

**AMENDMENT TO H.R. 6800**  
**OFFERED BY MS. OCASIO-CORTEZ OF NEW YORK**

At the end of the bill, add the following:

1                   **TITLE XVI—ANTITRUST**

2   **SEC. 210001. MORATORIUM ON CERTAIN MERGERS AND AC-**  
3                   **QUISITIONS.**

4           (a) IN GENERAL.—Except as provided in subsection  
5 (b), during the period beginning on the date of enactment  
6 of this Act and ending on the date on which the Federal  
7 Trade Commission votes unanimously under subsection  
8 (c), the following transactions are prohibited:

9                   (1) Acquisitions by firms with over  
10                   \$100,000,000 in revenue.

11                   (2) Acquisitions by financial institutions or eq-  
12                   uity funds with over \$100,000,000 in capitalization.

13                   (3) Acquisitions by firms that are registered in-  
14                   vestment advisers under section 203 of the Invest-  
15                   ment Advisers Act of 1940 (15 U.S.C. 80b–3) or by  
16                   firms that are majority-owned by a firm that is a  
17                   registered investment adviser under that section.

18                   (4) Acquisitions involving firms with exclusive  
19                   patent pertaining to coronavirus disease 2019  
20                   (COVID–19) pandemic-related production, manufac-

1 turing, distribution, or infrastructure, medical sup-  
2 plies, equipment, facilities, or services, and drug re-  
3 search, development, production, supply, reserves, or  
4 distribution.

5 (5) Any other acquisition required to be re-  
6 ported under section 7A of the Clayton Act (15  
7 U.S.C. 18a).

8 (6) Does not include an acquisition that is a  
9 transaction described in paragraph (1), (2), (3), (4),  
10 (5), (9), or (10) of section 7A(c) of the Clayton Act  
11 (15 U.S.C. 18a(c)).

12 (b) WAIVER.—

13 (1) IN GENERAL.—Firms participating in any  
14 transaction described in subsection (a) may petition  
15 the Federal Trade Commission for a waiver by pre-  
16 senting clear and convincing evidence that the trans-  
17 action will advance critical national security, eco-  
18 nomic, or public health interests during the emer-  
19 gency

20 (2) FAILING FIRM.—The acquisition of a failing  
21 firm shall be considered to advance critical economic  
22 interests and shall be deemed to meet the criteria  
23 for a waiver under paragraph (1). A firm shall be  
24 deemed failing if the Commission concludes that—

1 (A) the firm would be unable to meet the  
2 financial obligations of the firm in the near fu-  
3 ture, having established that the resources of  
4 the firm are so depleted and the prospect of re-  
5 habilitation so remote that the firm faces the  
6 grave probability of a business failure;

7 (B) the probability of the firm successfully  
8 reorganizing under chapter 11 of title 11,  
9 United States Code, is dim or nonexistent; and

10 (C) the firm has demonstrated that the  
11 firm made good faith efforts to elicit reasonable  
12 alternative offers that would keep assets of the  
13 firm in the market and pose a less severe dan-  
14 ger to competition than does the proposed ac-  
15 quisition.

16 (3) VOTE.—The Federal Trade Commission, by  
17 unanimous Commission vote and with the written  
18 concurrence of the Attorney General, the Secretary  
19 of Defense, the Secretary of Homeland Security, the  
20 Secretary of Labor, the Secretary of Health and  
21 Human Services, and the Administrator of the Small  
22 Business Administration may grant a petition under  
23 paragraph (1) if the Commission determines that  
24 the transaction will advance critical national secu-

1 rity, economic, or public health interests during the  
2 emergency.

3 (4) EXPLANATION.—Upon granting a petition  
4 under this subsection, the Federal Trade Commis-  
5 sion shall publish in the Federal Register and on the  
6 website of the Commission the rationale for granting  
7 the petition.

8 (c) TERMINATION OF MORATORIUM.—

9 (1) IN GENERAL.—The prohibition in sub-  
10 section (a) shall not apply only if the Federal Trade  
11 Commission unanimously determines, with the writ-  
12 ten consent of the Attorney General, the Secretary  
13 of Labor, and the Administrator of the Small Busi-  
14 ness Administration, that the prohibition should no  
15 longer apply.

16 (2) INITIAL DETERMINATION.—The Federal  
17 Trade Commission may only hold a vote under para-  
18 graph (1) after—

19 (A) the national emergency under the Na-  
20 tional Emergencies Act (50 U.S.C. 1601 et  
21 seq.) with respect to the coronavirus disease  
22 2019 (COVID–19) has terminated;

23 (B) each State of the United States, the  
24 District of Columbia, any territory of the  
25 United States, Puerto Rico, Guam, American

1 Samoa, the Virgin Islands, and the Northern  
2 Mariana Islands have reopened their economies;

3 (C) the 100-day period ending on the later  
4 of the date on which subparagraph (A) or (B)  
5 has been satisfied expires; and

6 (D) the Commission determines that small  
7 businesses and workers are no longer under se-  
8 vere financial distress.

9 (d) TOLLING.—During the period beginning on the  
10 date of enactment of this Act and ending on the date on  
11 which the Federal Trade Commission votes under sub-  
12 section (c)(1) to remove the prohibition under subsection  
13 (a), any waiting period or deadline required under section  
14 7A of the Clayton Act (15 U.S.C. 18a) shall be automati-  
15 cally tolled.

16 (e) PENALTIES.—Any firm attempting a prohibited  
17 transaction under this section shall be subject to an order  
18 blocking or reversing the transaction and a penalty of not  
19 less than 10 percent of the revenue of the firm for fiscal  
20 year 2019.

21 (f) RESILIENCY RULEMAKING.—

22 (1) IN GENERAL.—There shall be a legal pre-  
23 sumption against a transaction that may pose a risk  
24 to the Government’s ability to respond to a national  
25 emergency, including—

1 (A) a transaction that may reduce, restrict,  
2 curtail, or otherwise undermine the ability of  
3 the Government to invent, develop, improve,  
4 produce, procure, stockpile, or otherwise make  
5 available goods and services that are life-saving  
6 or otherwise essential to the Government's abil-  
7 ity to address the coronavirus disease 2019  
8 (COVID-19) pandemic or other potential public  
9 health, safety, or other emergencies;

10 (B) a transaction that may reduce, limit,  
11 curtail, or otherwise create a disincentive for re-  
12 search, development, or production of goods or  
13 services described in subparagraph (A); and

14 (C) a transaction by a firm under contract  
15 within the last 5 years with the Federal Gov-  
16 ernment regarding any goods or services de-  
17 scribed in subparagraph (A).

18 (2) BURDEN.—If a firm seeks to complete a  
19 transaction described in paragraph (1), that firm  
20 shall have the burden of showing by clear and con-  
21 vincing evidence that the transaction does not pose  
22 a risk to the Government's ability to respond to a  
23 national emergency.

24 (3) RULEMAKING.—Not later than 1 year after  
25 the date of enactment of this Act, the Federal Trade

1 Commission shall promulgate regulations to further  
2 define—

3 (A) transactions that fall under paragraph  
4 (1)(A);

5 (B) transactions that fall under paragraph  
6 (1)(B);

7 (C) companies that fall under paragraph  
8 (1)(C); and

9 (D) specific goods and services that are  
10 life-saving or otherwise essential to the Govern-  
11 ment's ability to address the coronavirus dis-  
12 ease 2019 (COVID-19) pandemic or other po-  
13 tential public health, safety, or other emer-  
14 gencies.

