

117TH CONGRESS
1ST SESSION

S. 3167

To amend the Bank Holding Company Act of 1956 and the Dodd-Frank Wall Street Reform and Consumer Protection Act to require disclosure of certain financed emissions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 4, 2021

Mr. MARKEY (for himself and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Bank Holding Company Act of 1956 and the Dodd-Frank Wall Street Reform and Consumer Protection Act to require disclosure of certain financed emissions, 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.**

4 This Act may be cited as the “Fossil Free Finance
5 Act”.

1 **SEC. 2. ALIGNMENT OF FINANCED EMISSIONS WITH**
 2 **SCIENCE-BASED TARGETS.**

3 The Bank Holding Company Act of 1956 (12 U.S.C.
 4 1841 et seq.) is amended by adding at the end the fol-
 5 lowing:

6 **“SEC. 15. ALIGNMENT OF FINANCED EMISSIONS WITH**
 7 **SCIENCE-BASED TARGETS.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) COVERED BANK HOLDING COMPANY.—The
 10 term ‘covered bank holding company’ means a bank
 11 holding company with total consolidated assets equal
 12 to or greater than \$50,000,000,000.

13 “(2) DEFORESTATION RISK COMMODITIES.—
 14 The term ‘deforestation risk commodities’ means
 15 globally traded goods and raw materials—

16 “(A) that originate from natural forest
 17 ecosystems, either—

18 “(i) directly from within forest areas;

19 or

20 “(ii) from areas previously under for-
 21 est cover; and

22 “(B) the extraction or production of which
 23 contributes significantly to the conversion of
 24 natural forest to agriculture, tree plantation, or
 25 other non-forest land use.

1 “(3) FINANCED EMISSIONS.—The term ‘fi-
 2 nanced emissions’ means, with respect to a covered
 3 bank holding company, and any nonbank financial
 4 company, the share of the emissions of such com-
 5 pany attributable to investment in, or the providing
 6 of financial services to, a company or project of a
 7 company, including—

8 “(A) investments in a debt or equity in-
 9 vestment in such another company or the assets
 10 of such another company;

11 “(B) project finance investment;

12 “(C) underwriting;

13 “(D) syndication or securitization of loans
 14 or asset-backed securities;

15 “(E) derivative transactions related to fi-
 16 nancing or hedging; and

17 “(F) market making.

18 “(4) FOSSIL FUEL FINANCING.—The term ‘fos-
 19 sil fuel financing’ means, with respect to a covered
 20 bank holding company, investment in—

21 “(A) a company that derives 15 percent or
 22 more of revenue from exploration, extraction,
 23 processing, exporting, transporting, and any
 24 other significant action with respect to oil, nat-
 25 ural gas, coal, or any byproduct thereof; or

1 “(B) a fossil fuel project.

2 “(5) FOSSIL FUEL PROJECT.—The term ‘fossil
3 fuel project’ means a project intended to—

4 “(A) facilitate or expand exploration, ex-
5 traction, processing, exporting, transporting, or
6 any other significant action with respect to oil,
7 natural gas, coal; or

8 “(B) construct any infrastructure related
9 to the activities in subparagraph (A), such as
10 wells, pipelines, terminals, refineries, or utility-
11 sale generation facility.

12 “(6) NATURAL FOREST.—The term ‘natural
13 forest’ means a natural arboreal ecosystem that—

14 “(A) has a species composition a signifi-
15 cant percentage of which is native species; and

16 “(B) contains a tree canopy cover of more
17 than 10 percent over an area of not less than
18 0.5 hectares.

19 “(7) NEW OR EXPANDED FOSSIL FUEL
20 PROJECT.—The term ‘new or expanded fossil fuel
21 project’ means a fossil fuel project that would in-
22 crease the—

23 “(A) level of proven or developable oil, nat-
24 ural gas or coal reserves;

1 “(B) midstream throughput of pipelines,
2 terminals or refineries; or

3 “(C) combustion of oil, natural gas or coal
4 for utility-scale electricity generation.

5 “(b) REQUIREMENTS.—Not later than 210 days after
6 the date of the enactment of this subsection, and not less
7 than once every 2 years thereafter, a covered bank holding
8 company shall—

9 “(1) submit to the Board an emission reduction
10 plan for reducing emissions in accordance with this
11 section; and

12 “(2) if the plan is accepted under subsection
13 (d), implement such plan.

14 “(c) ELEMENTS OF PLAN.—Each plan required
15 under subsection (b)(1)—

16 “(1) shall include—

17 “(A) a plan for the covered bank holding
18 company to reach zero financed emissions by
19 January 1, 2050;

20 “(B) a plan to reduce the financed emis-
21 sions of the bank holding company by 50 per-
22 cent by January 1, 2030;

23 “(C) a plan to discontinue new or ex-
24 panded fossil fuel projects not later than Janu-
25 ary 1, 2023;

1 “(D) a plan for the covered bank holding
2 company to discontinue thermal coal financing
3 by January 1, 2025;

4 “(E) a plan for the covered bank holding
5 company to discontinue fossil fuel financing by
6 January 1, 2030; and

7 “(F) a plan for the covered bank holding
8 company to eliminate financing of deforestation
9 risk commodities;“

10 “(G) such other requirements as the Board
11 determines is necessary to protect the financial
12 stability of the United States;

13 “(2) may not include carbon offsets;

14 “(3) may include proven negative carbon emis-
15 sion technologies to meet the requirements under
16 paragraph (1)(A) alone, provided that these projects
17 do not negatively impact low-income, minority, or in-
18 digenous communities;

19 “(4) shall prioritize—

20 “(A) the covered bank holding company
21 withdrawing funding from companies and
22 projects that have a disproportionately negative
23 impact on health and well-being of low-income
24 and minority communities; and

1 “(B) lending to companies for purposes of
2 carrying out severance, retraining, and other
3 benefits to workers impacted by the transition
4 to zero financed emissions.

5 “(d) CONSIDERATION OF PLAN.—Not later than 6
6 months after receiving a plan under subsection (b)(1), the
7 Board shall—

8 “(1) accept the plan; or

9 “(2) reject the plan if it does not align with
10 science-based targets without the use of offsets or
11 unproven carbon emission reduction technologies and
12 require the covered bank holding company to revise
13 such plan in accordance with the suggestions of the
14 Board.

15 “(e) PENALTIES.—In the case of a covered bank
16 holding company that does not submit a plan in accord-
17 ance with this section or meet the requirements set out
18 in such a plan—

19 “(1) the Board shall—

20 “(A) apply the penalties under section 8,
21 through procedures prescribed by the Board by
22 rule;

23 “(B) require divestiture of assets in order
24 to bring the financed emissions of a covered

1 bank holding company into compliance with the
2 requirements set out in such a plan; and

3 “(C) notify the Board of Directors of the
4 Federal Deposit Insurance Corporation of the
5 noncompliance of such covered bank holding
6 company; and

7 “(2) the Board of Directors of the Federal De-
8 posit Insurance Corporation may, with respect to
9 any covered bank holding company described in
10 paragraph (2)(B) or a subsidiary of such bank hold-
11 ing company that contributes to the failure of such
12 covered bank holding company to comply with this
13 section—

14 “(A) terminate insurance under section
15 8(a)(2) of the Federal Deposit Insurance Act
16 (12 U.S.C. 1818(a)(2)); and

17 “(B) carry out any other corrective action
18 available under section 38 of the Federal De-
19 posit Insurance Act (12 U.S.C. 1831o).

20 “(f) REGULATIONS.—Not later than 180 days after
21 the date of the enactment of this section, the Board shall
22 issue regulations establishing the format and timing for
23 submission of the plans required under this section.”.

1 **SEC. 3. CONTRIBUTION TO CLIMATE CHANGE INCLUDED IN**
 2 **FSOC DESIGNATION.**

3 (a) AUTHORITY TO REQUIRE SUPERVISION AND
 4 REGULATION OF CERTAIN NONBANK FINANCIAL COMPA-
 5 NIES.—Section 113 of the Dodd-Frank Wall Street Re-
 6 form and Consumer Protection Act (12 U.S.C. 5323) is
 7 amended—

8 (1) in subsection (a)(2)—

9 (A) in subparagraph (J), by striking “and”
 10 at the end;

11 (B) by redesignating subparagraph (K) as
 12 subparagraph (L); and

13 (C) by inserting after subparagraph (J)
 14 the following:

15 “(K) the extent to which the company
 16 makes a non-trivial contribution to the financed
 17 emissions (as defined in section 15 of the Bank
 18 Holding Company Act of 1956) of the financial
 19 system of the United States;”; and

20 (2) in subsection (b)(2)—

21 (A) in subparagraph (J), by striking “and”
 22 at the end;

23 (B) by redesignating subparagraph (K) as
 24 subparagraph (L); and

25 (C) by inserting after subparagraph (J)
 26 the following:

1 “(K) the extent to which the company
 2 makes a non-trivial contribution to the financed
 3 emissions (as defined in section 15 of the Bank
 4 Holding Company Act of 1956) of the financial
 5 system of the United States; and”.

6 (b) ENHANCED SUPERVISION AND PRUDENTIAL
 7 STANDARDS FOR NONBANK FINANCIAL COMPANIES SU-
 8 PERVISED BY THE BOARD OF GOVERNORS AND CERTAIN
 9 BANK HOLDING COMPANIES.—

10 (1) DEVELOPMENT OF PRUDENTIAL STAND-
 11 ARDS.—Section 115(b)(1) of the Dodd-Frank Wall
 12 Street Reform and Consumer Protection Act (12
 13 U.S.C. 5325(b)(1)) is amended—

14 (A) in subparagraph (H), by striking
 15 “and”;

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

18 (C) by adding at the end the following:

19 “(J) divestiture of financed emissions (as
 20 defined in section 15 of the Bank Holding Com-
 21 pany Act of 1956).”.

22 (2) REQUIRED STANDARDS.—Section
 23 165(b)(1)(A) of the Dodd-Frank Wall Street Reform
 24 and Consumer Protection Act (12 U.S.C.
 25 5365(b)(1)(A)) is amended—

1 (A) in clause (iv), by striking “and”;

2 (B) in clause (v), by striking the period
3 and inserting “; and”; and

4 (C) by adding at the end the following:

5 “(vi) emissions reduction plans in ac-
6 cordance with section 15 of the Bank
7 Holding Company Act of 1956 (12 U.S.C.
8 1841 et seq.).”.

9 **SEC. 4. REPORTS.**

10 (a) DEFINITIONS.—In this section:

11 (1) COVERED BANK HOLDING COMPANY.—The
12 term “covered bank holding company” means a bank
13 holding company with total consolidated assets equal
14 to or greater than \$50,000,000,000.

15 (2) FINANCED EMISSIONS.—The term “fi-
16 nanced emissions” means, with respect to a covered
17 bank holding company, and any nonbank financial
18 company, the share of the emissions of such com-
19 pany attributable to investment in, or the providing
20 of financial services to, a company or project of a
21 company, including—

22 (A) investments in a debt or equity invest-
23 ment in such another company or the assets of
24 such another company;

25 (B) project finance investment;

1 (C) underwriting;

2 (D) syndication or securitization of loans
3 or asset-backed securities;

4 (E) derivative transactions related to fi-
5 nancing or hedging; and

6 (F) market making.

7 (3) SCIENCE-BASED EMISSIONS TARGETS.—The
8 term “science-based emissions targets” means reduc-
9 tion in greenhouse gas emissions consistent with pre-
10 venting an increase in global average temperature of
11 greater than or equal to 1.5 degrees Celsius com-
12 pared to pre-industrial levels.

13 (b) INITIAL REPORT.—Not later than 180 days after
14 the date of the enactment of this subsection, the Board
15 of Governors of the Federal Reserve System shall submit
16 a report to Congress that—

17 (1) identifies current level of financed emissions
18 in the financial system of the United States;

19 (2) includes an analysis of trends in financed
20 emissions reductions;

21 (3) includes a summary of the commitments of
22 covered bank holding companies to reduce financed
23 emissions;

1 (4) estimates the financed emissions in the fi-
2 nancial system of the United States needed to meet
3 science-based emissions targets;

4 (5) identifies regulatory gaps in reducing fi-
5 nanced emissions that cannot be addressed with au-
6 thorities of the Board and recommendations for ad-
7 dressing such gaps;

8 (6) identifies data quality challenges for assess-
9 ing financed emissions and recommendations to ad-
10 dress those challenges;

11 (7) identifies the equitable transition needs for
12 workers and communities that will be impacted by a
13 shift to a zero financed emissions economy;

14 (8) analyzes—

15 (A) the number and groups of people af-
16 fected by a transition to zero financed emis-
17 sions; and

18 (B) the economic impact of such a transi-
19 tion with respect to such groups; and

20 (9) identifies regulatory and legislative options
21 for mitigating the economic impacts described in
22 paragraph (8)(B), including—

23 (A) the use of existing authorities, includ-
24 ing the Community Reinvestment Act of 1977
25 (12 U.S.C. 2901 et seq.) and emergency lend-

1 ing powers under section 13 of the Federal Re-
2 serve Act (12 U.S.C. 342); and

3 (B) the establishment of a public invest-
4 ment bank to finance investment in an equi-
5 table transition to a zero financed emissions
6 economy.

7 (c) PERIODIC REPORT.—Not later than 180 days
8 after the date of the enactment of this subsection and not
9 less than once every 2 years thereafter, the Board of Gov-
10 ernors of the Federal Reserve System shall submit a re-
11 port to Congress that includes—

12 (1) an analysis of the progress against aligning
13 with financed emissions targets;

14 (2) the estimates described in subsection (b)(4);
15 and

16 (3) an analysis of the progress made in the pre-
17 ceding 2 years towards an equitable transition to a
18 zero financed emissions economy; and

19 (4) recommendations with respect to assistance
20 Congress and other Federal agencies may provide
21 to—

22 (A) facilitate a reduction of financed emis-
23 sions; and

24 (B) support an equitable transition to a
25 zero financed emissions economy.

1 (d) COLLECTION OF DATA.—The Board of Governors
2 of the Federal Reserve System shall collect such data as
3 needed from bank holding companies to carry out the re-
4 ports under this section.

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