



(Original Signature of Member)

117TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to limit fiduciary consideration of non-pecuniary factors in investment decision-making.

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IN THE HOUSE OF REPRESENTATIVES

Mr. MURPHY of North Carolina introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to limit fiduciary consideration of non-pecuniary factors in investment decision-making.

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. FIDUCIARY RESPONSIBILITIES RELATING TO**  
4 **CERTAIN NON-PECUNIARY OBJECTIVES.**

5 Section 404(a) of the Employee Retirement Income  
6 Security Act of 1974 (29 U.S.C. 1104(a)) is amended by  
7 adding at the end the following new paragraph:

1       “(3) INTEREST BASED ON NON PECUNIARY FAC-  
2 TORS.—

3           “(A) IN GENERAL.—For purposes of paragraph  
4 (1), a fiduciary of a plan shall be considered to act  
5 solely in the interest of the participants and bene-  
6 ficiaries of the plan with respect to a plan invest-  
7 ment or investment course of action only if the fidu-  
8 ciary’s action with respect to such investment is  
9 based only on pecuniary factors. The fiduciary may  
10 not subordinate the interests of the participants and  
11 beneficiaries in their retirement income or financial  
12 benefits under the plan to other objectives and may  
13 not sacrifice investment return or take on additional  
14 investment risk to promote non-pecuniary benefits or  
15 goals. The weight given to any pecuniary factor by  
16 a fiduciary should appropriately reflect a prudent as-  
17 sessment of the impact of such factor on risk-return.

18           “(B) INVESTMENT ALTERNATIVES FOR PARTIC-  
19 IPANT-DIRECTED INDIVIDUAL ACCOUNT PLANS.—In  
20 selecting investment options for a pension plan de-  
21 scribed in subsection (c)(1)(A), a fiduciary is not  
22 prohibited from considering or including an invest-  
23 ment option on the basis that such investment op-  
24 tion promotes non-pecuniary benefits or goals, pro-  
25 vided that the fiduciary—

1 “(i) satisfies the requirements of para-  
2 graph (1) and subparagraph (A) in considering  
3 or including any such investment option; and

4 “(ii) does not consider or include such in-  
5 vestment option as a default investment (as de-  
6 fined in the regulations issued by the Secretary  
7 under subsection (e)(5)(A)), or a component  
8 thereof.

9 “(C) PECUNIARY FACTOR DEFINED.—For the  
10 purposes of this paragraph, the term ‘pecuniary fac-  
11 tor’ means a factor that a fiduciary prudently deter-  
12 mines is expected to have a material effect on the  
13 risk and return of an investment based on appro-  
14 priate investment horizons consistent with the plan’s  
15 investment objectives and the funding policy estab-  
16 lished pursuant to section 402(b)(1).”.

17 **SEC. 2. REQUIREMENT THAT RETIREMENT PLANS CON-**  
18 **TINUE TO OFFER INVESTMENTS BASED SOLE-**  
19 **LY ON PECUNIARY FACTORS.**

20 (a) IN GENERAL.—Section 401(a) of the Internal  
21 Revenue Code of 1986 is amended by adding at the end  
22 the following new paragraph:

23 “(39) DEFINED CONTRIBUTION PLAN INVEST-  
24 MENT OPTION REQUIREMENTS.—In the case of a  
25 trust forming part of a defined contribution plan

1       which includes investment options based on non-pe-  
2       cuniary factors (within the meaning of section  
3       404(a)(3) of the Employee Retirement Income Secu-  
4       rity Act of 1974), such trust shall not constitute a  
5       qualified trust unless the plan includes investment  
6       options not based on any such factors.”.

7       (b) 403(b) PLANS.—Section 403(b)(7) of such Code  
8       is amended by adding at the end the following new sub-  
9       paragraph:

10               “(D) INVESTMENT OPTION REQUIRE-  
11               MENTS.—Subparagraph (A) shall not apply to  
12               an amount unless under the custodial account  
13               meets investment option requirements similar to  
14               the requirements of section 401(a)(39).”.

15       (c) 457(b) PLANS.—Section 457(e) of such Code is  
16       amended by adding at the end the following new para-  
17       graph:

18               “(19) INVESTMENT OPTION REQUIREMENTS.—  
19       In the case of an employer described in subsection  
20       (e)(1)(A), a plan shall not be treated as meeting the  
21       requirements of this section unless such plan meets  
22       investment option requirements similar to the re-  
23       quirements of section 401(a)(39).”.

1           (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to plan years beginning after the  
3 date of the enactment of this Act.