(A) IN GENERAL.—Not later than 10 days after the approval of an application under this section by the Board, or the denial of a request for reconsideration of such an application by the Board, an individual may file a civil action in the appropriate United States district court to review such approval, regardless of whether the individual submitted a comment or otherwise participated in the application process.

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

“(C) COSTS.—An individual who files a civil action under this paragraph may not be required to pay the costs of the Board or any party to the application that is the subject of the civil action.

“(D) EFFECT ON APPLICATION.—The proposed acquisition, merger, or consolidation that is the subject of a civil action under this paragraph may not be consummated until the court issues a final decision in such action.”.