

117TH CONGRESS  
2D SESSION

# H. R. 7151

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.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2022

Mr. BARR (for himself and Mr. ALLEN) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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 may be necessary to implement the  
14 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-

tion only if the fiduciary's action with respect to such investment is based only on pecuniary factors. The fiduciary may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives and may not sacrifice investment return or take on additional investment risk to promote non-pecuniary benefits or goals. The weight given to any pecuniary factor by a fiduciary should appropriately reflect a prudent assessment of the impact of such factor on risk-return.

“(B) INVESTMENT ALTERNATIVES FOR PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNT PLANS.—In selecting investment options for a pension plan described in subsection (c)(1)(A), a fiduciary is not prohibited from considering or including an investment option on the basis that such investment option promotes non-pecuniary benefits or goals, provided that the fiduciary—

“(i) satisfies the requirements of paragraph (1) and subparagraph (A) in considering or including any such investment 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.

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