

119TH CONGRESS
1ST SESSION

S. _____

To amend the Employee Retirement Income Security Act of 1974 to clarify the criteria by which a fiduciary may evaluate and select investments based on nonpecuniary factors, and to clarify the application of prudence and exclusive purpose duties to the exercise of shareholder rights.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To amend the Employee Retirement Income Security Act of 1974 to clarify the criteria by which a fiduciary may evaluate and select investments based on nonpecuniary factors, and to clarify the application of prudence and exclusive purpose duties to the exercise of shareholder rights.

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 “Restoring Integrity
5 in Fiduciary Duty Act”.

1 **SEC. 2. EXERCISE OF FIDUCIARY DUTY IN EVALUATING**
2 **AND SELECTING INVESTMENTS.**

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) INVESTMENTS BASED ON PECUNIARY FAC-
7 TORS.—

8 “(A) IN GENERAL.—For the purposes of
9 paragraph (1), a fiduciary—

10 “(i) may evaluate an investment or in-
11 vestment course of action based only on
12 pecuniary factors, except as provided in
13 subparagraph (B);

14 “(ii) may not subordinate the inter-
15 ests of the participants and beneficiaries in
16 their retirement income or financial bene-
17 fits under the plan to other objectives;

18 “(iii) may not sacrifice investment re-
19 turn or take on additional investment risk
20 to promote nonpecuniary benefits or goals;
21 and

22 “(iv) shall weight each pecuniary fac-
23 tor in a manner that appropriately reflects
24 a prudent assessment of the impact of the
25 factor on risk and return.

1 “(B) USE OF NONPECUNIARY FACTORS
2 FOR INVESTMENT ALTERNATIVES.—Notwith-
3 standing subparagraph (A), when choosing be-
4 tween or among investment alternatives, if a fi-
5 diciary is unable to distinguish between or
6 among investment alternatives or investment
7 courses of action on the basis of pecuniary fac-
8 tors alone, the fiduciary shall use the capita aut
9 navia standard as the deciding factor in the in-
10 vestment decision, provided that—

11 “(i) the fiduciary documents detail—
12 “(I) why pecuniary factors were
13 not sufficient to select the investment
14 or investment course of action;

15 “(II) how the selected investment
16 compares to the alternative invest-
17 ments with regard to the composition
18 of the portfolio with regard to diver-
19 sification, the liquidity, current return
20 of the portfolio relative to the antici-
21 pated cash flow requirements of the
22 plan, and the projected return of the
23 portfolio relative to the funding objec-
24 tives of the plan; and

1 “(III) how the selected invest-
2 ment is consistent with the interests
3 of the participants and beneficiaries in
4 their retirement income or financial
5 benefits under the plan; and

6 “(ii) the fiduciary demonstrates that
7 it did not expend any resources during the
8 investment course of action on nonpecu-
9 niary factors that place weight between or
10 among investment alternatives for the pur-
11 pose of the investment decision.

12 “(C) INVESTMENT ALTERNATIVES FOR
13 PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNT
14 PLANS.—In selecting or retaining investment
15 options for a pension plan described in sub-
16 section (c)(1)(A), a fiduciary may consider, se-
17 lect, or retain an investment option on the basis
18 that such investment option promotes, seeks, or
19 supports 1 or more nonpecuniary benefits or
20 goals, only if—

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

1 “(ii) such investment option is not
2 added or retained as, or included as a com-
3 ponent of, a default investment described
4 in subsection (c)(5) (or any other default
5 investment alternative).

6 “(D) DEFINITIONS.—For the purposes of
7 this paragraph:

8 “(i) CAPITA AUT NAVIA.—The term
9 ‘capita aut navia’ means a standard by
10 which a fiduciary chooses at random be-
11 tween or among investment alternatives
12 where pecuniary factors are equal and does
13 not give added weight to 1 investment or
14 another, provided that the investment al-
15 ternatives have identical risk and return
16 attributes and choosing among the invest-
17 ment alternatives would have compara-
18 tively negligible impact, not considering li-
19 quidity constraints or transaction costs.

20 “(ii) INVESTMENT COURSE OF AC-
21 TION.—The term ‘investment course of ac-
22 tion’ means any series or program of in-
23 vestments or actions related to a fidu-
24 ciary’s performance of the fiduciary’s in-
25 vestment duties, and includes the selection

1 of an investment fund as a plan invest-
2 ment, or in the case of a plan described in
3 subsection (c)(1)(A), a designated invest-
4 ment alternative under the plan.

5 “(iii) MATERIAL.—The term ‘mate-
6 rial,’ when used to qualify a financial risk
7 or financial return—

8 “(I) means a financial risk or fi-
9 nancial return in which there is a sub-
10 stantial likelihood that a reasonable
11 investor would attach importance
12 when—

13 “(aa) evaluating the poten-
14 tial financial risks or returns of
15 an existing or prospective invest-
16 ment; or

17 “(bb) exercising, or declining
18 to exercise, any rights with re-
19 spect to securities; and

20 “(II) does not include furthering
21 nonpecuniary, environmental, social,
22 political, ideological, or other goals or
23 objectives.

24 “(iv) PECUNIARY FACTOR.—The term
25 ‘pecuniary factor’ means a factor that a fi-

1 duciary prudently determines is expected
2 to have a material effect on the risk or re-
3 turn of an investment based on appro-
4 priate investment horizons consistent with
5 the plan’s investment objectives and the
6 funding policy established pursuant to sec-
7 tion 402(b)(1).’.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to actions taken by a fiduciary on
10 or after the date that is 1 year after the date of enactment
11 of this Act.

12 **SEC. 3. EXERCISE OF SHAREHOLDER RIGHTS.**

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

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

18 “(1) **AUTHORITY TO EXERCISE SHAREHOLDER**
19 **RIGHTS.**—

20 “(A) **IN GENERAL.**—The fiduciary duty to
21 manage plan assets that are shares of stock in-
22 cludes the management of shareholder rights
23 appurtenant to those shares, including the right
24 to vote proxies. When deciding whether to exer-
25 cise a shareholder right and in exercising such

1 right, including the voting of proxies, a fidu-
2 ciary shall act prudently and solely in the inter-
3 ests of participants and beneficiaries and for
4 the exclusive purpose of providing benefits to
5 participants and beneficiaries and defraying the
6 reasonable expenses of administering the plan.
7 The fiduciary duty to manage shareholder
8 rights appurtenant to shares of stock does not
9 require the voting of every proxy or the exercise
10 of every shareholder right.

11 “(B) EXCEPTION.—This subsection shall
12 not apply to voting, tender, and similar rights
13 with respect to securities that are passed
14 through pursuant to the terms of an individual
15 account plan to participants and beneficiaries
16 with accounts holding such securities.

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

21 “(A) shall—

22 “(i) act solely in accordance with the
23 economic interest of the plan and its par-
24 ticipants and beneficiaries;

25 “(ii) consider any costs involved;

1 “(iii) evaluate material facts that
2 form the basis for any particular proxy
3 vote or exercise of shareholder rights; and

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

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

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

24 “(4) INVESTMENT MANAGERS AND PROXY ADVI-
25 SORY FIRMS.—Where the authority to vote proxies

1 or exercise other shareholder rights has been dele-
2 gated to an investment manager pursuant to section
3 403(a), or a proxy voting advisory firm or other per-
4 son who performs advisory services as to the voting
5 of proxies or the exercise of other shareholder rights,
6 a responsible plan fiduciary shall prudently monitor
7 the proxy voting activities of such investment man-
8 ager or advisory firm and determine whether such
9 activities are in compliance with paragraphs (1) and
10 (2).

11 “(5) VOTING POLICIES.—

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

20 “(B) SAFE HARBOR VOTING POLICY.—

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

1 “(i) limits voting resources to par-
2 ticular types of proposals that the fiduciary
3 has prudently determined are substantially
4 related to the business activities of the
5 issuer or are expected to have a material
6 effect on the value of the plan investment;
7 or

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

18 “(C) EXCEPTION.—No proxy voting policy
19 adopted pursuant to this paragraph shall pre-
20 clude a fiduciary from submitting a proxy vote
21 when the fiduciary determines that the matter
22 being voted on is expected to have a material
23 economic effect on the investment performance
24 of a plan’s portfolio (or the investment perform-
25 ance of assets under management in the case of

1 an investment manager); provided, however,
2 that in all cases compliance with a safe harbor
3 voting policy shall be presumed to satisfy fidu-
4 ciary responsibilities with respect to decisions
5 not to vote.

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

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