

116TH CONGRESS
2D SESSION

H. R. 9059

To require Federal financial supervisory agencies to evaluate a financial institution's record of meeting community environmentally sustainable investment needs as part of examinations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 31, 2020

Mr. KENNEDY (for himself and Mr. CICILLINE) introduced the following bill;
which was referred to the Committee on Financial Services

A BILL

To require Federal financial supervisory agencies to evaluate a financial institution's record of meeting community environmentally sustainable investment needs as part of examinations, 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 “Climate Protection and
5 Sustainable Communities Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND STATEMENT OF**
7 **PURPOSE.**

8 (a) FINDINGS.—Congress finds the following:

1 (1) Financial institutions that are federally reg-
2 ulated and supervised have an obligation to serve the
3 convenience and needs of the entire community, con-
4 sistent with safe and sound operations. These insti-
5 tutions include, but are not limited to, insured de-
6 pository institutions (and their holding companies, if
7 any), investment advisers, broker dealers, insurers,
8 non-bank lenders, credit unions, investment compa-
9 nies, and other financial institutions of significant
10 size and operations.

11 (2) The convenience and needs of communities
12 include the need for environmentally sustainable in-
13 vestment because—

14 (A) these financial institutions have, as a
15 result of their investment, lending, and other
16 activities, contributed to climate change and its
17 effects, and therefore have a responsibility to
18 act to mitigate climate change; and

19 (B) these financial institutions receive
20 Federal benefits not available to other types of
21 businesses, including—

22 (i) support for United States Treas-
23 ury bond markets, including extraordinary
24 commitments to purchase such bonds since
25 the onset of the COVID-19 health crisis;

1 (ii) access to the Federal Reserve Dis-
2 count Window and other special lending fa-
3 cilities established by the Board of Gov-
4 ernors of the Federal Reserve System and
5 supported by the Treasury department;

6 (iii) measures to maintain efficient,
7 transparent, and competitive markets;

8 (iv) regulatory relief during times of
9 stress in the financial system, such as the
10 ongoing COVID-19 health crisis; and

11 (v) other actions to ensure financial
12 stability and mitigate risk to the financial
13 system as a whole.

14 (3) Regulated financial institutions have con-
15 tinuing and affirmative obligation to help meet the
16 environmentally sustainable investment needs of the
17 local communities in which they are chartered.

18 (4) Regulated financial institutions should re-
19 flect the communities which they serve, which in-
20 cludes people of color and women.

21 (b) PURPOSE.—It is the purpose of this Act to re-
22 quire covered financial institutions that are regulated and
23 supervised by one or more appropriate financial regulators
24 to meet the environmentally sustainable investment needs

1 of the entire community, consistent with the safe and
2 sound operation of such institutions.

3 **SEC. 3. DEFINITIONS.**

4 (a) IN GENERAL.—In this Act:

5 (1) APPLICATION FOR A DEPOSIT FACILITY.—

6 The term “application for a deposit facility” means
7 an application to the appropriate financial regulator
8 otherwise required under Federal law or regulations
9 thereunder for—

10 (A) a charter for a national bank or Fed-
11 eral savings and loan association;

12 (B) deposit insurance in connection with a
13 newly chartered State bank, savings bank, sav-
14 ings and loan association or similar institution;

15 (C) the establishment of a domestic branch
16 or other facility with the ability to accept depos-
17 its of a regulated financial institution;

18 (D) the relocation of the home office or a
19 branch office of an insured depository institu-
20 tion (as defined in section 3 of the Federal De-
21 posit Insurance Act);

22 (E) the merger or consolidation with, or
23 the acquisition of the assets, or the assumption
24 of the liabilities of an insured depository insti-
25 tution requiring approval under section 18(c) of

1 the Federal Deposit Insurance Act or under
2 regulations issued under the authority of title
3 IV of the National Housing Act; or

4 (F) the acquisition of shares in, or the as-
5 sets of, an insured depository institution requir-
6 ing approval under section 3 of the Bank Hold-
7 ing Company Act of 1956 or section 408(e) of
8 the National Housing Act.

9 (2) APPROPRIATE FINANCIAL REGULATOR.—

10 The term “appropriate financial regulator” has the
11 meaning given in section 803 of the Payment, Clear-
12 ing, and Settlement Supervision Act of 2010 (12
13 U.S.C. 5462).

14 (3) COVERED FINANCIAL INSTITUTION.—The
15 term “covered financial institution” means—

16 (A) an insured depository institution (as
17 defined in section 3 of the Federal Deposit In-
18 surance Act (12 U.S.C. 1813));

19 (B) a depository institution holding com-
20 pany (as defined in such section);

21 (C) an investment adviser or investment
22 company (as defined in section 202 of the In-
23 vestment Advisers Act of 1940 (15 U.S.C. 80b-
24 2));

1 (D) a covered broker or dealer (as defined
2 in section 201(a)(7) of the Dodd-Frank Wall
3 Street Reform and Consumer Protection Act
4 (12 U.S.C. 5381(a)(7)));

5 (E) admitted insurers;

6 (F) an insured credit union (as defined in
7 section 101 of the Federal Credit Union Act
8 (12 U.S.C. 1752));

9 (G) a non-bank lender; and

10 (H) any entity that has been identified as
11 systemically important by the Financial Sta-
12 bility Oversight Council.

13 (4) ENVIRONMENTALLY SUSTAINABLE INVEST-
14 MENT.—The term “environmentally sustainable in-
15 vestment” means investments, loans, and other fi-
16 nancial products or services that support climate
17 mitigation and adaptation efforts, enterprises, and
18 projects whose impacts have been evaluated to equi-
19 tably and sustainably advance social and environ-
20 mental welfare.

21 (b) APPLICATION OF ENTIRE COMMUNITY.—For
22 purposes of this Act, with respect to a covered financial
23 institution whose business predominately consists of serv-
24 ing the needs of military personnel who are not located
25 within a defined geographic area, such covered financial

1 institution may define the term “entire community” to in-
2 clude the entire deposit customer base without regard to
3 geographic proximity to the covered financial institution.

4 **SEC. 4. ASSESSMENT OF COVERED FINANCIAL INSTITU-**
5 **TIONS.**

6 (a) IN GENERAL.—Except as provided in section 6,
7 not less than once every 24 months an appropriate finan-
8 cial regulator shall assess the record of a covered financial
9 institution of meeting the environmentally sustainable in-
10 vestment needs of the entire community of such institu-
11 tion, including low- and moderate-income neighborhoods,
12 consistent with the safe and sound operation of such insti-
13 tution.

14 (b) REQUIREMENTS FOR COVERED FINANCIAL IN-
15 STITUTIONS.—

16 (1) RATING.—

17 (A) IN GENERAL.—A covered financial in-
18 stitution that received a rating described in
19 subparagraph (C), (D), or (E) of section
20 5(b)(2) shall, within the 12-month period begin-
21 ning on the date of receipt of such rating, take
22 such action as may be necessary in order for
23 such institution to achieve a rating of “satisfac-
24 tory record of meeting community environ-
25 mentally sustainable investment needs”.

1 (B) PENALTY.—A covered financial insti-
2 tution that fails to meet the requirements of
3 subparagraph (A) shall be subject to such pen-
4 alties as determined appropriate by the appro-
5 priate financial regulator of such institution.

6 (2) APPROVAL OF REQUESTS.—With respect to
7 any request submitted by a covered financial institu-
8 tion to the appropriate financial regulator to take an
9 action that requires the approval of the regulator,
10 the appropriate financial regulator may only approve
11 such request if the covered financial institution re-
12 ceived a rating of “satisfactory record of meeting
13 community environmentally sustainable investment
14 needs” or better during the most recent examination
15 of the covered financial institution under this sec-
16 tion.

17 (c) MAJORITY-OWNED INSTITUTIONS.—In assessing
18 and taking into account, under subsection (a), the record
19 of a nonminority-owned and nonwomen-owned covered fi-
20 nancial institution, the appropriate financial regulator
21 may consider as a factor capital investment, loan partici-
22 pation, and other ventures undertaken by such covered fi-
23 nancial institution in cooperation with minority- and
24 women-owned financial institutions and low-income credit
25 unions, if such activities help meet the environmentally

1 sustainable investment needs of the local communities in
2 which such covered financial institution is chartered.

3 (d) FINANCIAL HOLDING COMPANY REQUIRE-
4 MENT.—

5 (1) IN GENERAL.—An election by a bank hold-
6 ing company to become a financial holding company
7 under section 4 of the Bank Holding Company Act
8 of 1956 shall not be effective if—

9 (A) the Board finds that, as of the date
10 the declaration of such election and the certifi-
11 cation is filed by such holding company under
12 section 4(l)(1)(C) of the Bank Holding Com-
13 pany Act of 1956, not all of the subsidiary in-
14 sured depository institutions of the bank hold-
15 ing company had achieved a rating of “satisfac-
16 tory record of meeting community environ-
17 mentally sustainable investment needs”, or bet-
18 ter, at the most recent examination of each
19 such institution; and

20 (B) the Board notifies the company of
21 such finding before the end of the 30-day pe-
22 riod beginning on such date.

23 (2) LIMITED EXCLUSIONS FOR NEWLY AC-
24 QUIRED INSURED DEPOSITORY INSTITUTIONS.—Any
25 insured depository institution acquired by a bank

1 holding company during the 12-month period pre-
2 ceding the date of the submission to the Board of
3 the declaration and certification under section
4 4(l)(1)(C) of the Bank Holding Company Act of
5 1956 may be excluded for purposes of paragraph (1)
6 during the 12-month period beginning on the date of
7 such acquisition if—

8 (A) the bank holding company has sub-
9 mitted an affirmative plan to the appropriate fi-
10 nancial regulator to take such action as may be
11 necessary in order for such institution to
12 achieve a rating of “satisfactory record of meet-
13 ing community environmentally sustainable in-
14 vestment needs”, or better, at the next exam-
15 ination of the institution; and

16 (B) the plan has been accepted by such
17 agency.

18 (3) DEFINITIONS.—For purposes of this sub-
19 section, the following definitions shall apply:

20 (A) BANK HOLDING COMPANY; FINANCIAL
21 HOLDING COMPANY.—The terms “bank holding
22 company” and “financial holding company”
23 have the meanings given those terms in section
24 2 of the Bank Holding Company Act of 1956.

1 (B) BOARD.—The term “Board” means
2 the Board of Governors of the Federal Reserve
3 System.

4 (C) INSURED DEPOSITORY INSTITUTION.—
5 The term “insured depository institution” has
6 the meaning given the term in section 3(c) of
7 the Federal Deposit Insurance Act.

8 **SEC. 5. WRITTEN EVALUATIONS.**

9 (a) REQUIRED.—

10 (1) IN GENERAL.—Upon the conclusion of each
11 examination of a covered financial institution under
12 section 4, the appropriate financial regulator shall
13 prepare a written evaluation of the institution’s
14 record of meeting the environmentally sustainable
15 investment needs of its entire community, including
16 low- and moderate-income neighborhoods.

17 (2) PUBLIC AND CONFIDENTIAL SECTIONS.—
18 Each written evaluation required under paragraph
19 (1) shall have a public section and a confidential sec-
20 tion.

21 (b) PUBLIC SECTION OF REPORT.—

22 (1) FINDINGS AND CONCLUSIONS.—

23 (A) CONTENTS OF WRITTEN EVALUA-
24 TION.—The public section of the written evalua-
25 tion shall—

1 (i) state the appropriate financial reg-
2 ulator's conclusions for each assessment
3 factor identified in the regulations pre-
4 scribed by such appropriate financial regu-
5 lator to implement this Act;

6 (ii) discuss the facts and data sup-
7 porting such conclusions; and

8 (iii) contain the rating of the covered
9 financial institution and a statement de-
10 scribing the basis for the rating.

11 (B) METROPOLITAN AREA DISTINC-
12 TIONS.—The information required by clauses (i)
13 and (ii) of subparagraph (A) shall be presented
14 separately for each metropolitan area in which
15 a covered financial institution maintains one or
16 more domestic branch offices.

17 (2) ASSIGNED RATING.—The rating of a cov-
18 ered financial institution referred to in paragraph
19 (1)(A)(iii) shall be one of the following:

20 (A) “Outstanding record of meeting com-
21 munity environmentally sustainable investment
22 needs”.

23 (B) “Satisfactory record of meeting com-
24 munity environmentally sustainable investment
25 needs”.

1 (C) “Sufficient record of meeting commu-
2 nity environmentally sustainable investment
3 needs”.

4 (D) “Needs to improve record of meeting
5 community environmentally sustainable invest-
6 ment needs”.

7 (E) “Substantial noncompliance in meeting
8 community environmentally sustainable invest-
9 ment needs”.

10 (c) CONFIDENTIAL SECTION OF REPORT.—

11 (1) PRIVACY OF NAMED INDIVIDUALS.—The
12 confidential section of the written evaluation shall
13 contain—

14 (A) all references that identify any cus-
15 tomer of the covered financial institution, any
16 employee or officer of such institution, or any
17 person or organization that has provided infor-
18 mation in confidence to a Federal or State fi-
19 nancial supervisory agency; and

20 (B) any statements obtained or made by
21 the appropriate financial regulator in the course
22 of an examination which, in the judgment of
23 the regulator, are too sensitive or speculative in
24 nature to disclose to the covered financial insti-
25 tution or the public.

1 (2) DISCLOSURE TO DEPOSITORY INSTITU-
 2 TION.—The confidential section may be disclosed, in
 3 whole or part, to the covered financial institution, if
 4 the appropriate financial regulator determines that
 5 such disclosure will promote the objectives of this
 6 Act. However, disclosure under this paragraph shall
 7 not identify a person or organization that has pro-
 8 vided information in confidence to a Federal or
 9 State financial supervisory agency.

10 (d) INSTITUTIONS WITH INTERSTATE BRANCHES.—

11 (1) STATE-BY-STATE EVALUATION.—In the case
 12 of a covered financial institution that maintains do-
 13 mestic branches in 2 or more States, the appropriate
 14 financial regulator shall prepare—

15 (A) a written evaluation of the entire insti-
 16 tution’s record of performance under this title,
 17 as required by subsections (a), (b), and (c); and

18 (B) for each State in which the institution
 19 maintains 1 or more domestic branches, a sepa-
 20 rate written evaluation of the institution’s
 21 record of performance within such State under
 22 this title, as required by subsections (a), (b),
 23 and (c).

24 (2) MULTISTATE METROPOLITAN AREAS.—In
 25 the case of a covered financial institution that main-

1 tains domestic branches in 2 or more States within
2 a multistate metropolitan area, the appropriate fi-
3 nancial regulator shall prepare a separate written
4 evaluation of the institution's record of performance
5 within such metropolitan area under this title, as re-
6 quired by subsections (a), (b), and (c). If the appro-
7 priate financial regulator prepares a written evalua-
8 tion pursuant to this paragraph, the scope of the
9 written evaluation required under paragraph (1)(B)
10 shall be adjusted accordingly.

11 (3) CONTENT OF STATE-LEVEL EVALUATION.—
12 A written evaluation prepared pursuant to para-
13 graph (1)(B) shall—

14 (A) present the information required by
15 subparagraphs (A) and (B) of subsection (b)(1)
16 separately for each metropolitan area in which
17 the covered financial institution maintains 1 or
18 more domestic branch offices and separately for
19 the remainder of the nonmetropolitan area of
20 the State if the covered financial institution
21 maintains 1 or more domestic branch offices in
22 such nonmetropolitan area; and

23 (B) describe how the appropriate financial
24 regulator has performed the examination of the

1 covered financial institution, including a list of
2 the individual branches examined.

3 (e) DEFINITIONS.—For purposes of this section the
4 following definitions shall apply:

5 (1) DOMESTIC BRANCH.—The term “domestic
6 branch” means any branch office or other facility of
7 a covered financial institution that accepts deposits,
8 located in any State.

9 (2) METROPOLITAN AREA.—The term “metro-
10 politan area” means any primary metropolitan sta-
11 tistical area, metropolitan statistical area, or consoli-
12 dated metropolitan statistical area, as defined by the
13 Director of the Office of Management and Budget,
14 with a population of 250,000 or more, and any other
15 area designated as such by the appropriate financial
16 regulator.

17 (3) STATE.—The term “State” has the same
18 meaning as in section 3 of the Federal Deposit In-
19 surance Act.

20 **SEC. 6. SMALL COVERED FINANCIAL INSTITUTION REGU-**
21 **LATORY RELIEF.**

22 (a) IN GENERAL.—Except as provided in subsections
23 (b) and (c), any covered financial institution with aggre-
24 gate assets of not more than \$250,000,000 shall be sub-
25 ject to routine examination under this Act—

1 (1) not more than once every 60 months for an
2 institution that has achieved a rating of “out-
3 standing record of meeting community environ-
4 mentally sustainable investment needs” at its most
5 recent examination under section 4;

6 (2) not more than once every 48 months for an
7 institution that has received a rating of “satisfactory
8 record of meeting community environmentally sus-
9 tainable investment needs” at its most recent exam-
10 ination under section 4; and

11 (3) at least once every 24 months for an insti-
12 tution that has received a rating of less than “satis-
13 factory record of meeting community environ-
14 mentally sustainable investment needs” at its most
15 recent examination under section 4.

16 (b) NO EXCEPTION FROM EXAMINATIONS IN CON-
17 NECTION WITH APPLICATIONS FOR DEPOSIT FACILI-
18 TIES.—A covered financial institution described in sub-
19 section (a) shall remain subject to examination under this
20 title in connection with an application for a deposit facil-
21 ity.

22 (c) DISCRETION.—A covered financial institution de-
23 scribed in subsection (a) may be subject to more frequent
24 or less frequent examinations for reasonable cause under

1 such circumstances as may be determined by the appro-
2 priate financial regulator.

3 **SEC. 7. APPLICABILITY.**

4 The requirements of this Act shall not supplant the
5 requirements of the Community Reinvestment Act of 1977
6 (12 U.S.C. 2901 et seq.).

7 **SEC. 8. REPORT TO CONGRESS.**

8 Each appropriate financial regulator shall include in
9 its annual report to the Congress a section outlining the
10 actions it has taken to carry out its responsibilities under
11 this Act.

12 **SEC. 9. REGULATIONS.**

13 Not later than 180 days after the date of enactment
14 of this Act, each appropriate financial regulator shall con-
15 sult with each other appropriate financial regulator to
16 issue rules to carry out this Act. To the extent practicable,
17 the appropriate financial regulator shall issue substan-
18 tially similar rules.

19 **SEC. 10. EFFECTIVE DATE.**

20 Except as otherwise provided, the requirements of
21 this Act shall take effect one year after the date of the
22 enactment of this Act.

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