

Union Calendar No. 184

118TH CONGRESS
1ST SESSION

H. R. 5339

[Report No. 118-225]

To amend the Employee Retirement Income Security Act of 1974 to specify requirements concerning the consideration of pecuniary and non-pecuniary factors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 5, 2023

Mr. ALLEN introduced the following bill; which was referred to the Committee on Education and the Workforce

SEPTEMBER 26, 2023

Additional sponsor: Mrs. HOUCHIN

SEPTEMBER 26, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on September 5, 2023]

A BILL

To amend the Employee Retirement Income Security Act of 1974 to specify requirements concerning the consideration of pecuniary and non-pecuniary factors, 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 “Roll back ESG To In-*
5 *crease Retirement Earnings Act” or the “RETIRE Act”.*

6 **SEC. 2. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF**
7 **1974 AMENDMENT.**

8 *(a) IN GENERAL.—Section 404(a) of the Employee Re-*
9 *irement Income Security Act of 1974 (29 U.S.C. 1104(a))*
10 *is amended by adding at the end the following:*

11 *“(3) INTEREST BASED ON PECUNIARY FAC-*
12 *TORS.—*

13 *“(A) IN GENERAL.—For purposes of para-*
14 *graph (1), a fiduciary shall be considered to act*
15 *solely in the interest of the participants and*
16 *beneficiaries of the plan with respect to an in-*
17 *vestment or investment course of action only if*
18 *the fiduciary’s action with respect to such invest-*
19 *ment or investment course of action is based only*
20 *on pecuniary factors (except as provided in sub-*
21 *paragraph (B)). The fiduciary may not subordi-*
22 *nate the interests of the participants and bene-*
23 *ficiaries in their retirement income or financial*
24 *benefits under the plan to other objectives and*
25 *may not sacrifice investment return or take on*

1 *additional investment risk to promote non-pecu-*
2 *niary benefits or goals. The weight given to any*
3 *pecuniary factor by a fiduciary shall reflect a*
4 *prudent assessment of the impact of such factor*
5 *on risk and return.*

6 “(B) *USE OF NON-PECUNIARY FACTORS FOR*
7 *INVESTMENT ALTERNATIVES.—Notwithstanding*
8 *paragraph (A), if a fiduciary is unable to distin-*
9 *guish between or among investment alternatives*
10 *or investment courses of action on the basis of*
11 *pecuniary factors alone, the fiduciary may use*
12 *non-pecuniary factors as the deciding factor if*
13 *the fiduciary documents—*

14 “(i) *why pecuniary factors were not*
15 *sufficient to select a plan investment or in-*
16 *vestment course of action;*

17 “(ii) *how the selected investment com-*
18 *pares to the alternative investments with re-*
19 *gard to the composition of the portfolio with*
20 *regard to diversification, the liquidity and*
21 *current return of the portfolio relative to the*
22 *anticipated cash flow requirements of the*
23 *plan, and the projected return of the port-*
24 *folio relative to the funding objectives of the*
25 *plan; and*

1 “(iii) how the selected non-pecuniary
2 factor or factors are consistent with the in-
3 terests of the participants and beneficiaries
4 in their retirement income or financial ben-
5 efits under the plan.

6 “(C) INVESTMENT ALTERNATIVES FOR PAR-
7 TICIPANT-DIRECTED INDIVIDUAL ACCOUNT
8 PLANS.—In selecting or retaining investment op-
9 tions for a pension plan described in subsection
10 (c)(1)(A), a fiduciary is not prohibited from con-
11 sidering, selecting, or retaining an investment
12 option on the basis that such investment option
13 promotes, seeks, or supports one or more non-pe-
14 cuniary benefits or goals, if—

15 “(i) the fiduciary satisfies the require-
16 ments of paragraph (1) and subparagraphs
17 (A) and (B) of this paragraph in selecting
18 or retaining any such investment option;
19 and

20 “(ii) such investment option is not
21 added or retained as, or included as a com-
22 ponent of, a default investment under sub-
23 section (c)(5) (or any other default invest-
24 ment alternative) if its investment objectives
25 or goals or its principal investment strate-

1 gies include, consider, or indicate the use of
2 one or more non-pecuniary factors.

3 “(D) *DEFINITIONS.*—For the purposes of
4 this paragraph:

5 “(i) *The term ‘pecuniary factor’ means*
6 *a factor that a fiduciary prudently deter-*
7 *mines is expected to have a material effect*
8 *on the risk or return of an investment based*
9 *on appropriate investment horizons con-*
10 *sistent with the plan’s investment objectives*
11 *and the funding policy established pursuant*
12 *to section 402(b)(1).*

13 “(ii) *The term ‘investment course of*
14 *action’ means any series or program of in-*
15 *vestments or actions related to a fiduciary’s*
16 *performance of the fiduciary’s investment*
17 *duties, and includes the selection of an in-*
18 *vestment fund as a plan investment, or in*
19 *the case of an individual account plan, a*
20 *designated investment alternative under the*
21 *plan.”.*

22 “(b) *EFFECTIVE DATE.*—The amendments made by this
23 section shall apply to actions taken by a fiduciary on or
24 after the date that is 12 months after the date of enactment
25 of this Act.

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