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

Mr. Lee (for himself and Mr. Scott of Florida) introduced the following bill; which was read twice and referred to the Committee on...

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “No ESG at TSP Act”.

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

(a) DEFINITIONS.—In this section:
(1) BOARD; EXECUTIVE DIRECTOR.—The terms “Board” and “Executive Director” have the meanings given those terms in section 8401 of title 5, United States Code.

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

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

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

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

(b) PROHIBITION.—

(1) IN GENERAL.—Section 8438(b)(5) of title 5, United States Code, is amended by adding at the end the following:
“(E) The Board may not offer through the mutual fund window any mutual fund, exchange-traded fund (as defined in section 270.6c–11 of title 17, Code of Federal Regulations, or any successor regulation), or other investment vehicle that invests in bonds or equities and that makes investment decisions based on ESG criteria, to the extent that those criteria are unrelated to maximizing monetary returns for investors.

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

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

“(i) Environmental criteria, including—

“(I) emissions, climate change, sustainability, environmental justice, pollution, or conservation; or

“(II) whether a company is engaged in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy.

“(ii) Social criteria, including—
“(I) diversity criteria, including—

“(aa) the sex, race, ethnicity, gender identity, sexual orientation, or socio-economic status of the owners, board members, employees, or customers of companies; or

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

“(II) whether a company is engaged in the manufacture, transportation, or sale of firearms, firearms accessories, or ammunition.

“(iii) Political criteria, including the perceived or actual political affiliations, donations, or associations of companies.

“(iv) Criteria for corporate governance standards that differ from the applicable standards required under State and Federal law, as in effect on the date of enactment of this subparagraph.”.

(2) REVIEW AND REMOVAL.—The Executive Director shall establish a process through which, during the period beginning on the date of enactment
of this Act and ending on the effective date described in subsection (c), members of the Board shall—

(A) identify investment vehicles that—

(i) were added to the mutual fund window pursuant to the rule of the Board entitled “Mutual Fund Window” (87 Fed. Reg. 27917 (effective June 1, 2022)); and

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

(B) remove from the mutual fund window all investment vehicles identified under subparagraph (A).

(3) EXISTING INVESTMENTS IN IMPERMISSIBLE MUTUAL FUNDS.—

(A) NOTICE.—Not later than 30 days after the effective date described in subsection (c), the Executive Director shall notify each participant of the option to make an election under subparagraph (B).

(B) ELECTION.—During the 90-day period beginning on the day after the date on which the 30-day period described in subparagraph
(A) ends, a participant may elect to have any
covered sums credited to the account of that in-
dividual 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 es-
tablished 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—
“(i) to obtain any appropriate equitable relief to redress a violation of subparagraph (E) or (F) of section 8438(b)(5);

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

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

(c) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (4) of subsection (b) shall take effect on the date that is 90 days after the date of enactment of this Act.