

117TH CONGRESS
2D SESSION

H. R. 9198

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to limit fiduciary consideration of non-pecuniary factors in investment decision-making.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 18, 2022

Mr. MURPHY of North Carolina (for himself, Mrs. MILLER of West Virginia, Mr. SCHWEIKERT, and Mr. SMUCKER) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to limit fiduciary consideration of non-pecuniary factors in investment decision-making.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. FIDUCIARY RESPONSIBILITIES RELATING TO**
2 **CERTAIN NON-PECUNIARY OBJECTIVES.**

3 Section 404(a) of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1104(a)) is amended by
5 adding at the end the following new paragraph:

6 “(3) INTEREST BASED ON NON-PECUNIARY FAC-
7 TORS.—

8 “(A) IN GENERAL.—For purposes of paragraph
9 (1), a fiduciary of a plan shall be considered to act
10 solely in the interest of the participants and bene-
11 ficiaries of the plan with respect to a plan invest-
12 ment or investment course of action only if the fidu-
13 ciary’s action with respect to such investment is
14 based only on pecuniary factors. The fiduciary may
15 not subordinate the interests of the participants and
16 beneficiaries in their retirement income or financial
17 benefits under the plan to other objectives and may
18 not sacrifice investment return or take on additional
19 investment risk to promote non-pecuniary benefits or
20 goals. The weight given to any pecuniary factor by
21 a fiduciary should appropriately reflect a prudent as-
22 sessment of the impact of such factor on risk-return.

23 “(B) INVESTMENT ALTERNATIVES FOR PARTIC-
24 IPANT-DIRECTED INDIVIDUAL ACCOUNT PLANS.—In
25 selecting investment options for a pension plan de-
26 scribed in subsection (c)(1)(A), a fiduciary is not

1 prohibited from considering or including an invest-
2 ment option on the basis that such investment op-
3 tion promotes non-pecuniary benefits or goals, pro-
4 vided that the fiduciary—

5 “(i) satisfies the requirements of para-
6 graph (1) and subparagraph (A) in considering
7 or including any such investment option; and

8 “(ii) does not consider or include such in-
9 vestment option as a default investment (as de-
10 fined in the regulations issued by the Secretary
11 under subsection (c)(5)(A)), or a component
12 thereof.

13 “(C) PECUNIARY FACTOR DEFINED.—For the
14 purposes of this paragraph, the term ‘pecuniary fac-
15 tor’ means a factor that a fiduciary prudently deter-
16 mines is expected to have a material effect on the
17 risk and return of an investment based on appro-
18 priate investment horizons consistent with the plan’s
19 investment objectives and the funding policy estab-
20 lished pursuant to section 402(b)(1).”.

1 **SEC. 2. REQUIREMENT THAT RETIREMENT PLANS CON-**
2 **TINUE TO OFFER INVESTMENTS BASED SOLE-**
3 **LY ON PECUNIARY FACTORS.**

4 (a) IN GENERAL.—Section 401(a) of the Internal
5 Revenue Code of 1986 is amended by adding at the end
6 the following new paragraph:

7 “(39) DEFINED CONTRIBUTION PLAN INVEST-
8 MENT OPTION REQUIREMENTS.—In the case of a
9 trust forming part of a defined contribution plan
10 which includes investment options based on non-pe-
11 cuniary factors (within the meaning of section
12 404(a)(3) of the Employee Retirement Income Secu-
13 rity Act of 1974), such trust shall not constitute a
14 qualified trust unless the plan includes investment
15 options not based on any such factors.”.

16 (b) 403(b) PLANS.—Section 403(b)(7) of such Code
17 is amended by adding at the end the following new sub-
18 paragraph:

19 “(D) INVESTMENT OPTION REQUIRE-
20 MENTS.—Subparagraph (A) shall not apply to
21 an amount unless under the custodial account
22 meets investment option requirements similar to
23 the requirements of section 401(a)(39).”.

24 (c) 457(b) PLANS.—Section 457(e) of such Code is
25 amended by adding at the end the following new para-
26 graph:

1 “(19) INVESTMENT OPTION REQUIREMENTS.—
2 In the case of an employer described in subsection
3 (e)(1)(A), a plan shall not be treated as meeting the
4 requirements of this section unless such plan meets
5 investment option requirements similar to the re-
6 quirements of section 401(a)(39).”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to plan years beginning after the
9 date of the enactment of this Act.

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