

Union Calendar No. 186

118TH CONGRESS
1ST SESSION

H. R. 5337

[Report No. 118-227]

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

SEPTEMBER 26, 2023

Additional sponsors: Mr. HUIZENGA, Mr. SESSIONS, Mr. GROTHMAN, Mr. WILSON of South Carolina, Mr. ESTES, Mr. BARR, Mr. FLOOD, and Mr. OWENS

SEPTEMBER 26, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on September 5, 2023]

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) is*
9 *amended by adding at the end the following new subsection:*

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

11 “(1) *AUTHORITY TO EXERCISE SHAREHOLDER*
12 *RIGHTS.—*

13 “(A) *IN GENERAL.—The fiduciary duty to*
14 *manage plan assets that are shares of stock in-*
15 *cludes the management of shareholder rights ap-*
16 *purtenant to those shares, including the right to*
17 *vote proxies. When deciding whether to exercise*
18 *a shareholder right and in exercising such right,*
19 *including the voting of proxies, a fiduciary must*
20 *act prudently and solely in the interests of par-*
21 *ticipants and beneficiaries and for the exclusive*
22 *purpose of providing benefits to participants and*
23 *beneficiaries and defraying the reasonable ex-*
24 *penses of administering the plan. The fiduciary*
25 *duty to manage shareholder rights appurtenant*

1 to shares of stock does not require the voting of
2 every proxy or the exercise of every shareholder
3 right.

4 “(B) *EXCEPTION.*—This subsection shall not
5 apply to voting, tender, and similar rights with
6 respect to securities that are passed through pur-
7 suant to the terms of an individual account plan
8 to participants and beneficiaries with accounts
9 holding such securities.

10 “(2) *REQUIREMENTS FOR EXERCISE OF SHARE-*
11 *HOLDER RIGHTS.*—A fiduciary, when deciding wheth-
12 er to exercise a shareholder right and when exercising
13 a shareholder right—

14 “(A) shall—

15 “(i) act solely in accordance with the
16 economic interest of the plan and its par-
17 ticipants and beneficiaries;

18 “(ii) consider any costs involved;

19 “(iii) evaluate material facts that form
20 the basis for any particular proxy vote or
21 exercise of shareholder rights; and

22 “(iv) maintain a record of any proxy
23 vote, proxy voting activity, or other exercise
24 of a shareholder right, including any at-
25 tempt to influence management; and

1 “(B) shall not subordinate the interests of
2 participants and beneficiaries in their retire-
3 ment income or financial benefits under the plan
4 to any non-pecuniary objective, or promote non-
5 pecuniary benefits or goals unrelated to those fi-
6 nancial interests of the plan’s participants and
7 beneficiaries.

8 “(3) MONITORING.—A fiduciary shall exercise
9 prudence and diligence in the selection and moni-
10 toring of a person, if any, selected to advise or other-
11 wise assist with the exercise of shareholder rights, in-
12 cluding by providing research and analysis, rec-
13 ommendations on exercise of proxy voting or other
14 shareholder rights, administrative services with re-
15 spect to voting proxies, and recordkeeping and report-
16 ing services.

17 “(4) INVESTMENT MANAGERS AND PROXY ADVI-
18 SORY FIRMS.—Where the authority to vote proxies or
19 exercise other shareholder rights has been delegated to
20 an investment manager pursuant to section 403(a), or
21 a proxy voting advisory firm or other person who
22 performs advisory services as to the voting of proxies
23 or the exercise of other shareholder rights, a respon-
24 sible plan fiduciary shall prudently monitor the
25 proxy voting activities of such investment manager or

1 *advisory firm and determine whether such activities*
2 *are in compliance with paragraphs (1) and (2).*

3 *“(5) VOTING POLICIES.—*

4 *“(A) IN GENERAL.—In deciding whether to*
5 *vote a proxy pursuant to this subsection, the*
6 *plan fiduciary may adopt a proxy voting policy,*
7 *including a safe harbor proxy voting policy de-*
8 *scribed in subparagraph (B), providing that the*
9 *authority to vote a proxy shall be exercised pur-*
10 *suant to specific parameters designed to serve the*
11 *economic interest of the plan.*

12 *“(B) SAFE HARBOR VOTING POLICY.—With*
13 *respect to a decision not to vote a proxy, a fidu-*
14 *ciary shall satisfy the fiduciary responsibilities*
15 *under this subsection if such fiduciary adopts*
16 *and is following a safe harbor proxy voting pol-*
17 *icy that—*

18 *“(i) limits voting resources to par-*
19 *ticular types of proposals that the fiduciary*
20 *has prudently determined are substantially*
21 *related to the business activities of the*
22 *issuer or are expected to have a material ef-*
23 *fect on the value of the plan investment; or*

24 *“(ii) establishes that the fiduciary will*
25 *refrain from voting on proposals or par-*

1 *ticular types of proposals when the assets of*
2 *a plan invested in the issuer relative to the*
3 *total assets of such plan are below 5 percent*
4 *(or, in the event such assets are under man-*
5 *agement, when the assets under manage-*
6 *ment invested in the issuer are below 5 per-*
7 *cent of the total assets under management).*

8 *“(C) EXCEPTION.—No proxy voting policy*
9 *adopted pursuant to this paragraph shall pre-*
10 *clude a fiduciary from submitting a proxy vote*
11 *when the fiduciary determines that the matter*
12 *being voted on is expected to have a material eco-*
13 *nomical effect on the investment performance of a*
14 *plan’s portfolio (or the investment performance*
15 *of assets under management in the case of an in-*
16 *vestment manager); provided, however, that in*
17 *all cases compliance with a safe harbor voting*
18 *policy shall be presumed to satisfy fiduciary re-*
19 *sponsibilities with respect to decisions not to*
20 *vote.*

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

23 *(b) EFFECTIVE DATE.—The amendments made by sub-*
24 *section (a) shall apply to an exercise of shareholder rights*
25 *occurring on or after January 1, 2024.*

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