II

117TH CONGRESS
2D SESSION

S. 4484

To amend the Employee Retirement Income Security Act of 1974 to clarify the fiduciary duty of plan administrators to select and maintain investments based solely on pecuniary factors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2022

Mr. DAINES introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To amend the Employee Retirement Income Security Act of 1974 to clarify the fiduciary duty of plan administrators to select and maintain investments based solely on pecuniary factors, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Securing Employee Retirement Returns Act''.

SEC. 2. FIDUCIARY DUTY REGARDING THE CONSIDERATION OF CERTAIN FACTORS IN INVESTMENT DECISIONS FOR EMPLOYEE BENEFIT PLANS.

(a) IN GENERAL.—Subsection (a) of section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new paragraph:

"(3)(A) The duties under paragraph (1) shall include the duty to select and maintain investments (including designated investment alternatives for purposes of a defined contribution plan) based, except as provided in subparagraph (B) or (C), solely on pecuniary factors.

"(B) Notwithstanding subparagraph (A), when choosing between or among investment alternatives that a fiduciary is unable to distinguish on the basis of pecuniary factors alone, the fiduciary may use non-pecuniary factors as the deciding factor in the selection or maintenance of an investment if the fiduciary documents the following:

"(i) Why pecuniary factors were not sufficient to select or maintain the investment.

"(ii) How the chosen non-pecuniary factor is consistent with the interests of participants and beneficiaries in their retirement income or financial benefits under the plan.

"(C) Notwithstanding subparagraph (A), when selecting or maintaining designated investment alternatives for purposes of a defined contribution plan that permits a participant or beneficiary to choose from a broad range of designated investment alternatives, a fiduciary may select or maintain an investment in an investment fund, product, or model portfolio that considers, or indicates the use of, non-pecuniary factors, if—

"(i) in selecting or maintaining such investment, the fiduciary otherwise satisfies the duties under paragraph (1) (including, as applicable, subparagraph (B) of this paragraph); and

"(ii) the investment is not added or retained as, or as a component of, a qualified default investment alternative of the defined contribution plan.

"(D) For purposes of this paragraph:

"(i) The term 'broad range' has the meaning given such term in section 2550.404c–1(b)(3) of title 29, Code of Federal Regulations (or successor regulations).

"(ii) The term 'pecuniary factor' means a factor that a fiduciary prudently determines is expected to have a material effect on the risk or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and the plan's funding policy established pursuant to section 402(b)(1).

"(iii) The term 'qualified default investment alternative' has the meaning given such term in section 2550.404c–5(e)(4) of title 29, Code of Federal Regulations (or successor regulations).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to investments made after the date of enactment of this Act.

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