

118TH CONGRESS  
1ST SESSION

# H. R. 5339

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.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 5, 2023

Mr. ALLEN introduced the following bill; which was referred to the Committee on Education and the Workforce

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## 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.**

4 This Act may be cited as the “Roll back ESG To  
5 Increase Retirement Earnings Act” or the “RETIRE  
6 Act”.

1 **SEC. 2. EMPLOYEE RETIREMENT INCOME SECURITY ACT**  
2 **OF 1974 AMENDMENT.**

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 of a plan shall be consid-  
10 ered to act solely in the interest of the partici-  
11 pants and beneficiaries of the plan with respect  
12 to an investment or investment course of action  
13 only if the fiduciary’s action with respect to  
14 such investment or investment course of action  
15 is based only on pecuniary factors (except as  
16 provided in subparagraph (B)). The fiduciary  
17 may not subordinate the interests of the partici-  
18 pants and beneficiaries in their retirement in-  
19 come or financial benefits under the plan to  
20 other objectives and may not sacrifice invest-  
21 ment return or take on additional investment  
22 risk to promote non-pecuniary benefits or goals.  
23 The weight given to any pecuniary factor by a  
24 fiduciary shall reflect a prudent assessment of  
25 the impact 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.

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