

118TH CONGRESS
1ST SESSION

H. R. 1177

To prohibit the Secretary of Labor from constraining the range or type of investments that may be offered to participants and beneficiaries of individual retirement accounts who exercise control over the assets in such accounts.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 2023

Mr. DONALDS (for himself, Mr. DAVIDSON, Mr. CLOUD, Mr. SCHWEIKERT, Mr. EMMER, and Mrs. KIM of California) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To prohibit the Secretary of Labor from constraining the range or type of investments that may be offered to participants and beneficiaries of individual retirement accounts who exercise control over the assets in such accounts.

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 “Financial Freedom Act
5 of 2023”.

1 **SEC. 2. FIDUCIARY DUTIES WITH RESPECT TO PENSION**
2 **PLAN INVESTMENTS.**

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

6 “(3)(A) In the case of a pension plan that pro-
7 vides for individual accounts and permits a partici-
8 pant or beneficiary to exercise control over the as-
9 sets in the participant’s or beneficiary’s account,
10 nothing in paragraph (1)—

11 “(i) requires a fiduciary to select, or pro-
12 hibits a fiduciary from selecting, any particular
13 type of investment alternative, provided that a
14 fiduciary provides the participant or beneficiary
15 an opportunity to choose, from a broad range of
16 investment alternatives, the manner in which
17 some or all of the assets of the participant’s or
18 beneficiary’s account are invested, according to
19 regulations prescribed by the Secretary; or

20 “(ii) requires that any particular type of
21 investment be either favored or disfavored,
22 other than on the basis of the investment’s risk-
23 return characteristics, in the context of the plan
24 fiduciary’s objective of providing investment al-
25 ternatives suitable for providing benefits for
26 participants and beneficiaries.

1 “(B) In the event that a fiduciary selects a self-
2 directed brokerage window as an investment alter-
3 native for a plan described in subparagraph (A)—

4 “(i) the Secretary shall not issue any regu-
5 lations or subregulatory guidance constraining
6 or prohibiting the range or type of investments
7 that may be offered through such brokerage
8 window;

9 “(ii) subsection (c) shall apply to such self-
10 directed brokerage window; and

11 “(iii) the diversification requirement of
12 paragraph (1)(C) and the prudence requirement
13 of paragraph (1)(B) are not violated by the fi-
14 duciary’s selection of a self-directed brokerage
15 window as an investment alternative or as a re-
16 sult of the exercise of a participant or bene-
17 ficiary’s control over the assets in such self-di-
18 rected brokerage window.”.

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