

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.

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## 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

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## 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

1 (A) ends, a participant may elect to have any  
2 covered sums credited to the account of that in-  
3 dividual in the Thrift Savings Fund reinvested  
4 in accordance with section 8438 of title 5,  
5 United States Code, as amended by paragraph  
6 (1).

7 (C) MANDATORY REINVESTMENT.—Begin-  
8 ning on the day after the date on which the 90-  
9 day period described in subparagraph (B) ends,  
10 the Board shall ensure that all covered sums  
11 with respect to which elections have not been  
12 made under that subparagraph are invested in  
13 the Government Securities Investment Fund es-  
14 tablished under section 8438(b)(1)(A) of title 5,  
15 United States Code.

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

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

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

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

23 “(D) by any participant or beneficiary against  
24 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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