

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:

See. 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-

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

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.”.

1 **DIVISION C—RETIREMENT** 2 **PROXY PROTECTION**

3 **SEC. 3001. SHORT TITLE.**

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

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

7 (a) IN GENERAL.—Section 404 of the Employee Re-
8 tirement Income Security Act of 1974 (29 U.S.C. 1104)
9 is amended by adding at the end the following new sub-
10 section:

11 “(f) EXERCISE OF SHAREHOLDER RIGHTS.—

12 “(1) AUTHORITY TO EXERCISE SHAREHOLDER
13 RIGHTS.—

14 “(A) IN GENERAL.—The fiduciary duty to
15 manage plan assets that are shares of stock in-
16 cludes the management of shareholder rights
17 appurtenant to those shares, including the right
18 to vote proxies. When deciding whether to exer-
19 cise a shareholder right and in exercising such
20 right, including the voting of proxies, a fidu-
21 ciary must act prudently and solely in the inter-
22 ests of participants and beneficiaries and for
23 the exclusive purpose of providing benefits to
24 participants and beneficiaries and defraying the
25 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

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.

