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

At the end of the bill, add the following:

TITLE XVI—ANTITRUST

SEC. 210001. MORATORIUM ON CERTAIN MERGERS AND ACQUISITIONS.

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

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

(2) Acquisitions by financial institutions or equity funds with over $100,000,000 in capitalization.

(3) Acquisitions by firms that are registered investment advisers under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) or by firms that are majority-owned by a firm that is a registered investment adviser under that section.

(4) Acquisitions involving firms with exclusive patent pertaining to coronavirus disease 2019 (COVID–19) pandemic-related production, manufac-
turing, distribution, or infrastructure, medical supplies, equipment, facilities, or services, and drug research, development, production, supply, reserves, or distribution.

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

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

(b) WAIVER.—

(1) In general.—Firms participating in any transaction described in subsection (a) may petition the Federal Trade Commission for a waiver by presenting clear and convincing evidence that the transaction will advance critical national security, economic, or public health interests during the emergency

(2) Failing firm.—The acquisition of a failing firm shall be considered to advance critical economic interests and shall be deemed to meet the criteria for a waiver under paragraph (1). A firm shall be deemed failing if the Commission concludes that—
(A) the firm would be unable to meet the financial obligations of the firm in the near future, having established that the resources of the firm are so depleted and the prospect of rehabilitation so remote that the firm faces the grave probability of a business failure;

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

(C) the firm has demonstrated that the firm made good faith efforts to elicit reasonable alternative offers that would keep assets of the firm in the market and pose a less severe danger to competition than does the proposed acquisition.

(3) VOTE.—The Federal Trade Commission, by unanimous Commission vote and with the written concurrence of the Attorney General, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Labor, the Secretary of Health and Human Services, and the Administrator of the Small Business Administration may grant a petition under paragraph (1) if the Commission determines that the transaction will advance critical national secu-
(4) **EXPLANATION.**—Upon granting a petition under this subsection, the Federal Trade Commission shall publish in the Federal Register and on the website of the Commission the rationale for granting the petition.

(c) **TERMINATION OF MORATORIUM.**—

(1) **IN GENERAL.**—The prohibition in subsection (a) shall not apply only if the Federal Trade Commission unanimously determines, with the written consent of the Attorney General, the Secretary of Labor, and the Administrator of the Small Business Administration, that the prohibition should no longer apply.

(2) **INITIAL DETERMINATION.**—The Federal Trade Commission may only hold a vote under paragraph (1) after—

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

(B) each State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American
Samoa, the Virgin Islands, and the Northern Mariana Islands have reopened their economies; (C) the 100-day period ending on the later of the date on which subparagraph (A) or (B) has been satisfied expires; and (D) the Commission determines that small businesses and workers are no longer under severe financial distress.

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

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

(f) RESILIENCY RULEMAKING.—

(1) IN GENERAL.—There shall be a legal presumption against a transaction that may pose a risk to the Government’s ability to respond to a national emergency, including—
(A) a transaction that may reduce, restrict, curtail, or otherwise undermine the ability of the Government to invent, develop, improve, produce, procure, stockpile, or otherwise make available goods and services that are life-saving or otherwise essential to the Government’s ability to address the coronavirus disease 2019 (COVID–19) pandemic or other potential public health, safety, or other emergencies;

(B) a transaction that may reduce, limit, curtail, or otherwise create a disincentive for research, development, or production of goods or services described in subparagraph (A); and

(C) a transaction by a firm under contract within the last 5 years with the Federal Government regarding any goods or services described in subparagraph (A).

(2) BURDEN.—If a firm seeks to complete a transaction described in paragraph (1), that firm shall have the burden of showing by clear and convincing evidence that the transaction does not pose a risk to the Government’s ability to respond to a national emergency.

(3) RULEMAKING.—Not later than 1 year after the date of enactment of this Act, the Federal Trade
Commission shall promulgate regulations to further define—

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

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

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

(D) specific goods and services that are life-saving or otherwise essential to the Government’s ability to address the coronavirus disease 2019 (COVID–19) pandemic or other potential public health, safety, or other emergencies.