

117TH CONGRESS
1ST SESSION

S. 1762

To amend the Employee Retirement Income Security Act of 1974 to permit retirement plans to consider certain factors in investment decisions.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2021

Ms. SMITH (for herself, Mrs. MURRAY, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 to permit retirement plans to consider certain factors in investment decisions.

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 Factors in
5 Selecting Retirement Plan Investments Act”.

6 **SEC. 2. ERISA AMENDMENTS.**

7 (a) IN GENERAL.—Subsection (a) of section 404 of
8 the Employee Retirement Income Security Act of 1974

1 (29 U.S.C. 1104) is amended by adding at the end the
2 following new paragraph:

3 “(3)(A) Provided that a fiduciary discharges the fidu-
4 ciary’s duties with respect to a plan in a manner otherwise
5 consistent with this subsection, a fiduciary may—

6 “(i) consider environmental, social, governance,
7 or similar factors, in connection with carrying out an
8 investment decision, strategy, or objective, or other
9 fiduciary act; and

10 “(ii) consider collateral environmental, social,
11 governance, or similar factors as tie-breakers when
12 competing investments can reasonably be expected to
13 serve the plan’s economic interests equally well with
14 respect to expected return and risk over the appro-
15 priate time horizon.

16 “(B) In a case described in clause (i) or (ii) of sub-
17 paragraph (A), a fiduciary shall not be required to main-
18 tain any greater documentation, substantiation, or other
19 justification of the fiduciary’s actions relating to such fi-
20 duciary act than is otherwise required under this part.

21 “(C) Nothing in this part shall preclude an invest-
22 ment selected in accordance with clause (i) or (ii) of sub-
23 paragraph (A) from being treated as a default investment
24 or a component of such a default investment (as described
25 in regulations issued by the Secretary under subsection

1 (c)(5)(A)), if such investment would otherwise qualify for
2 such treatment under such regulations.”.

3 (b) EFFECT ON REGULATIONS.—The rule entitled
4 “Financial Factors in Selecting Plan Investments”, pub-
5 lished by the Employee Benefits Security Administration
6 of the Department of Labor on November 13, 2020 (85
7 Fed. Reg. 72846), shall cease to have force or effect on
8 the date of enactment of this Act.

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