

SEPTEMBER 6, 2024

**RULES COMMITTEE PRINT 118–50**  
**TEXT OF H.R. 5339, PROTECTING AMERICANS’**  
**INVESTMENTS FROM WOKE POLICIES ACT**

**[Showing the text of H.R. 5339, 5338, 5337, and 5340 as  
reported by the Committee on Education and the Workforce]**

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Protecting Americans’ Investments from Woke Policies  
4 Act”.

5 (b) TABLE OF CONTENTS.—The table of contents for  
6 this Act is as follows:

Sec. 1. Short title; table of contents.

**DIVISION A—ROLL BACK ESG TO INCREASE RETIREMENT  
EARNINGS**

Sec. 1001. Short title.

Sec. 1002. Limitation on consideration of non-pecuniary factors by fiduciaries.

**DIVISION B—NO DISCRIMINATION IN MY BENEFITS**

Sec. 2001. Short title.

Sec. 2002. Service provider selection.

**DIVISION C—RETIREMENT PROXY PROTECTION**

Sec. 3001. Short title.

Sec. 3002. Exercise of shareholder rights.

**DIVISION D—PROVIDING COMPLETE INFORMATION TO  
RETIREMENT INVESTORS**

Sec. 4001. Short title.

Sec. 4002. Brokerage window disclosures.

1 **DIVISION A—ROLL BACK ESG TO**  
2 **INCREASE RETIREMENT**  
3 **EARNINGS**

4 **SEC. 1001. SHORT TITLE.**

5 This division may be cited as the “Roll back ESG  
6 To Increase Retirement Earnings Act” or the “RETIRE  
7 Act”.

8 **SEC. 1002. LIMITATION ON CONSIDERATION OF NON-PECU-**  
9 **NIARY FACTORS BY FIDUCIARIES.**

10 (a) IN GENERAL.—Section 404(a) of the Employee  
11 Retirement Income Security Act of 1974 (29 U.S.C.  
12 1104(a)) is amended by adding at the end the following:

13 “(3) INTEREST BASED ON PECUNIARY FAC-  
14 TORS.—

15 “(A) IN GENERAL.—For purposes of para-  
16 graph (1), a fiduciary shall be considered to act  
17 solely in the interest of the participants and  
18 beneficiaries of the plan with respect to an in-  
19 vestment or investment course of action only if  
20 the fiduciary’s action with respect to such in-  
21 vestment or investment course of action is  
22 based only on pecuniary factors (except as pro-  
23 vided in subparagraph (B)). The fiduciary may  
24 not subordinate the interests of the participants  
25 and beneficiaries in their retirement income or

1 financial benefits under the plan to other objec-  
2 tives and may not sacrifice investment return or  
3 take on additional investment risk to promote  
4 non-pecuniary benefits or goals. The weight  
5 given to any pecuniary factor by a fiduciary  
6 shall reflect a prudent assessment of the impact  
7 of such factor on risk and return.

8 “(B) USE OF NON-PECUNIARY FACTORS  
9 FOR INVESTMENT ALTERNATIVES.—Notwith-  
10 standing paragraph (A), if a fiduciary is unable  
11 to distinguish between or among investment al-  
12 ternatives or investment courses of action on  
13 the basis of pecuniary factors alone, the fidu-  
14 ciary may use non-pecuniary factors as the de-  
15 ciding factor if the fiduciary documents—

16 “(i) why pecuniary factors were not  
17 sufficient to select a plan investment or in-  
18 vestment course of action;

19 “(ii) how the selected investment com-  
20 pares to the alternative investments with  
21 regard to the composition of the portfolio  
22 with regard to diversification, the liquidity  
23 and current return of the portfolio relative  
24 to the anticipated cash flow requirements  
25 of the plan, and the projected return of the

1 portfolio relative to the funding objectives  
2 of the plan; and

3 “(iii) how the selected non-pecuniary  
4 factor or factors are consistent with the in-  
5 terests of the participants and beneficiaries  
6 in their retirement income or financial ben-  
7 efits under the plan.

8 “(C) INVESTMENT ALTERNATIVES FOR  
9 PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNT  
10 PLANS.—In selecting or retaining investment  
11 options for a pension plan described in sub-  
12 section (c)(1)(A), a fiduciary is not prohibited  
13 from considering, selecting, or retaining an in-  
14 vestment option on the basis that such invest-  
15 ment option promotes, seeks, or supports one or  
16 more non-pecuniary benefits or goals, if—

17 “(i) the fiduciary satisfies the require-  
18 ments of paragraph (1) and subparagraphs  
19 (A) and (B) of this paragraph in selecting  
20 or retaining any such investment option;  
21 and

22 “(ii) such investment option is not  
23 added or retained as, or included as a com-  
24 ponent of, a default investment under sub-  
25 section (c)(5) (or any other default invest-

1           ment alternative) if its investment objec-  
2           tives or goals or its principal investment  
3           strategies include, consider, or indicate the  
4           use of one or more non-pecuniary factors.

5           “(D) DEFINITIONS.—For the purposes of  
6           this paragraph:

7                   “(i) The term ‘pecuniary factor’  
8                   means a factor that a fiduciary prudently  
9                   determines is expected to have a material  
10                  effect on the risk or return of an invest-  
11                  ment based on appropriate investment ho-  
12                  rizons consistent with the plan’s invest-  
13                  ment objectives and the funding policy es-  
14                  tablished pursuant to section 402(b)(1).

15                  “(ii) The term ‘investment course of  
16                  action’ means any series or program of in-  
17                  vestments or actions related to a fidu-  
18                  ciary’s performance of the fiduciary’s in-  
19                  vestment duties, and includes the selection  
20                  of an investment fund as a plan invest-  
21                  ment, or in the case of an individual ac-  
22                  count plan, a designated investment alter-  
23                  native under the plan.”.

24           (b) EFFECTIVE DATE.—The amendments made by  
25           this section shall apply to actions taken by a fiduciary on

1 or after the date that is 12 months after the date of enact-  
2 ment of this Act.

3 **DIVISION B—NO DISCRIMINA-**  
4 **TION IN MY BENEFITS**

5 **SEC. 2001. SHORT TITLE.**

6 This division may be cited as the “No Discrimination  
7 in My Benefits Act”.

8 **SEC. 2002. SERVICE PROVIDER SELECTION.**

9 Section 404(a)(1) of the Employee Retirement In-  
10 come Security Act of 1974 (29 U.S.C. 1104(a)(1)) is  
11 amended—

12 (1) in subparagraph (C), by striking “and”;

13 (2) in subparagraph (D), by striking the period  
14 at the end and inserting “; and”; and

15 (3) by adding at the end the following new sub-  
16 paragraph:

17 “(E) by selecting, monitoring, and retaining  
18 any fiduciary, counsel, employee, or service provider  
19 of the plan—

20 “(i) in accordance with subparagraphs (A)  
21 and (B); and

22 “(ii) without regard to race, color, religion,  
23 sex, or national origin.”.

## **DIVISION C—RETIREMENT PROXY PROTECTION**

### **SEC. 3001. SHORT TITLE.**

This division may be cited as the “Retirement Proxy Protection Act”.

### **SEC. 3002. EXERCISE OF SHAREHOLDER RIGHTS.**

(a) IN GENERAL.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

“(f) EXERCISE OF SHAREHOLDER RIGHTS.—

“(1) AUTHORITY TO EXERCISE SHAREHOLDER RIGHTS.—

“(A) IN GENERAL.—The fiduciary duty to manage plan assets that are shares of stock includes the management of shareholder rights appurtenant to those shares, including the right to vote proxies. When deciding whether to exercise a shareholder right and in exercising such right, including the voting of proxies, a fiduciary must act prudently and solely in the interests of participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan.

1           The fiduciary duty to manage shareholder  
2           rights appurtenant to shares of stock does not  
3           require the voting of every proxy or the exercise  
4           of every shareholder right.

5           “(B) EXCEPTION.—This subsection shall  
6           not apply to voting, tender, and similar rights  
7           with respect to securities that are passed  
8           through pursuant to the terms of an individual  
9           account plan to participants and beneficiaries  
10          with accounts holding such securities.

11          “(2) REQUIREMENTS FOR EXERCISE OF SHARE-  
12          HOLDER RIGHTS.—A fiduciary, when deciding  
13          whether to exercise a shareholder right and when ex-  
14          ercising a shareholder right—

15               “(A) shall—

16                   “(i) act solely in accordance with the  
17                   economic interest of the plan and its par-  
18                   ticipants and beneficiaries;

19                   “(ii) consider any costs involved;

20                   “(iii) evaluate material facts that  
21                   form the basis for any particular proxy  
22                   vote or exercise of shareholder rights; and

23                   “(iv) maintain a record of any proxy  
24                   vote, proxy voting activity, or other exer-



1                   cise of a shareholder right, including any  
2                   attempt to influence management; and

3                   “(B) shall not subordinate the interests of  
4                   participants and beneficiaries in their retire-  
5                   ment income or financial benefits under the  
6                   plan to any non-pecuniary objective, or promote  
7                   non-pecuniary benefits or goals unrelated to  
8                   those financial interests of the plan’s partici-  
9                   pants and beneficiaries.

10                  “(3) MONITORING.—A fiduciary shall exercise  
11                  prudence and diligence in the selection and moni-  
12                  toring of a person, if any, selected to advise or oth-  
13                  erwise assist with the exercise of shareholder rights,  
14                  including by providing research and analysis, rec-  
15                  ommendations on exercise of proxy voting or other  
16                  shareholder rights, administrative services with re-  
17                  spect to voting proxies, and recordkeeping and re-  
18                  porting services.

19                  “(4) INVESTMENT MANAGERS AND PROXY ADVI-  
20                  SORY FIRMS.—Where the authority to vote proxies  
21                  or exercise other shareholder rights has been dele-  
22                  gated to an investment manager pursuant to section  
23                  403(a), or a proxy voting advisory firm or other per-  
24                  son who performs advisory services as to the voting  
25                  of proxies or the exercise of other shareholder rights,

1 a responsible plan fiduciary shall prudently monitor  
2 the proxy voting activities of such investment man-  
3 ager or advisory firm and determine whether such  
4 activities are in compliance with paragraphs (1) and  
5 (2).

6 “(5) VOTING POLICIES.—

7 “(A) IN GENERAL.—In deciding whether to  
8 vote a proxy pursuant to this subsection, the  
9 plan fiduciary may adopt a proxy voting policy,  
10 including a safe harbor proxy voting policy de-  
11 scribed in subparagraph (B), providing that the  
12 authority to vote a proxy shall be exercised pur-  
13 suant to specific parameters designed to serve  
14 the economic interest of the plan.

15 “(B) SAFE HARBOR VOTING POLICY.—  
16 With respect to a decision not to vote a proxy,  
17 a fiduciary shall satisfy the fiduciary respon-  
18 sibilities under this subsection if such fiduciary  
19 adopts and is following a safe harbor proxy vot-  
20 ing policy that—

21 “(i) limits voting resources to par-  
22 ticular types of proposals that the fiduciary  
23 has prudently determined are substantially  
24 related to the business activities of the  
25 issuer or are expected to have a material

1 effect on the value of the plan investment;  
2 or

3 “(ii) establishes that the fiduciary will  
4 refrain from voting on proposals or par-  
5 ticular types of proposals when the assets  
6 of a plan invested in the issuer relative to  
7 the total assets of such plan are below 5  
8 percent (or, in the event such assets are  
9 under management, when the assets under  
10 management invested in the issuer are  
11 below 5 percent of the total assets under  
12 management).

13 “(C) EXCEPTION.—No proxy voting policy  
14 adopted pursuant to this paragraph shall pre-  
15 clude a fiduciary from submitting a proxy vote  
16 when the fiduciary determines that the matter  
17 being voted on is expected to have a material  
18 economic effect on the investment performance  
19 of a plan’s portfolio (or the investment perform-  
20 ance of assets under management in the case of  
21 an investment manager); provided, however,  
22 that in all cases compliance with a safe harbor  
23 voting policy shall be presumed to satisfy fidu-  
24 ciary responsibilities with respect to decisions  
25 not to vote.

1 “(6) REVIEW.—A fiduciary shall periodically re-  
2 view any policy adopted under this subsection.”.

3 (b) EFFECTIVE DATE.—The amendments made by  
4 subsection (a) shall apply to an exercise of shareholder  
5 rights occurring on or after January 1, 2024.

6 **DIVISION D—PROVIDING COM-**  
7 **plete INFORMATION TO RE-**  
8 **TIREMENT INVESTORS**

9 **SEC. 4001. SHORT TITLE.**

10 This division may be cited as the “Providing Com-  
11 plete Information to Retirement Investors Act”.

12 **SEC. 4002. BROKERAGE WINDOW DISCLOSURES.**

13 (a) IN GENERAL.—Section 404(c) of the Employee  
14 Retirement Income Security Act of 1974 (29 U.S.C.  
15 1104(c)) is amended by adding at the end the following  
16 new paragraph:

17 “(7) NOTICE REQUIREMENTS FOR BROKERAGE  
18 WINDOWS.—

19 “(A) IN GENERAL.—In the case of a pen-  
20 sion plan which provides for individual accounts  
21 and which provides a participant or beneficiary  
22 the opportunity to choose from designated in-  
23 vestment alternatives, a participant or bene-  
24 ficiary shall not be treated as exercising control  
25 over assets in the account of the participant or

1 beneficiary unless, with respect to any invest-  
2 ment arrangement that is not a designated in-  
3 vestment alternative, each time before such a  
4 participant or beneficiary directs an investment  
5 into, out of, or within such investment arrange-  
6 ment, such participant is notified of, and ac-  
7 knowledges, each element of the notice de-  
8 scribed under paragraph (B).

9 “(B) NOTICE.—The notice described under  
10 this paragraph is a four part information that  
11 is substantially similar to the following informa-  
12 tion:

- “1. Your retirement plan offers designated investment alternatives prudently selected and monitored by fiduciaries for the purpose of enabling you to construct an appropriate retirement savings portfolio. In selecting and monitoring designated investment alternatives, your plan’s fiduciary considers the risk of loss and the opportunity for gain (or other return) compared with reasonably available investment alternatives.
2. The investments available through this investment arrangement are not designated investment alternatives, and have not been prudently selected and are not monitored by a plan fiduciary.
3. Depending on the investments you select through this investment arrangement, you may experience diminished returns, higher fees, and higher risk than if you select from the plan’s designated investment alternatives.
4. The following is a hypothetical illustration of the impact of return at 4 percent, 6 percent, and 8 percent on your account balance projected to age 67.

13 “(C) ILLUSTRATION.—The notice de-  
14 scribed under paragraph (B) shall also include  
15 a graph displaying the projected retirement bal-  
16 ances of such participant or beneficiary at age  
17 67 if the account of such individual were to

1 achieve an annual return equal to each of the  
2 following:

3 “(i) 4 percent.

4 “(ii) 6 percent.

5 “(iii) 8 percent.”.

6 (b) DESIGNATED INVESTMENT ALTERNATIVE DE-  
7 FINED.—Section 3 of such Act (29 U.S.C. 1002) is  
8 amended by adding at the end the following new para-  
9 graph:

10 “(46) DESIGNATED INVESTMENT ALTER-  
11 NATIVE.—

12 “(A) IN GENERAL.—The term ‘designated  
13 investment alternative’ means any investment  
14 alternative designated by a responsible fiduciary  
15 of an individual account plan described in sub-  
16 section 404(c) into which participants and bene-  
17 ficiaries may direct the investment of assets  
18 held in, or contributed to, their individual ac-  
19 counts.

20 “(B) EXCEPTION.—The term ‘designated  
21 investment alternative’ does not include broker-  
22 age windows, self-directed brokerage accounts,  
23 or similar plan arrangements that enable par-  
24 ticipants and beneficiaries to select investments

1           beyond those designated by a responsible plan  
2           fiduciary.”.

3       (c) EFFECTIVE DATE.—The amendment made by  
4   subsection (a) shall take effect on January 1, 2025.

