AFR Americans for Financial Reform

# Attacks on "ESG" Are Attacks on Workers' Retirement Security

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**Far-right political project**

Far-right, extremist forces have orchestrated a coordinated attack aimed at framing common sense investment practices — specifically, the consideration of environmental, social, and governance (ESG) factors in investment decisions — as "woke capitalism."

With funding and guidance from prominent anti-democratic figures like Leonard Leo and Peter Thiel, Republican politicians have explicitly signaled their intention to make "ESG" the "CRT" (critical race theory) of 2023 and 2024.

GOP likely presidential candidates such as Florida governor Ron DeSantis and former Vice President Mike Pence have joined in anti-ESG efforts, and "woke capitalism" was a major focus of the Conservative Political Action Conference (CPAC) earlier this year.

This far-right political project exposes our retirement savings to significant financial risks that cannot be ignored, like those caused by destructive labor practices, worsening climate impacts, and excessive executive compensation.

**Congressional attacks**

Congressional Republicans have joined in anti-ESG attacks, which 17 Attorneys General warned Congress about last year. These attacks forced President Biden to issue his first veto. The veto blocked a Congressional Review Act (CRA) resolution and preserved an important Department of Labor rule that allows retirement plan fiduciaries to consider all relevant factors that might impact an investment, including ESG factors. The rule protects the hard-earned retirement savings of tens of millions of workers and retirees across the country.

This is one of many important financial regulations that Republicans will likely attempt to undermine this Congress under the banner of anti-ESG and "woke capitalism." To defend these important regulations that protect investors (including retirees and workers saving for retirement) and our economy as a whole, members of Congress can support the rulemaking process during and after comment periods, highlight their importance at hearings, and vote and speak out against any CRA resolutions attempting to nullify them. Here are the next likely attacks:

- SEC climate-risk disclosure rule: Climate risk is financial risk. The SEC rule — which is only applicable to public companies — will bring much-needed transparency to investors about how companies are addressing climate risk and capturing emissions reduction incentives created by the Inflation Reduction Act. Securities law experts agree that the proposal is clearly within agency authority.

- CFPB small business lending rule: This recently-finalized rule, which implements section 1071 of the Dodd-Frank Act, will allow better enforcement of fair lending laws and help increase access to sustainable credit for small businesses and women- and minority-owned small businesses in particular.

- SEC private equity rules: These rules would provide fund investors (including pension funds) more transparency into their investments and management fees and prohibit private funds from engaging in certain practices that present conflicts of interest and increase investor risk.

- SEC beneficial ownership and swaps rules: These rules would narrow loopholes some investors use to: 1) secretly build large ownership stakes in public companies; 2) engage in what is in essence legalized insider trading before disclosures of large ownership stakes are made public; and 3) use their newly-acquired ownership stake to extract value and boost short-term returns at the expense of long-term value. This strategy hurts workers, companies, communities, and regular investors by leaving companies in a weakened state that ultimately results in fewer jobs, worse pay, losses to long-term investors, and a declining U.S. economy.

- Community Reinvestment Act modernization: The OCC and FDIC proposed a rule to encourage financial institutions to better serve their communities, including low- and moderate-income (LMI) neighborhoods by increasing lending, investment, and services in areas that need it most.

- SEC shareholder proposals rule: This rule will bring more predictability and consistency to decisions about what types of shareholder proposals — an important tool for investors to hold companies accountable — are allowed to come to a vote in public companies' annual general meetings.

- SEC human capital management disclosure rule: The SEC has this rule on its agenda, but it has not been proposed yet. As the Human Capital Management Coalition argued in its rulemaking petition, "[t]here is broad consensus that human capital management is important to the bottom line, and . . . effective human capital management [is] essential to long-term value creation and therefore material to evaluating a company's prospects."

**Costs of state-level attacks**

State anti-ESG laws have resulted in hundreds of millions of dollars in higher debt servicing costs for states, municipalities, and school districts, and are projected to cost billions in lower returns for state pensioners. Over 149 state bills attacking ESG policy have been introduced in 35 states just since January of this year.

- ***Costs to the public:*** A study estimated that a 2021 Texas investment blacklist would cost municipalities an additional $303-$532 million in bond interest. Several of that study's warnings about limited competition in the Texas bond market have come to pass, and a subsequent study used the same methodology to estimate that six additional states primed to pass similar investment blacklists would be raising debt servicing costs by over $700 million.

- ***Costs to pensioners:*** Indiana's budget office found that a bill forcing pension funds to divest from asset managers that consider ESG factors would cost $6.7 billion over the next decade in sub-market returns, force retirees to increase their contributions, and impose an additional $550,000 in administrative costs per year. Amended legislation now puts the estimated costs to pensions funds at $5.5 million. The Kansas Division of the Budget found that an anti-ESG bill could cost the Kansas Public Employees Retirement System (KPERS) upwards of $3.6 billion over the next ten years.

## Voters are on our side

Anti-ESG state bills have faced significant pushback from public pension beneficiaries, retirement system officials, bank and local business associations, and unions. Indeed, far-right anti-ESG attacks are unpopular, with 63% of voters agreeing the government should not set limits on corporate ESG investments. Additionally, Americans are concerned about politicians using "wokeness" as a distraction.

## What members of Congress can do

In addition to defeating dangerous CRAs that seek to undermine important financial regulations, members of Congress can:

- Co-sponsor the Freedom to Invest in a Sustainable Future Act (S. 523; H.R. 1119), which would give workplace retirement plans the ability to consider ESG factors in their investment decisions or offer ESG options.

- Join the Congressional Sustainable Investment Caucus, which brings together members of Congress with experts to better understand sustainable investing and inform policy making that provides investor protections and transparency of information to market participants.

- Look for other opportunities to support or introduce legislation that protects retirees' and workers' retirement security.