

[118H5339RFS]

(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

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

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

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Protecting Prudent Investment of Retirement Savings
6 Act”.

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

Sec. 1. Short title; table of contents.

DIVISION A—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.

3 **DIVISION A—INCREASE**
4 **RETIREMENT EARNINGS**

5 **SEC. 1001. SHORT TITLE.**

6 This division may be cited as the “Increase Retire-
7 ment Earnings Act”.

8 **SEC. 1002. LIMITATION ON CONSIDERATION OF NON-PECU-**
9 **NIARY FACTORS BY FIDUCIARIES.**

10 (a) IN GENERAL.—Section 404(a) of the Employee
11 Retirement Income Security Act of 1974 (29 U.S.C.
12 1104(a)) is amended by adding at the end the following:

13 “(3) INTEREST BASED ON PECUNIARY FACTORS.—

14 “(A) IN GENERAL.—For purposes of paragraph

15 (1), a fiduciary shall be considered to act solely in

16 the interest of the participants and beneficiaries of

1 the plan with respect to an investment or investment
2 course of action only if the fiduciary's action with
3 respect to such investment or investment course of
4 action is based solely on pecuniary factors (except as
5 provided in subparagraph (B)). The fiduciary may
6 not subordinate the interests of the participants and
7 beneficiaries in their retirement income or financial
8 benefits under the plan to other objectives and may
9 not sacrifice investment return or take on additional
10 investment risk to promote non-pecuniary benefits or
11 goals. The weight given to any pecuniary factor by
12 a fiduciary shall reflect a prudent assessment of the
13 impact of such factor on risk and return.

14 “(B) USE OF NON-PECUNIARY FACTORS FOR
15 INVESTMENT ALTERNATIVES.—Notwithstanding
16 paragraph (A), if a fiduciary is unable to distinguish
17 between or among investment alternatives or invest-
18 ment courses of action on the basis of pecuniary fac-
19 tors alone, the fiduciary may use non-pecuniary fac-
20 tors as the deciding factor if the fiduciary docu-
21 ments—

22 “(i) why pecuniary factors were not suffi-
23 cient to select a plan investment or investment
24 course of action;

1 “(ii) how the selected investment compares
2 to the alternative investments with regard to
3 the composition of the portfolio with regard to
4 diversification, the liquidity and current return
5 of the portfolio relative to the anticipated cash
6 flow requirements of the plan, and the projected
7 return of the portfolio relative to the funding
8 objectives of the plan; and

9 “(iii) how the selected non-pecuniary factor
10 or factors are consistent with the interests of
11 the participants and beneficiaries in their re-
12 tirement income or financial benefits under the
13 plan.

14 “(C) INVESTMENT ALTERNATIVES FOR PARTICI-
15 PANT-DIRECTED INDIVIDUAL ACCOUNT PLANS.—In
16 selecting or retaining investment options for a pen-
17 sion plan described in subsection (c)(1)(A), a fidu-
18 ciary is not prohibited from considering, selecting, or
19 retaining an investment option on the basis that
20 such investment option promotes, seeks, or supports
21 one or more non-pecuniary benefits or goals, if—

22 “(i) the fiduciary satisfies the requirements
23 of paragraph (1) and subparagraphs (A) and
24 (B) of this paragraph in selecting or retaining
25 any such investment option; and

1 “(ii) such investment option is not added
2 or retained as, or included as a component of,
3 a default investment under subsection (c)(5) (or
4 any other default investment alternative) if its
5 investment objectives or goals or its principal
6 investment strategies include, consider, or indi-
7 cate the use of one or more non-pecuniary fac-
8 tors.

9 “(D) DEFINITIONS.—For the purposes of this
10 paragraph:

11 “(i) The term ‘pecuniary factor’ means a
12 factor that a fiduciary prudently determines is
13 expected to have a material effect on the risk
14 or return of an investment based on appropriate
15 investment horizons consistent with the plan’s
16 investment objectives and the funding policy es-
17 tablished pursuant to section 402(b)(1).

18 “(ii) The term ‘investment course of ac-
19 tion’ means any series or program of invest-
20 ments or actions related to a fiduciary’s per-
21 formance of the fiduciary’s investment duties,
22 and includes the selection of an investment fund
23 as a plan investment, or in the case of an indi-
24 vidual account plan, a designated investment al-
25 ternative under the plan.”

1 (b) **EFFECTIVE DATE.**—The amendments made by
2 this section shall apply to actions taken by a fiduciary on
3 or after the date that is 12 months after the date of enact-
4 ment of this Act.

5 **DIVISION B—NO DISCRIMINA-**
6 **TION IN MY BENEFITS**

7 **SEC. 2001. SHORT TITLE.**

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

10 **SEC. 2002. SERVICE PROVIDER SELECTION.**

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

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

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

17 (3) by adding at the end the following new sub-
18 paragraph:

19 “(E) by selecting, monitoring, and retaining
20 any fiduciary, counsel, employee, or service provider
21 of the plan—

22 “(i) in accordance with subparagraphs (A)
23 and (B); and

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

1 **DIVISION C—RETIREMENT**
2 **PROXY PROTECTION**

3 **SEC. 3001. SHORT TITLE.**

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

6 **SEC. 3002. EXERCISE OF SHAREHOLDER RIGHTS.**

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

11 “(f) **EXERCISE OF SHAREHOLDER RIGHTS.**—

12 “(1) **AUTHORITY TO EXERCISE SHAREHOLDER**
13 **RIGHTS.**—

14 “(A) **IN GENERAL.**—The fiduciary duty to
15 manage plan assets that are shares of stock in-
16 cludes the management of shareholder rights
17 appurtenant to those shares, including the right
18 to vote proxies. When deciding whether to exer-
19 cise a shareholder right and in exercising such
20 right, including the voting of proxies, a fidu-
21 ciary must act prudently and solely in the inter-
22 ests of participants and beneficiaries and for
23 the exclusive purpose of providing benefits to
24 participants and beneficiaries and defraying the
25 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 qualifying employer securities or
8 securities held in an investment arrangement
9 that is not a designated investment alternative
10 in the event such rights are passed through
11 pursuant to the terms of an individual account
12 plan to participants and beneficiaries with ac-
13 counts holding such securities.

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

18 “(A) shall—

19 “(i) act solely in accordance with the
20 economic interest of the plan and its par-
21 ticipants and beneficiaries;

22 “(ii) consider any costs involved;

23 “(iii) evaluate material facts that
24 form the basis for any particular proxy
25 vote or exercise of shareholder rights; and

1 “(iv) maintain a record of any proxy
2 vote, proxy voting activity, or other exer-
3 cise of a shareholder right, including any
4 attempt to influence management; and

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

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

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

1 son who performs advisory services as to the voting
2 of proxies or the exercise of other shareholder rights,
3 a responsible plan fiduciary shall prudently monitor
4 the proxy voting activities of such investment man-
5 ager or advisory firm and determine whether such
6 activities are in compliance with paragraphs (1) and
7 (2).

8 “(5) VOTING POLICIES.—

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

17 “(B) SAFE HARBOR VOTING POLICY.—

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

23 “(i) limits voting resources to par-
24 ticular types of proposals that the fiduciary
25 has prudently determined are substantially

1 related to the business activities of the
2 issuer or are expected to have a material
3 effect on the value of the plan investment;
4 or

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

15 “(C) EXCEPTION.—No proxy voting policy
16 adopted pursuant to this paragraph shall pre-
17 clude a fiduciary from submitting a proxy vote
18 when the fiduciary determines that the matter
19 being voted on is expected to have a material
20 economic effect on the investment performance
21 of a plan’s portfolio (or the investment perform-
22 ance of assets under management in the case of
23 an investment manager); provided, however,
24 that in all cases compliance with a safe harbor
25 voting policy shall be presumed to satisfy fidu-

1 ciary responsibilities with respect to decisions
2 not to vote.

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

5 (b) EFFECTIVE DATE.—The amendments made by
6 subsection (a) shall apply to an exercise of shareholder
7 rights occurring on or after January 1, 2026.

8 **DIVISION D—PROVIDING COM-**
9 **plete INFORMATION TO RE-**
10 **TIREMENT INVESTORS**

11 **SEC. 4001. SHORT TITLE.**

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

14 **SEC. 4002. BROKERAGE WINDOW DISCLOSURES.**

15 (a) IN GENERAL.—Section 404(e) of the Employee
16 Retirement Income Security Act of 1974 (29 U.S.C.
17 1104(e)) is amended by adding at the end the following
18 new paragraph:

19 “(7) NOTICE REQUIREMENTS FOR BROKERAGE
20 WINDOWS.—

21 “(A) IN GENERAL.—In the case of a pen-
22 sion plan which provides for individual accounts
23 and which provides a participant or beneficiary
24 the opportunity to choose from designated in-
25 vestment alternatives, a participant or bene-

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

11 “(B) NOTICE.—The notice described under
12 this paragraph is a four part information that
13 is substantially similar to the following informa-
14 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.

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

1 67 if the account of such individual were to
2 achieve an annual return equal to each of the
3 following:

4 “(i) 4 percent.

5 “(ii) 6 percent.

6 “(iii) 8 percent.”.

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

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

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

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

1 beyond those designated by a responsible plan
2 fiduciary.”.

3 (c) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall take effect on January 1, 2027.