

118TH CONGRESS
1ST SESSION

S. 149

To amend title 5, United States Code, to address the responsibilities of fiduciaries with respect to the Thrift Savings Fund, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2023

Mr. RUBIO 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 address the responsibilities of fiduciaries with respect to the Thrift Savings Fund, 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 “TSP Fiduciary Secu-
5 rity Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The Federal Retirement Thrift Investment
9 Board has a fiduciary duty to manage the Thrift

1 Savings Fund in the best interest of the beneficiaries
2 of the Fund.

3 (2) The principal beneficiaries of the Thrift
4 Savings Fund are the civil servants of the United
5 States, and members of the uniformed services, who
6 are tasked with defending the national security of
7 the United States.

8 (3) The duty of the Federal Retirement Thrift
9 Investment Board to manage the Thrift Savings
10 Fund in the best interests of the beneficiaries of the
11 Fund includes a duty not to harm the national secu-
12 rity of the United States.

13 **SEC. 3. FIDUCIARY RESPONSIBILITIES WITH RESPECT TO**
14 **THRIFT SAVINGS FUND.**

15 Section 8477 of title 5, United States Code, is
16 amended—

17 (1) in subsection (b)(1)—

18 (A) in subparagraph (B), by striking “;
19 and” and inserting a semicolon;

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

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

23 “(D) to the maximum extent practicable, by
24 preventing the investments of the Thrift Savings
25 Fund (or portions thereof), and the exercise of vot-

1 ing rights associated with any such investments,
2 from harming the national security of the United
3 States.”; and

4 (2) in subsection (e), by adding at the end the
5 following:

6 “(9)(A) Notwithstanding any other provision of this
7 subsection, no fiduciary shall be personally liable for any
8 monetary damages, or be assessed any civil penalty, under
9 this subsection with respect to a breach of the requirement
10 under subsection (b)(1)(D).

11 “(B) Subparagraph (A) shall cease to have effect be-
12 ginning on January 1, 2025.”.

13 **SEC. 4. REVIEW OF THRIFT SAVINGS FUND FOR COMPLI-**
14 **ANCE WITH FIDUCIARY DUTIES.**

15 (a) IN GENERAL.—Section 8477(f) of title 5, United
16 States Code, is amended—

17 (1) by inserting “(1)” after “(f)”; and

18 (2) by adding at the end the following:

19 “(2)(A) Not later than 1 year after the date of enact-
20 ment of this paragraph, the Secretary of Labor, in con-
21 sultation with the Secretary of Defense, the Attorney Gen-
22 eral, the Secretary of Homeland Security, and the Sec-
23 retary of the Treasury, shall prescribe regulations to carry
24 out subsection (b)(1)(D) with respect to each of the fol-
25 lowing:

1 “(i) The investments of the Thrift Savings
2 Fund, which shall include the establishment of
3 standards by which compliance with subsection
4 (b)(1)(D) with respect to the investments of the
5 Thrift Savings Fund (or portions thereof) shall be
6 determined.

7 “(ii) The exercise of voting rights associated
8 with the investments of the Thrift Savings Fund (or
9 portions thereof).

10 “(B) The regulations prescribed under subparagraph
11 (A)(ii) shall include—

12 “(i) the establishment of a process by which the
13 exercise of voting rights described in subparagraph
14 (A)(ii) shall be reviewed by the Secretary of Labor,
15 in consultation with the Secretary of Defense, the
16 Attorney General, the Secretary of Homeland Secu-
17 rity, and the Secretary of the Treasury, for compli-
18 ance with subsection (b)(1)(D) with respect to the
19 exercise of those rights; and

20 “(ii) the establishment of standards by which
21 compliance with subsection (b)(1)(D) with respect to
22 the exercise of voting rights described in subpara-
23 graph (A)(ii) shall be determined, including the fac-
24 tors contributing to a determination that a covered
25 vote would not comply with subsection (b)(1)(D).

1 “(C) For the purposes of any regulation prescribed
2 under subparagraph (A), the Secretary of Labor shall pre-
3 sume that—

4 “(i) an investment of the Thrift Savings Fund
5 (or portions thereof) does not comply with sub-
6 section (b)(1)(D) if the investment invests in—

7 “(I) an entity included on—

8 “(aa) the list of Communist Chinese
9 military companies maintained under sec-
10 tion 1237(b) of the Strom Thurmond Na-
11 tional Defense Authorization Act for Fiscal
12 Year 1999 (50 U.S.C. 1701 note); or

13 “(bb) the entity list maintained by the
14 Bureau of Industry and Security of the
15 Department of Commerce and set forth in
16 Supplement No. 4 to part 744 of title 15,
17 Code of Federal Regulations; or

18 “(II) a parent, subsidiary, or affiliate of,
19 or an entity controlled by, an entity described
20 in subclause (I); and

21 “(ii) an exercise of voting rights associated with
22 any investments of the Thrift Savings Fund (or por-
23 tions thereof) does not comply with subsection
24 (b)(1)(D) if that exercise of voting rights is a cov-
25 ered vote with respect to a proposal that would—

1 “(I) approve or ratify a transaction, in-
2 cluding a transaction described in subparagraph
3 (D)(ii)(I), that would cause, or would reason-
4 ably be expected to cause, an entity to which
5 the covered vote applies to—

6 “(aa) breach any contract with the
7 Federal Government to which the entity is
8 a party, and under which the consideration
9 provided to the entity over the course of
10 the entire contract is more than
11 \$10,000,000, if the entity has otherwise
12 complied with all applicable laws and regu-
13 lations in fulfilling the responsibilities of
14 the entity with respect to the contract;

15 “(bb) significantly reduce the produc-
16 tion of, or the capital expenditure or re-
17 search and development expenditure with
18 respect to, any—

19 “(AA) industrial resources, crit-
20 ical technology items, or materials
21 that are essential to the national de-
22 fense (as those terms are defined in
23 section 702 of the Defense Production
24 Act of 1950 (50 U.S.C. 4552)); or

1 “(BB) emerging and
2 foundational technology identified by
3 the President under section 1758 of
4 the Export Controls Act of 2018 (50
5 U.S.C. 4817); or

6 “(cc) outsource or substantially sell,
7 whether to any affiliated entity or joint
8 venture, or by contract, to any entity lo-
9 cated in a covered country, any—

10 “(AA) industrial resources, crit-
11 ical technology items, or materials
12 that are essential to the national de-
13 fense (as those terms are defined in
14 section 702 of the Defense Production
15 Act of 1950 (50 U.S.C. 4552)); or

16 “(BB) emerging and
17 foundational technology identified by
18 the President under section 1758 of
19 the Export Controls Act of 2018 (50
20 U.S.C. 4817); or

21 “(II) elect to the board of directors of any
22 entity an individual who—

23 “(aa) is a director, officer, employee,
24 or affiliate of any entity described in clause
25 (i)(I);

1 “(bb) at any time during the 5-year
2 period preceding the date on which that
3 election occurs, was as described in item
4 (aa); or

5 “(cc) a reasonable investor would be-
6 lieve supports any proposal described in
7 subclause (I).

8 “(D) In this paragraph—

9 “(i) the term ‘covered country’ means—

10 “(I) the People’s Republic of China, the
11 Russian Federation, North Korea, Iran, Syria,
12 Sudan, Venezuela, or Cuba;

13 “(II) any country, the government of which
14 the Secretary of State determines has provided
15 support for international terrorism pursuant
16 to—

17 “(aa) section 1754(c)(1)(A) of the Ex-
18 port Control Reform Act of 2018 (50
19 U.S.C. 4813(c)(1)(A));

20 “(bb) section 620A of the Foreign As-
21 sistance Act of 1961 (22 U.S.C. 2371);

22 “(cc) section 40 of the Arms Export
23 Control Act (22 U.S.C. 2780); or

24 “(dd) any other provision of law; or

1 “(III) any other country that the Secretary
2 of Labor, in consultation with the Secretary of
3 Defense, the Attorney General, the Secretary of
4 Homeland Security, and the Secretary of the
5 Treasury, designates as posing an undue or un-
6 necessary risk to the national security of the
7 United States; and

8 “(ii) the term ‘covered vote’ means a vote in
9 favor of (or an abstention with respect to) a pro-
10 posal to—

11 “(I) approve or ratify a transaction involv-
12 ing an entity, including—

13 “(aa) any sale of, or other disposition
14 of (whether in a single or a series of trans-
15 actions) assets or capital stock; and

16 “(bb) any merger, consolidation, joint
17 venture, partnership, spin-off, reverse spin-
18 off, dissolution, restructuring, recapitaliza-
19 tion, liquidation, or any other business
20 combination or strategic transaction; or

21 “(II) elect an individual to the board of di-
22 rectors of the entity that is the subject of the
23 proposal.”.

1 (b) REVIEW OF EXERCISE OF VOTING RIGHTS; RE-
2 PORT TO CONGRESS.—Section 8438 of title 5, United
3 States Code, is amended—

4 (1) in subsection (f)—

5 (A) by inserting “(1)” after “(f)”; and

6 (B) by adding at the end the following:

7 “(2) For the purposes of paragraph (1), a review of
8 the exercise of voting rights for compliance with section
9 8477(b)(1)(D), including under the regulations prescribed
10 under section 8477(f)(2), shall not be considered to be the
11 exercise of voting rights associated with the ownership of
12 securities by the Thrift Savings Fund.”; and

13 (2) by adding at the end the following:

14 “(i) Not later than 2 years after the date of enact-
15 ment of this subsection, and annually thereafter, the Sec-
16 retary of Labor shall submit to the Committee on Home-
17 land Security and Governmental Affairs of the Senate and
18 the Committee on Oversight and Accountability of the
19 House of Representatives a report regarding—

20 “(1) for the year covered by the report, the in-
21 vestments of the Thrift Savings Fund (or portions
22 thereof), and the exercise of voting rights associated
23 with any such investments, that have been reviewed
24 for compliance with section 8477(b)(1)(D); and

1 “(2) the outcome with respect to enforcement of
2 each review conducted under paragraph (1) and a
3 justification for that outcome.”.

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