

AFL-CIO

LEGISLATIVE ALERT

September 17, 2024

Dear Representative:

On behalf of the AFL-CIO, I urge you to oppose H.R. 5339, RETIRE Act, which is composed of the following four anti-ESG bills:

- No Discrimination in My Benefits Act (H.R. 5338)
- Retirement Proxy Protection Act (H.R. 5337)
- Providing Complete Information to Retirement Investors Act (H.R. 5340)
- Roll Back ESG to Increase Retirement Earnings Act (H.R. 5339)

H.R. 5339 would roll back or block the inclusion of relevant investment factors in retirement plans, which include environmental, social, and governance ("ESG") risks. Pension plans represent the deferred wages of hard working Americans, and ERISA requires plan fiduciaries to invest plan assets according to the duties of prudence and loyalty in order to maximize benefits.

H.R. 5339 would limit the criteria fiduciaries can consider when selecting investments to solely pecuniary or financial factors. The only exception is when two investments are indistinguishable based purely on pecuniary factors or the fiduciary satisfies burdensome documentation requirements. Similarly, provisions from HR 5337 will discourage fiduciaries from voting proxies on ESG issues that might be considered "non-pecuniary." This bill would effectively disfranchise retirement plan participants from having their shares voted on important ESG issues. The Department of Labor ("DOL") has wisely rejected the distinction between pecuniary and non-pecuniary factors based on concerns that this terminology causes confusion and has a chilling effect on investment choices that may increase plan participants' retirement income security.

Provisions from H.R. 5338 prohibit the consideration of diversity by ERISA plans when selecting a fiduciary, counsel, employee, or service provider. We oppose this bill as a blatant attempt to obstruct efforts to address under representation of minority- and women-owned firms in asset management. DOL rules permit ERISA plans to consider the benefits of investment advisor diversity so long as the plan does not sacrifice risk-adjusted returns. Indeed, studies have shown that diversity can be a source of investment outperformance by casting a wider net for professional talent.

Provisions from H.R. 5340 were intended to deter self-directed defined contribution plan participants from selecting ESG investments, for example those in a 401(k) plan. This legislation would require defined contribution plans to provide a written warning to participants who are choosing from investments through a brokerage window rather than those selected by the plan. While we do not oppose suitable warnings for plan participants that choose to invest through a brokerage window, we are concerned that this bill is intended to interfere with the freedom of 401(k) plan participants to invest in ESG-related funds of their own choosing.

Continued attempts to block plans from considering ESG's have deep impacts on retirees. ESG's are critical factors in assessing and mitigating risks and creating opportunities for enhanced returns. Therefore, AFL-CIO urges you to oppose H.R. 5339.

Sincerely,

A handwritten signature in black ink, appearing to read "Jody Calemine". The signature is fluid and cursive, with the first name "Jody" being more prominent and the last name "Calemine" following in a similar style.

Jody Calemine
Director, Government Affairs