H. R. 8959

To amend the Employee Retirement Income Security Act of 1974 to require retirement plans to establish Sustainable Investment Policies.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 14, 2020

Mr. LEVIN of Michigan (for himself, Mr. BRENDAN F. BOYLE of Pennsylvania, Mrs. AXNE, and Mr. GARCÍA of Illinois) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Employee Retirement Income Security Act of 1974 to require retirement plans to establish Sustainable Investment Policies.

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

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Retirees Sustainable Investment Policies Act of 2020”.

4 SEC. 2. FINDINGS.

5 The Congress finds the following:

6 (1) Fiduciaries for retirement plans should—
(A) incorporate all relevant factors, including environmental, social, and governance (hereinafter in this Act referred to as "ESG") factors, into investment analysis and decision-making processes, consistent with the investment time horizons of plan participants and beneficiaries;

(B) encourage the adoption of best practices for ESG performance in the companies or other entities in which they invest;

(C) consider plan participants’ and beneficiaries’ sustainability-related interests and preferences when making investment decisions;

(D) consider the impact of plan investments on the stability and resilience of the financial system; and

(E) disclose how they have implemented these commitments.

(2) There is now incontrovertible evidence that ESG factors are financially material to investors and relevant to investment decisionmaking.

SEC. 3. PURPOSE.

The purpose of this Act is to require retirement and welfare benefit plans that are covered by the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001
et seq.), to adopt and implement policies in consideration of ESG factors when making investment decisions, because considering ESG factors is relevant to the fiduciary duty of prudence, as such factors help ensure investments’ long-term sustainability.

SEC. 4. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) Disclosure of Sustainable Investment Policies.—Section 102 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1022) is amended in subsection (b), by inserting “the sustainable investment policy of the plan (as established under section 402(b)(5));” after “collective bargaining agreement;”.

(b) Establishment of Sustainable Investment Policy.—Section 402 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1102) is amended—

(1) in subsection (b)—

(A) in paragraph (3), by striking “and”;

(B) in paragraph (4), by striking the period and insert “, and”; and

(C) by inserting after paragraph (4) the following:

“(5) provide a sustainable investment policy of the plan in accordance with subparagraph (d) unless
the plan elects to rely on the sustainable investment policies of the plan’s fiduciaries as defined by section 3(38)”; and

(2) by adding after subsection (c) the following:

“(d)(1) A sustainable investment policy under subsection (b)(5) shall include guidelines with respect to—

“(A) corporate governance practices by entities in which the plan invests, including executive compensation, board diversity, the independence of board chairs, political spending and lobbying disclosure;

“(B) characteristics of workforces employed by entities in which the plan invests, including compensation and benefits, health and safety, diversity and demographics, skills and training, retention and turnover, full-time and part-time employment, and the use of independent contractors;

“(C) labor and human rights compliance by entities in which the plan invests, including workers’ freedom of association, the right to collectively bargain, and the prevention of employment discrimination, child labor, and forced labor in company operations and supply chains;

“(D) the implementation, to the extent practicable, of practices which enhance diversity and in-
clusion performance within the workforce, senior leadership, business procurement, philanthropy, and/or board of directors;

“(E) environmental risks to the assets and properties of entities invested in by the plan and related disclosures, including—

“(i) climate risks and contributions;

“(ii) environmental risks that may not be related to climate, such as industrial pollution, habitat destruction, and other forms of environmental degradation;

“(iii) impact to species endangerment and extinction; and

“(iv) pollution of land, air, and water related to the operation of the entities invested in by the plan;

“(F) due diligence and practices regarding supply chain management, including environmental, human rights, and worker compensation considerations; and

“(G) tax practices of entities in which the plan invests, including international tax avoidance strategies and tax payment disclosure.
“(2) A plan subject to the requirements of section 402(d)(1) shall conduct a review of the sustainable investment policy under subsection (b)(5) on an annual basis.

“(3) Section 404(a) shall not be construed to prohibit a plan fiduciary from doing the following:

“(A) In choosing among investments with commensurate degrees of risk and rates of return, to select one or more such investments based on environmental, social, and governance considerations.

“(B) To monitor or dispose of a plan investment alternative based on considerations that include environmental, social, and governance considerations.

“(C) Vote proxies in accordance with the plan’s proxy voting guidelines.”.

(e) QUALIFIED INVESTMENT ALTERNATIVES.—Section 404(c)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)(5)) is amended by adding at the end the following:

“(5) A qualified default investment alternative (as defined in section 2550.404c–5(e) of title 29, Code of Federal Regulations, or a successor regulation) may include an investment alternative—

“(A) with an environmental, social, and governance investment mandate; or
“(B) that was selected, in part, on the basis of an environmental, social, and governance consideration.”