

117TH CONGRESS
1ST SESSION

H. R. 3604

To amend the Employee Retirement Income Security Act of 1974 to enable consideration and disclosure by retirement plans of Sustainable Investment Policies.

IN THE HOUSE OF REPRESENTATIVES

MAY 28, 2021

Mr. LEVIN of Michigan (for himself, Mrs. AXNE, Mr. BRENDAN F. BOYLE of Pennsylvania, and Mr. GARCÍA of Illinois) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Employee Retirement Income Security Act of 1974 to enable consideration and disclosure by retirement plans of Sustainable Investment Policies.

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 “Retirees Sustainable
5 Investment Opportunities Act of 2021”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) There is now incontrovertible evidence that
9 environmental, social, and governance (hereinafter in

1 this Act referred to as “ESG”) factors can have ma-
2 terial and substantial effects on investment perform-
3 ance.

4 (2) The United States Department of Labor
5 which is responsible for administering and enforcing
6 the Employee Retirement Security Act of 1974 has
7 historically recognized that retirement plans may
8 make economically targeted investments (“ETIs”),
9 that is, investments that offer the potential for eco-
10 nomic benefits, such as local job creation, commu-
11 nity economic development, and affordable and
12 workforce housing construction, in addition to in-
13 vestment returns, provided such investments other-
14 wise comply with ERISA’s fiduciary requirements.

15 (3) ESG and ETI-related factors are referred
16 to in this Act as “sustainability considerations” and
17 investments guided by sustainability considerations
18 are referred to as “sustainable investments.” Sus-
19 tainable investments have the potential to contribute
20 to the long-term well-being and resilience of individ-
21 uals and communities in this nation and around the
22 world while earning investment returns comparable
23 to or better than investments with similar risk that
24 do not take these factors into account.

1 (4) Sustainable investing is now among the
2 fastest growing segments of the investment industry
3 with broad and growing interest from both indi-
4 vidual investors and institutional asset managers.
5 Nevertheless, sustainable investments are virtually
6 absent from ERISA-regulated retirement plans in
7 the United States.

8 (5) Retirement plans and participants in indi-
9 vidual account retirement plans should have the op-
10 portunity to make and hold sustainable investments,
11 provided ERISA’s fiduciary requirements are other-
12 wise met.

13 (6) Accordingly, fiduciaries for retirement plans
14 should—

15 (A) incorporate all relevant factors, includ-
16 ing sustainability-related factors, into invest-
17 ment analysis and decision-making processes,
18 consistent with the investment time horizons of
19 plan participants and beneficiaries;

20 (B) be permitted to consider factors rel-
21 evant to sustainability, whether or not they can
22 be demonstrated to be financially material, pro-
23 vided doing so does not diminish anticipated in-
24 vestment returns or increase investment risk

1 and is otherwise consistent with ERISA’s fidu-
2 ciary requirements;

3 (C) encourage the adoption of best prac-
4 tices for sustainability performance and sustain-
5 ability impacts in the companies or other enti-
6 ties in which they invest;

7 (D) consider plan participants’ and bene-
8 ficiaries’ sustainability-related interests and
9 preferences when making investment decisions;

10 (E) consider the impact of plan invest-
11 ments on the stability and resilience of the fi-
12 nancial system and on broad market returns as
13 a result of the sustainability characteristics of
14 those investments;

15 (F) consider participation in shareholder
16 engagement and proxy activities, policy advo-
17 cacy and similar actions based on sustainability
18 considerations; and

19 (G) disclose how they have implemented
20 these commitments.

21 **SEC. 3. PURPOSE.**

22 The purpose of this Act is to enable retirement and
23 welfare benefit plans and participants in individual ac-
24 count retirement plans that are covered by the Employee
25 Retirement Income Security Act of 1974 (29 U.S.C. 1001

1 et seq.), to make and hold sustainable investments, con-
 2 sistent with the fiduciary standards, requirements, and
 3 procedures of said Employee Retirement Income Security
 4 Act.

5 **SEC. 4. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
 6 **COME SECURITY ACT OF 1974.**

7 (a) **DISCLOSURE OF SUSTAINABLE INVESTMENT**
 8 **POLICIES.**—Section 102 of the Employee Retirement In-
 9 come Security Act of 1974 (29 U.S.C. 1022) (“ERISA”)
 10 is amended in subsection (b), by inserting “a statement
 11 of whether or not the plan has adopted a sustainable in-
 12 vestment policy pursuant to section 402(b)(5) of ERISA;”
 13 after “collective bargaining agreement;”.

14 (b) **ESTABLISHMENT OF SUSTAINABLE INVESTMENT**
 15 **POLICY.**—Section 402 of the Employee Retirement In-
 16 come Security Act of 1974 (29 U.S.C. 1102) is amend-
 17 ed—

18 (1) in subsection (b)—

19 (A) in paragraph (3), by striking “and”;

20 (B) in paragraph (4), by striking the pe-
 21 riod and insert “, and”; and

22 (C) by inserting after paragraph (4) the
 23 following:

24 “(5) adopt a sustainable investment policy of
 25 the plan in accordance with subparagraph (d), pro-

1 vided a plan may elect not to do so if it gives notice
2 to plan participants or beneficiaries in writing of
3 such election”; and

4 (2) by adding after subsection (c) the following:

5 “(d)(1) A sustainable investment policy under sub-
6 section (b)(5) shall address sustainability considerations
7 including, without limitation, the following:

8 “(A) Economically targeted investment consid-
9 erations including, the potential for achieving eco-
10 nomic benefits, such as local job creation, commu-
11 nity economic development, and affordable and
12 workforce housing construction, in addition to in-
13 vestment returns.

14 “(B) Social considerations including—

15 “(i) characteristics of workforces employed
16 by entities in which the plan invests, including
17 compensation and benefits, health and safety,
18 diversity and demographics, skills and training,
19 retention and turnover, full-time and part-time
20 employment, and the use of independent con-
21 tractors;

22 “(ii) labor and human rights compliance by
23 entities in which the plan invests, including
24 workers’ freedom of association, the right to
25 collectively bargain, and the prevention of em-

1 employment discrimination, child labor, and forced
2 labor in company operations and supply chains;

3 “(iii) due diligence and practices regarding
4 supply chain management, including environ-
5 mental, human rights, and worker compensa-
6 tion considerations; and

7 “(iv) the implementation, to the extent
8 practicable, of practices which enhance diversity
9 and inclusion within the workforce, senior lead-
10 ership, business procurement, and philanthropy.

11 “(C) Environmental considerations including—

12 “(i) the potential to reduce and ultimately
13 eliminate net greenhouse gas emissions associ-
14 ated with business activities and to mitigate ex-
15 posure to climate-related risks to the busi-
16 nesses, assets and properties of entities invested
17 in by the plan;

18 “(ii) the potential to mitigate other cli-
19 mate-related and associated environmental
20 harms and risks, such as industrial pollution,
21 habitat destruction, deforestation, species
22 endangerment and extinction, and other forms
23 of environmental degradation;

24 “(iii) the potential to address and rectify
25 issues of environmental justice and the inequi-

1 table environmental impacts of certain business
2 operations on historically disadvantaged com-
3 munities; and

4 “(iv) the potential to provide workers af-
5 fected by the shift to a low carbon economy
6 with a just transition by creating decent work
7 and quality jobs.

8 “(D) Governance considerations including—

9 “(i) corporate governance practices by enti-
10 ties in which the plan invests, including execu-
11 tive compensation, board diversity, worker
12 board representation and codetermination, the
13 independence of board chairs, political spending
14 and lobbying disclosure; and

15 “(ii) tax practices of entities in which the
16 plan invests, including international tax avoid-
17 ance strategies and tax payment disclosure.

18 “(E) Other relevant economically targeted in-
19 vestment, environmental, social, and governance con-
20 siderations and factors.

21 “(2) A plan shall be deemed to have adopted a sus-
22 tainable investment policy for the purposes of subsection
23 (b)(5) if it incorporates the sustainability considerations
24 set forth in subsection (d)(1) into a previously adopted
25 investment policy of the plan or if the plan elects to be

1 governed by a sustainable investment policy otherwise
2 meeting the requirements of subsection (d)(1) adopted by
3 a third-party fiduciary to the plan.

4 “(3) A plan that has adopted a sustainable invest-
5 ment policy pursuant to subsection (b)(5), including plans
6 relying on subsection (d)(2), shall conduct a review of such
7 policy on an annual basis.”.

8 (c) UTILIZATION OF CERTAIN SUSTAINABILITY CON-
9 siderations.—Section 404 of the Employee Retirement
10 Income Security Act of 1974 (29 U.S.C. 1104) is amended
11 in subsection 404(a) by adding after subsection (2) the
12 following:

13 “(3) This subsection 404(a) shall not be con-
14 strued to prohibit a plan fiduciary from doing the
15 following:

16 “(A) In choosing among investments with
17 comparable degrees of risk and rates of return,
18 selecting one or more such investments based
19 on one or more sustainability considerations as
20 set forth in section 402(d)(1), regardless of
21 whether such considerations are determined to
22 be financially material. For the purposes hereof,
23 the determination that investments have com-
24 parable degrees of risk and anticipated rates of
25 return shall be a determination that a prudent

1 man acting in like capacity and familiar with
2 such matters could reasonably be expected to
3 make on a forward-looking basis.

4 “(B) Incorporating sustainability consider-
5 ations into the monitoring of or decisions re-
6 garding the disposition of plan investments.

7 “(C) Exercising proxy voting rights in ac-
8 cordance with the plan’s proxy voting guidelines
9 which may include sustainability considerations.

10 “(D) Considering as financially material to
11 retirement benefits the potential for increased
12 contributions to the plan resulting from a plan
13 investment.”.

14 (d) INDIVIDUAL ACCOUNT PLANS.—Section 404 of
15 the Employee Retirement Income Security Act of 1974
16 (29 U.S.C. 1104) is amended in subsection 404(c)(1) by
17 adding after subsection (C) the following:

18 “(D) In selecting investment alternatives
19 for individual accounts, including investment al-
20 ternatives meeting the requirements of section
21 404(c)(5) of this title, a plan fiduciary may in-
22 clude investment alternatives selected in part on
23 the basis of sustainability considerations as set
24 forth in section 402(d)(1) regardless of whether
25 such considerations are determined to be finan-

1 cially material, provided any such alternative is
2 determined to have a degree of risk and antici-
3 pated rate of return comparable to other invest-
4 ments of similar type determined by the fidu-
5 ciary to be available and appropriate for inclu-
6 sion in the plan. For the purposes hereof, the
7 determination that investments have com-
8 parable degrees of risk and rates of return shall
9 be a determination that a prudent man acting
10 in like capacity and familiar with such matters
11 could reasonably be expected to make on a for-
12 ward-looking basis.”.

13 (e) ESTABLISHMENT OF SUSTAINABLE INVESTMENT
14 POLICY TECHNICAL ASSISTANCE PROGRAM.—Not later
15 than 90 days after the date of enactment of this Act, the
16 Assistant Secretary of Labor for Employee Benefits shall
17 establish a technical assistance program to provide edu-
18 cational materials and technical assistance to plans to
19 comply with the amendments made by this Act.

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