

[DISCUSSION DRAFT]

117TH CONGRESS
2D SESSION

H. R. _____

To amend the Investment Advisers Act of 1940 and the Employment Retirement Income Security Act of 1974 to specify that only pecuniary factors are to be taken into account in determining best interest, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. BARR introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend the Investment Advisers Act of 1940 and the Employment Retirement Income Security Act of 1974 to specify that only pecuniary factors are to be taken into account in determining best interest, 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 “Ensuring Sound Guid-
5 ance Act”.

1 **SEC. 2. INVESTMENT ADVISORS ACT OF 1940 AMENDMENT.**

2 (a) IN GENERAL.—Section 211(g) of the Investment
3 Advisers Act of 1940 (15 U.S.C. 80b–11(g)) is amended
4 by adding at the end the following:

5 “(3) BEST INTEREST BASED ON PECUNIARY
6 FACTORS.—For purposes of paragraph (1), the best
7 interest of a customer shall be determined using only
8 pecuniary factors, unless the customer specifically
9 requests that non-pecuniary factors be considered.”.

10 (b) RULEMAKING.—Not later than the end of the 12-
11 month period beginning on the date of enactment of this
12 Act, the Securities and Exchange Commission shall revise
13 or issue such rules as many be necessary to implement
14 the amendment made by subsection (a).

15 **SEC. 3. EMPLOYEE RETIREMENT INCOME SECURITY ACT**
16 **OF 1974 AMENDMENT.**

17 Section 404(a) of the Employee Retirement Income
18 Security Act of 1974 (29 U.S.C. 1104(a)) is amended by
19 adding at the end the following:

20 “(3) INTEREST BASED ON PECUNIARY FAC-
21 TORS.—

22 “(A) IN GENERAL.—For purposes of para-
23 graph (1), a fiduciary of a plan shall be consid-
24 ered to act solely in the interest of the partici-
25 pants and beneficiaries of the plan with respect
26 to a plan investment or investment course of ac-

1 tion only if the fiduciary’s action with respect
2 to such investment is based only on pecuniary
3 factors. The fiduciary may not subordinate the
4 interests of the participants and beneficiaries in
5 their retirement income or financial benefits
6 under the plan to other objectives and may not
7 sacrifice investment return or take on addi-
8 tional investment risk to promote non-pecuniary
9 benefits or goals. The weight given to any pecu-
10 niary factor by a fiduciary should appropriately
11 reflect a prudent assessment of the impact of
12 such factor on risk-return.

13 “(B) INVESTMENT ALTERNATIVES FOR
14 PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNT
15 PLANS.—In selecting investment options for a
16 pension plan described in subsection (c)(1)(A),
17 a fiduciary is not prohibited from considering or
18 including an investment option on the basis
19 that such investment option promotes non-pecu-
20 niary benefits or goals, provided that the fidu-
21 ciary—

22 “(i) satisfies the requirements of
23 paragraph (1) and subparagraph (A) in
24 considering or including any such invest-
25 ment option; and

1 “(ii) does not consider or include such
2 investment option as a default investment
3 (as defined in the regulations issued by the
4 Secretary under subsection (c)(5)(A)), or a
5 component thereof.

6 “(C) PECUNIARY FACTOR DEFINED.—For
7 the purposes of this paragraph, the term ‘pecu-
8 niary factor’ means a factor that a fiduciary
9 prudently determines is expected to have a ma-
10 terial effect on the risk and return of an invest-
11 ment based on appropriate investment horizons
12 consistent with the plan’s investment objectives
13 and the funding policy established pursuant to
14 section 402(b)(1).”.

15 **SEC. 4. PROHIBITION OF RULE RELATED TO FIDUCIARY**
16 **PRUDENCE AND LOYALTY.**

17 The Secretary of Labor may not finalize, implement,
18 administer, or enforce the proposed rule entitled “Pru-
19 dence and Loyalty in Selecting Plan Investments and Ex-
20 ercising Shareholder Rights” (86 Fed. Reg. 57272) and
21 dated October 14, 2021.