

116TH CONGRESS
2D SESSION

H. R. 8959

To amend the Employee Retirement Income Security Act of 1974 to require retirement plans to establish Sustainable Investment Policies.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 14, 2020

Mr. LEVIN of Michigan (for himself, Mr. BRENDAN F. BOYLE of Pennsylvania, Mrs. AXNE, and Mr. GARCÍA of Illinois) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Employee Retirement Income Security Act of 1974 to require retirement plans to establish Sustainable Investment Policies.

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 “Retirees Sustainable
5 Investment Policies Act of 2020”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Fiduciaries for retirement plans should—

1 (A) incorporate all relevant factors, includ-
2 ing environmental, social, and governance (here-
3 inafter in this Act referred to as “ESG”) fac-
4 tors, into investment analysis and decision-mak-
5 ing processes, consistent with the investment
6 time horizons of plan participants and bene-
7 ficiaries;

8 (B) encourage the adoption of best prac-
9 tices for ESG performance in the companies or
10 other entities in which they invest;

11 (C) consider plan participants’ and bene-
12 ficiaries’ sustainability-related interests and
13 preferences when making investment decisions;

14 (D) consider the impact of plan invest-
15 ments on the stability and resilience of the fi-
16 nancial system; and

17 (E) disclose how they have implemented
18 these commitments.

19 (2) There is now incontrovertible evidence that
20 ESG factors are financially material to investors and
21 relevant to investment decisionmaking.

22 **SEC. 3. PURPOSE.**

23 The purpose of this Act is to require retirement and
24 welfare benefit plans that are covered by the Employee
25 Retirement Income Security Act of 1974 (29 U.S.C. 1001

1 et seq.), to adopt and implement policies in consideration
 2 of ESG factors when making investment decisions, be-
 3 cause considering ESG factors is relevant to the fiduciary
 4 duty of prudence, as such factors help ensure investments’
 5 long-term sustainability.

6 **SEC. 4. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
 7 **COME SECURITY ACT OF 1974.**

8 (a) DISCLOSURE OF SUSTAINABLE INVESTMENT
 9 POLICIES.—Section 102 of the Employee Retirement In-
 10 come Security Act of 1974 (29 U.S.C. 1022) is amended
 11 in subsection (b), by inserting “the sustainable investment
 12 policy of the plan (as established under section
 13 402(b)(5));” after “collective bargaining agreement;”.

14 (b) ESTABLISHMENT OF SUSTAINABLE INVESTMENT
 15 POLICY.—Section 402 of the Employee Retirement In-
 16 come Security Act of 1974 (29 U.S.C. 1102) is amend-
 17 ed—

18 (1) in subsection (b)—

19 (A) in paragraph (3), by striking “and”;

20 (B) in paragraph (4), by striking the pe-
 21 riod and insert “, and”; and

22 (C) by inserting after paragraph (4) the
 23 following:

24 “(5) provide a sustainable investment policy of
 25 the plan in accordance with subparagraph (d) unless

1 the plan elects to rely on the sustainable investment
2 policies of the plan’s fiduciaries as defined by section
3 3(38)”; and

4 (2) by adding after subsection (c) the following:

5 “(d)(1) A sustainable investment policy under sub-
6 section (b)(5) shall include guidelines with respect to—

7 “(A) corporate governance practices by entities
8 in which the plan invests, including executive com-
9 pensation, board diversity, the independence of
10 board chairs, political spending and lobbying disclo-
11 sure;

12 “(B) characteristics of workforces employed by
13 entities in which the plan invests, including com-
14 pensation and benefits, health and safety, diversity
15 and demographics, skills and training, retention and
16 turnover, full-time and part-time employment, and
17 the use of independent contractors;

18 “(C) labor and human rights compliance by en-
19 tities in which the plan invests, including workers’
20 freedom of association, the right to collectively bar-
21 gain, and the prevention of employment discrimina-
22 tion, child labor, and forced labor in company oper-
23 ations and supply chains;

24 “(D) the implementation, to the extent prac-
25 ticable, of practices which enhance diversity and in-

1 clusion performance within the workforce, senior
2 leadership, business procurement, philanthropy, and/
3 or board of directors;

4 “(E) environmental risks to the assets and
5 properties of entities invested in by the plan and re-
6 lated disclosures, including—

7 “(i) climate risks and contributions;

8 “(ii) environmental risks that may not be
9 related to climate, such as industrial pollution,
10 habitat destruction, and other forms of environ-
11 mental degradation;

12 “(iii) impact to species endangerment and
13 extinction; and

14 “(iv) pollution of land, air, and water re-
15 lated to the operation of the entities invested in
16 by the plan;

17 “(F) due diligence and practices regarding sup-
18 ply chain management, including environmental,
19 human rights, and worker compensation consider-
20 ations; and

21 “(G) tax practices of entities in which the plan
22 invests, including international tax avoidance strate-
23 gies and tax payment disclosure.

1 “(2) A plan subject to the requirements of section
 2 402(d)(1) shall conduct a review of the sustainable invest-
 3 ment policy under subsection (b)(5) on an annual basis.

4 “(3) Section 404(a) shall not be construed to prohibit
 5 a plan fiduciary from doing the following:

6 “(A) In choosing among investments with com-
 7 mensurate degrees of risk and rates of return, to se-
 8 lect one or more such investments based on environ-
 9 mental, social, and governance considerations.

10 “(B) To monitor or dispose of a plan invest-
 11 ment alternative based on considerations that in-
 12 clude environmental, social, and governance consid-
 13 erations.

14 “(C) Vote proxies in accordance with the plan’s
 15 proxy voting guidelines.”.

16 (c) QUALIFIED INVESTMENT ALTERNATIVES.—Sec-
 17 tion 404(c)(5) of the Employee Retirement Income Secu-
 18 rity Act of 1974 (29 U.S.C. 1104(c)(5)) is amended by
 19 adding at the end the following:

20 “(5) A qualified default investment alternative
 21 (as defined in section 2550.404c-5(e) of title 29,
 22 Code of Federal Regulations, or a successor regula-
 23 tion) may include an investment alternative—

24 “(A) with an environmental, social, and
 25 governance investment mandate; or

1 “(B) that was selected, in part, on the
2 basis of an environmental, social, and govern-
3 ance consideration.”.

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