

118TH CONGRESS
2D SESSION

H. R. 5339

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2024

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “Protecting Americans’ Investments from Woke Policies
 4 Act”.

5 (b) TABLE OF CONTENTS.—The table of contents for
 6 this Act is as follows:

Sec. 1. Short title; table of contents.

DIVISION A—ROLL BACK ESG TO INCREASE RETIREMENT
EARNINGS

Sec. 1001. Short title.

Sec. 1002. Limitation on consideration of non-pecuniary factors by fiduciaries.

DIVISION B—NO DISCRIMINATION IN MY BENEFITS

Sec. 2001. Short title.

Sec. 2002. Service provider selection.

DIVISION C—RETIREMENT PROXY PROTECTION

Sec. 3001. Short title.

Sec. 3002. Exercise of shareholder rights.

DIVISION D—PROVIDING COMPLETE INFORMATION TO
RETIREMENT INVESTORS

Sec. 4001. Short title.

Sec. 4002. Brokerage window disclosures.

7 **DIVISION A—ROLL BACK ESG TO**
 8 **INCREASE RETIREMENT**
 9 **EARNINGS**

10 **SEC. 1001. SHORT TITLE.**

11 This division may be cited as the “Roll back ESG
 12 To Increase Retirement Earnings Act” or the “RETIRE
 13 Act”.

1 **SEC. 1002. LIMITATION ON CONSIDERATION OF NON-PECU-**
2 **NIARY FACTORS BY FIDUCIARIES.**

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

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

8 “(A) IN GENERAL.—For purposes of para-
9 graph (1), a fiduciary shall be considered to act
10 solely in the interest of the participants and
11 beneficiaries of the plan with respect to an in-
12 vestment or investment course of action only if
13 the fiduciary’s action with respect to such in-
14 vestment or investment course of action is
15 based only on pecuniary factors (except as pro-
16 vided in subparagraph (B)). The fiduciary may
17 not subordinate the interests of the participants
18 and beneficiaries in their retirement income or
19 financial benefits under the plan to other objec-
20 tives and may not sacrifice investment return or
21 take on additional investment risk to promote
22 non-pecuniary benefits or goals. The weight
23 given to any pecuniary factor by a fiduciary
24 shall reflect a prudent assessment of the impact
25 of such factor on risk and return.

1 “(B) USE OF NON-PECUNIARY FACTORS
2 FOR INVESTMENT ALTERNATIVES.—Notwith-
3 standing paragraph (A), if a fiduciary is unable
4 to distinguish between or among investment al-
5 ternatives or investment courses of action on
6 the basis of pecuniary factors alone, the fidu-
7 ciary may use non-pecuniary factors as the de-
8 ciding factor if the fiduciary documents—

9 “(i) why pecuniary factors were not
10 sufficient to select a plan investment or in-
11 vestment course of action;

12 “(ii) how the selected investment com-
13 pares to the alternative investments with
14 regard to the composition of the portfolio
15 with regard to diversification, the liquidity
16 and current return of the portfolio relative
17 to the anticipated cash flow requirements
18 of the plan, and the projected return of the
19 portfolio relative to the funding objectives
20 of the plan; and

21 “(iii) how the selected non-pecuniary
22 factor or factors are consistent with the in-
23 terests of the participants and beneficiaries
24 in their retirement income or financial ben-
25 efits under the plan.

1 “(C) INVESTMENT ALTERNATIVES FOR
2 PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNT
3 PLANS.—In selecting or retaining investment
4 options for a pension plan described in sub-
5 section (c)(1)(A), a fiduciary is not prohibited
6 from considering, selecting, or retaining an in-
7 vestment option on the basis that such invest-
8 ment option promotes, seeks, or supports one or
9 more non-pecuniary benefits or goals, if—

10 “(i) the fiduciary satisfies the require-
11 ments of paragraph (1) and subparagraphs
12 (A) and (B) of this paragraph in selecting
13 or retaining any such investment option;
14 and

15 “(ii) such investment option is not
16 added or retained as, or included as a com-
17 ponent of, a default investment under sub-
18 section (c)(5) (or any other default invest-
19 ment alternative) if its investment objec-
20 tives or goals or its principal investment
21 strategies include, consider, or indicate the
22 use of one or more non-pecuniary factors.

23 “(D) DEFINITIONS.—For the purposes of
24 this paragraph:

1 “(i) The term ‘pecuniary factor’
2 means a factor that a fiduciary prudently
3 determines is expected to have a material
4 effect on the risk or return of an invest-
5 ment based on appropriate investment ho-
6 rizons consistent with the plan’s invest-
7 ment objectives and the funding policy es-
8 tablished pursuant to section 402(b)(1).

9 “(ii) The term ‘investment course of
10 action’ means any series or program of in-
11 vestments or actions related to a fidu-
12 ciary’s performance of the fiduciary’s in-
13 vestment duties, and includes the selection
14 of an investment fund as a plan invest-
15 ment, or in the case of an individual ac-
16 count plan, a designated investment alter-
17 native under the plan.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to actions taken by a fiduciary on
20 or after the date that is 12 months after the date of enact-
21 ment of this Act.

1 **DIVISION B—NO DISCRIMINA-**
2 **TION IN MY BENEFITS**

3 **SEC. 2001. SHORT TITLE.**

4 This division may be cited as the “No Discrimination
5 in My Benefits Act”.

6 **SEC. 2002. SERVICE PROVIDER SELECTION.**

7 Section 404(a)(1) of the Employee Retirement In-
8 come Security Act of 1974 (29 U.S.C. 1104(a)(1)) is
9 amended—

10 (1) in subparagraph (C), by striking “and”;

11 (2) in subparagraph (D), by striking the period
12 at the end and inserting “; and”; and

13 (3) by adding at the end the following new sub-
14 paragraph:

15 “(E) by selecting, monitoring, and retaining
16 any fiduciary, counsel, employee, or service provider
17 of the plan—

18 “(i) in accordance with subparagraphs (A)
19 and (B); and

20 “(ii) without regard to race, color, religion,
21 sex, or national origin.”.

DIVISION C—RETIREMENT PROXY PROTECTION

SEC. 3001. SHORT TITLE.

This division may be cited as the “Retirement Proxy Protection Act”.

SEC. 3002. EXERCISE OF SHAREHOLDER RIGHTS.

(a) IN GENERAL.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

“(f) EXERCISE OF SHAREHOLDER RIGHTS.—

“(1) AUTHORITY TO EXERCISE SHAREHOLDER RIGHTS.—

“(A) IN GENERAL.—The fiduciary duty to manage plan assets that are shares of stock includes the management of shareholder rights appurtenant to those shares, including the right to vote proxies. When deciding whether to exercise a shareholder right and in exercising such right, including the voting of proxies, a fiduciary must act prudently and solely in the interests of participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan.

1 The fiduciary duty to manage shareholder
2 rights appurtenant to shares of stock does not
3 require the voting of every proxy or the exercise
4 of every shareholder right.

5 “(B) EXCEPTION.—This subsection shall
6 not apply to voting, tender, and similar rights
7 with respect to securities that are passed
8 through pursuant to the terms of an individual
9 account plan to participants and beneficiaries
10 with accounts holding such securities.

11 “(2) REQUIREMENTS FOR EXERCISE OF SHARE-
12 HOLDER RIGHTS.—A fiduciary, when deciding
13 whether to exercise a shareholder right and when ex-
14 ercising a shareholder right—

15 “(A) shall—

16 “(i) act solely in accordance with the
17 economic interest of the plan and its par-
18 ticipants and beneficiaries;

19 “(ii) consider any costs involved;

20 “(iii) evaluate material facts that
21 form the basis for any particular proxy
22 vote or exercise of shareholder rights; and

23 “(iv) maintain a record of any proxy
24 vote, proxy voting activity, or other exer-

1 cise of a shareholder right, including any
2 attempt to influence management; and

3 “(B) shall not subordinate the interests of
4 participants and beneficiaries in their retire-
5 ment income or financial benefits under the
6 plan to any non-pecuniary objective, or promote
7 non-pecuniary benefits or goals unrelated to
8 those financial interests of the plan’s partici-
9 pants and beneficiaries.

10 “(3) MONITORING.—A fiduciary shall exercise
11 prudence and diligence in the selection and moni-
12 toring of a person, if any, selected to advise or oth-
13 erwise assist with the exercise of shareholder rights,
14 including by providing research and analysis, rec-
15 ommendations on exercise of proxy voting or other
16 shareholder rights, administrative services with re-
17 spect to voting proxies, and recordkeeping and re-
18 porting services.

19 “(4) INVESTMENT MANAGERS AND PROXY ADVI-
20 SORY FIRMS.—Where the authority to vote proxies
21 or exercise other shareholder rights has been dele-
22 gated to an investment manager pursuant to section
23 403(a), or a proxy voting advisory firm or other per-
24 son who performs advisory services as to the voting
25 of proxies or the exercise of other shareholder rights,

1 a responsible plan fiduciary shall prudently monitor
2 the proxy voting activities of such investment man-
3 ager or advisory firm and determine whether such
4 activities are in compliance with paragraphs (1) and
5 (2).

6 “(5) VOTING POLICIES.—

7 “(A) IN GENERAL.—In deciding whether to
8 vote a proxy pursuant to this subsection, the
9 plan fiduciary may adopt a proxy voting policy,
10 including a safe harbor proxy voting policy de-
11 scribed in subparagraph (B), providing that the
12 authority to vote a proxy shall be exercised pur-
13 suant to specific parameters designed to serve
14 the economic interest of the plan.

15 “(B) SAFE HARBOR VOTING POLICY.—

16 With respect to a decision not to vote a proxy,
17 a fiduciary shall satisfy the fiduciary respon-
18 sibilities under this subsection if such fiduciary
19 adopts and is following a safe harbor proxy vot-
20 ing policy that—

21 “(i) limits voting resources to par-
22 ticular types of proposals that the fiduciary
23 has prudently determined are substantially
24 related to the business activities of the
25 issuer or are expected to have a material

1 effect on the value of the plan investment;
2 or

3 “(ii) establishes that the fiduciary will
4 refrain from voting on proposals or par-
5 ticular types of proposals when the assets
6 of a plan invested in the issuer relative to
7 the total assets of such plan are below 5
8 percent (or, in the event such assets are
9 under management, when the assets under
10 management invested in the issuer are
11 below 5 percent of the total assets under
12 management).

13 “(C) EXCEPTION.—No proxy voting policy
14 adopted pursuant to this paragraph shall pre-
15 clude a fiduciary from submitting a proxy vote
16 when the fiduciary determines that the matter
17 being voted on is expected to have a material
18 economic effect on the investment performance
19 of a plan’s portfolio (or the investment perform-
20 ance of assets under management in the case of
21 an investment manager); provided, however,
22 that in all cases compliance with a safe harbor
23 voting policy shall be presumed to satisfy fidu-
24 ciary responsibilities with respect to decisions
25 not to vote.

1 “(6) REVIEW.—A fiduciary shall periodically re-
2 view any policy adopted under this subsection.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) shall apply to an exercise of shareholder
5 rights occurring on or after January 1, 2024.

6 **DIVISION D—PROVIDING COM-**
7 **plete INFORMATION TO RE-**
8 **TIREMENT INVESTORS**

9 **SEC. 4001. SHORT TITLE.**

10 This division may be cited as the “Providing Com-
11 plete Information to Retirement Investors Act”.

12 **SEC. 4002. BROKERAGE WINDOW DISCLOSURES.**

13 (a) IN GENERAL.—Section 404(c) of the Employee
14 Retirement Income Security Act of 1974 (29 U.S.C.
15 1104(c)) is amended by adding at the end the following
16 new paragraph:

17 “(7) NOTICE REQUIREMENTS FOR BROKERAGE
18 WINDOWS.—

19 “(A) IN GENERAL.—In the case of a pen-
20 sion plan which provides for individual accounts
21 and which provides a participant or beneficiary
22 the opportunity to choose from designated in-
23 vestment alternatives, a participant or bene-
24 ficiary shall not be treated as exercising control
25 over assets in the account of the participant or

1 beneficiary unless, with respect to any invest-
 2 ment arrangement that is not a designated in-
 3 vestment alternative, each time before such a
 4 participant or beneficiary directs an investment
 5 into, out of, or within such investment arrange-
 6 ment, such participant is notified of, and ac-
 7 knowledges, each element of the notice de-
 8 scribed under paragraph (B).

9 “(B) NOTICE.—The notice described under
 10 this paragraph is a four part information that
 11 is substantially similar to the following informa-
 12 tion:

- “1. Your retirement plan offers designated investment alternatives prudently selected and monitored by fiduciaries for the purpose of enabling you to construct an appropriate retirement savings portfolio. In selecting and monitoring designated investment alternatives, your plan’s fiduciary considers the risk of loss and the opportunity for gain (or other return) compared with reasonably available investment alternatives.
2. The investments available through this investment arrangement are not designated investment alternatives, and have not been prudently selected and are not monitored by a plan fiduciary.
3. Depending on the investments you select through this investment arrangement, you may experience diminished returns, higher fees, and higher risk than if you select from the plan’s designated investment alternatives.
4. The following is a hypothetical illustration of the impact of return at 4 percent, 6 percent, and 8 percent on your account balance projected to age 67.

13 “(C) ILLUSTRATION.—The notice de-
 14 scribed under paragraph (B) shall also include
 15 a graph displaying the projected retirement bal-
 16 ances of such participant or beneficiary at age
 17 67 if the account of such individual were to

1 achieve an annual return equal to each of the
2 following:

3 “(i) 4 percent.

4 “(ii) 6 percent.

5 “(iii) 8 percent.”.

6 (b) DESIGNATED INVESTMENT ALTERNATIVE DE-
7 FINED.—Section 3 of such Act (29 U.S.C. 1002) is
8 amended by adding at the end the following new para-
9 graph:

10 “(46) DESIGNATED INVESTMENT ALTER-
11 NATIVE.—

12 “(A) IN GENERAL.—The term ‘designated
13 investment alternative’ means any investment
14 alternative designated by a responsible fiduciary
15 of an individual account plan described in sub-
16 section 404(c) into which participants and bene-
17 ficiaries may direct the investment of assets
18 held in, or contributed to, their individual ac-
19 counts.

20 “(B) EXCEPTION.—The term ‘designated
21 investment alternative’ does not include broker-
22 age windows, self-directed brokerage accounts,
23 or similar plan arrangements that enable par-
24 ticipants and beneficiaries to select investments

Attest: **KEVIN F. MCCUMBER,**
Clerk.