

117TH CONGRESS
2D SESSION

S. 5000

To amend title 5, United States Code, to prohibit investments under the Thrift Savings Plan in certain mutual funds that make investment decisions based primarily on environmental, social, or governance criteria, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2022

Mr. LEE introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend title 5, United States Code, to prohibit investments under the Thrift Savings Plan in certain mutual funds that make investment decisions based primarily on environmental, social, or governance criteria, 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 “No ESG at TSP Act”.

5 **SEC. 2. PROHIBITION ON CERTAIN MUTUAL FUNDS UNDER** 6 **THE THRIFT SAVINGS PLAN.**

7 (a) DEFINITIONS.—In this section:

1 (1) BOARD; EXECUTIVE DIRECTOR.—The terms
2 “Board” and “Executive Director” have the mean-
3 ings given those terms in section 8401 of title 5,
4 United States Code.

5 (2) COVERED SUM.—The term “covered sum”
6 means any sum of the Thrift Savings Fund that is
7 invested in a mutual fund, exchange-traded fund, or
8 other investment vehicle described in subparagraph
9 (E) or (F) of section 8438(b)(5) of title 5, United
10 States Code, as added by subsection (b).

11 (3) MUTUAL FUND WINDOW.—The term “mu-
12 tual fund window” means the mutual fund window
13 added by the Board pursuant to the authorization
14 under section 8438(b)(5) of title 5, United States
15 Code.

16 (4) PARTICIPANT.—The term “participant” has
17 the meaning given the term in section 8471 of title
18 5, United States Code.

19 (5) THRIFT SAVINGS FUND.—The term “Thrift
20 Savings Fund” means the fund established under
21 section 8437 of title 5, United States Code.

22 (b) PROHIBITION.—

23 (1) IN GENERAL.—Section 8438(b)(5) of title
24 5, United States Code, is amended by adding at the
25 end the following:

1 “(E) The Board may not offer through the mutual
 2 fund window any mutual fund, exchange-traded fund (as
 3 defined in section 270.6c–11 of title 17, Code of Federal
 4 Regulations, or any successor regulation), or other invest-
 5 ment vehicle that invests in bonds or equities and that
 6 makes investment decisions based on ESG criteria, to the
 7 extent that those criteria are unrelated to maximizing
 8 monetary returns for investors.

9 “(F) The Board may not offer through the mutual
 10 fund window any mutual fund, exchange-traded fund (as
 11 defined in section 270.6c–11 of title 17, Code of Federal
 12 Regulations, or any successor regulation), or other invest-
 13 ment vehicle that is marketed as making investment deci-
 14 sions based on ESG criteria.

15 “(G) In this paragraph, the term ‘ESG criteria’
 16 means any of the following criteria:

17 “(i) Environmental criteria, including—

18 “(I) emissions, climate change, sustain-
 19 ability, environmental justice, pollution, or con-
 20 servation; or

21 “(II) whether a company is engaged in the
 22 exploration, production, utilization, transpor-
 23 tation, sale, or manufacturing of fossil fuel-
 24 based energy.

25 “(ii) Social criteria, including—

1 “(I) diversity criteria, including—

2 “(aa) the sex, race, ethnicity, gender
3 identity, sexual orientation, or socio-
4 economic status of the owners, board mem-
5 bers, employees, or customers of compa-
6 nies; or

7 “(bb) whether the board members,
8 employees, or customers described in item
9 (aa) are members of a labor organization
10 (as that term is defined in section 2 of the
11 National Labor Relations Act (29 U.S.C.
12 152)); or

13 “(II) whether a company is engaged in the
14 manufacture, transportation, or sale of fire-
15 arms, firearms accessories, or ammunition.

16 “(iii) Political criteria, including the perceived
17 or actual political affiliations, donations, or associa-
18 tions of companies.

19 “(iv) Criteria for corporate governance stand-
20 ards that differ from the applicable standards re-
21 quired under State and Federal law, as in effect on
22 the date of enactment of this subparagraph.”.

23 (2) REVIEW AND REMOVAL.—The Executive Di-
24 rector shall establish a process through which, dur-
25 ing the period beginning on the date of enactment

1 of this Act and ending on the effective date de-
 2 scribed in subsection (c), members of the Board
 3 shall—

4 (A) identify investment vehicles that—

5 (i) were added to the mutual fund
 6 window pursuant to the rule entitled “Mu-
 7 tual Fund Window” (87 Fed. Reg. 27917
 8 (effective June 1, 2022)); and

9 (ii) would violate subparagraph (E) or
 10 (F) of section 8438(b)(5) of title 5, United
 11 States Code, as added by paragraph (1);
 12 and

13 (B) remove from the mutual fund window
 14 all investment vehicles identified under subpara-
 15 graph (A).

16 (3) EXISTING INVESTMENTS IN IMPERMISSIBLE
 17 MUTUAL FUNDS.—

18 (A) NOTICE.—Not later than 30 days after
 19 the effective date described in subsection (c),
 20 the Executive Director shall notify each partici-
 21 pant of the option to make an election under
 22 subparagraph (B).

23 (B) ELECTION.—During the 90-day period
 24 beginning on the day after the date on which
 25 the 30-day period described in subparagraph

(A) ends, a participant may elect to have any covered sums credited to the account of that individual in the Thrift Savings Fund reinvested in accordance with section 8438 of title 5, United States Code, as amended by paragraph (1).

(C) MANDATORY REINVESTMENT.—Beginning on the day after the date on which the 90-day period described in subparagraph (B) ends, the Board shall ensure that all covered sums with respect to which elections have not been made under that subparagraph are invested in the Government Securities Investment Fund established under section 8438(b)(1)(A) of title 5, United States Code.

(4) ENFORCEMENT.—Section 8477(e)(3) of title 5, United States Code, is amended—

(A) in subparagraph (B)(iii), by striking “or” at the end;

(B) in subparagraph (C)(ii), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(D) by any participant or beneficiary against the Board—

1 “(i) to obtain any appropriate equitable re-
2 lief to redress a violation of subparagraph (E)
3 or (F) of section 8438(b)(5);

4 “(ii) to enjoin any act or practice which
5 violates subparagraph (E) or (F) of section
6 8438(b)(5); or

7 “(iii) to obtain actual or compensatory
8 damages to redress a violation of subparagraph
9 (E) or (F) of section 8438(b)(5).”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 paragraphs (1) and (4) of subsection (b) shall take effect
12 on the date that is 1 year after the date of enactment
13 of this Act.

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