

118TH CONGRESS
1ST SESSION

H. R. 5337

To amend the Employee Retirement Income Security Act of 1974 to clarify the application of prudence and exclusive purpose duties to the exercise of shareholder rights.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 5, 2023

Mrs. HOUCHIN introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Employee Retirement Income Security Act of 1974 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 “Retirement Proxy Pro-
5 tection Act”.

6 **SEC. 2. EXERCISE OF SHAREHOLDER RIGHTS.**

7 (a) IN GENERAL.—Section 404 of the Employee Re-
8 tirement Income Security Act of 1974 (29 U.S.C. 1104)

1 is amended by adding at the end the following new sub-
2 section:

3 “(f) EXERCISE OF SHAREHOLDER RIGHTS.—

4 “(1) AUTHORITY TO EXERCISE SHAREHOLDER
5 RIGHTS.—

6 “(A) IN GENERAL.—The fiduciary duty to
7 manage plan assets that are shares of stock in-
8 cludes the management of shareholder rights
9 appurtenant to those shares, including the right
10 to vote proxies. When deciding whether to exer-
11 cise a shareholder right and in exercising such
12 right, including the voting of proxies, a fidu-
13 ciary must act prudently and solely in the inter-
14 ests of participants and beneficiaries and for
15 the exclusive purpose of providing benefits to
16 participants and beneficiaries and defraying the
17 reasonable expenses of administering the plan.
18 The fiduciary duty to manage shareholder
19 rights appurtenant to shares of stock does not
20 require the voting of every proxy or the exercise
21 of every shareholder right.

22 “(B) EXCEPTION.—This subsection shall
23 not apply to voting, tender, and similar rights
24 with respect to securities that are passed
25 through pursuant to the terms of an individual

1 account plan to participants and beneficiaries
2 with accounts holding such securities.

3 “(2) REQUIREMENTS FOR EXERCISE OF SHARE-
4 HOLDER RIGHTS.—A fiduciary, when deciding
5 whether to exercise a shareholder right and when ex-
6 ercising a shareholder right—

7 “(A) shall—

8 “(i) act solely in accordance with the
9 economic interest of the plan and its par-
10 ticipants and beneficiaries;

11 “(ii) consider any costs involved;

12 “(iii) evaluate material facts that
13 form the basis for any particular proxy
14 vote or exercise of shareholder rights; and

15 “(iv) maintain a record of any proxy
16 vote, proxy voting activity, or other exer-
17 cise of a shareholder right, including any
18 attempt to influence management; and

19 “(B) shall not subordinate the interests of
20 participants and beneficiaries in their retire-
21 ment income or financial benefits under the
22 plan to any non-pecuniary objective, or promote
23 non-pecuniary benefits or goals unrelated to
24 those financial interests of the plan’s partici-
25 pants and beneficiaries.

1 “(3) MONITORING.—A fiduciary shall exercise
2 prudence and diligence in the selection and moni-
3 toring of a person, if any, selected to advise or oth-
4 erwise assist with the exercise of shareholder rights,
5 including by providing research and analysis, rec-
6 ommendations on exercise of proxy voting or other
7 shareholder rights, administrative services with re-
8 spect to voting proxies, and recordkeeping and re-
9 porting services.

10 “(4) INVESTMENT MANAGERS AND PROXY
11 FIRMS.—Where the authority to vote proxies or exer-
12 cise shareholder rights has been delegated to an in-
13 vestment manager pursuant to section 403(a), or a
14 proxy voting firm or other person who performs ad-
15 visory services as to the voting of proxies or the ex-
16 ercise of shareholder rights, a responsible plan fidu-
17 ciary shall prudently monitor the proxy voting activi-
18 ties of such investment manager or advisory firm
19 and determine whether such activities are in compli-
20 ance with paragraphs (1) and (2).

21 “(5) VOTING POLICIES.—

22 “(A) IN GENERAL.—In deciding whether to
23 vote a proxy pursuant to this subsection, the
24 plan fiduciary may adopt a proxy voting policy,
25 including a safe harbor proxy voting policy de-

1 scribed in subparagraph (B), providing that the
2 authority to vote a proxy shall be exercised pur-
3 suant to specific parameters designed to serve
4 the economic interest of the plan.

5 “(B) SAFE HARBOR VOTING POLICY.—

6 With respect to a decision not to vote a proxy,
7 a fiduciary shall satisfy the fiduciary respon-
8 sibilities under this subsection if such fiduciary
9 adopts and is following a safe harbor proxy vot-
10 ing policy that—

11 “(i) limits voting resources to par-
12 ticular types of proposals that the fiduciary
13 has prudently determined are substantially
14 related to the business activities of the
15 issuer or are expected to have a material
16 effect on the value of the plan investment;
17 or

18 “(ii) establishes that the fiduciary will
19 refrain from voting on proposals or par-
20 ticular types of proposals when the assets
21 of a plan invested in the issuer relative to
22 the total assets of such plan are below 5
23 percent (or, in the event such assets are
24 under management, when the assets under
25 management invested in the issuer are

1 below 5 percent of the total assets under
2 management).

3 “(C) EXCEPTION.—No proxy voting policy
4 adopted pursuant to this paragraph shall pre-
5 clude a fiduciary from submitting a proxy vote
6 when the fiduciary determines that the matter
7 being voted on is expected to have a material
8 economic effect on the investment performance
9 of a plan’s portfolio (or the investment perform-
10 ance of assets under management in the case of
11 an investment manager); provided, however,
12 that in all cases compliance with a safe harbor
13 voting policy shall be presumed to satisfy fidu-
14 ciary responsibilities with respect to decisions
15 not to vote.

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

18 (b) EFFECTIVE DATE.—The amendments made by
19 subsection (a) shall apply to an exercise of shareholder
20 rights occurring on or after January 1, 2024.

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