

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5339
OFFERED BY MR. ALLEN OF GEORGIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Roll back ESG To
3 Increase Retirement Earnings Act” or the “RETIRE
4 Act”.

**5 SEC. 2. EMPLOYEE RETIREMENT INCOME SECURITY ACT
6 OF 1974 AMENDMENT.**

7 (a) IN GENERAL.—Section 404(a) of the Employee
8 Retirement Income Security Act of 1974 (29 U.S.C.
9 1104(a)) is amended by adding at the end the following:

10 “(3) INTEREST BASED ON PECUNIARY FAC-
11 TORS.—

12 “(A) IN GENERAL.—For purposes of para-
13 graph (1), a fiduciary shall be considered to act
14 solely in the interest of the participants and
15 beneficiaries of the plan with respect to an in-
16 vestment or investment course of action only if
17 the fiduciary’s action with respect to such in-
18 vestment or investment course of action is

1 based only on pecuniary factors (except as pro-
2 vided in subparagraph (B)). The fiduciary may
3 not subordinate the interests of the participants
4 and beneficiaries in their retirement income or
5 financial benefits under the plan to other objec-
6 tives and may not sacrifice investment return or
7 take on additional investment risk to promote
8 non-pecuniary benefits or goals. The weight
9 given to any pecuniary factor by a fiduciary
10 shall reflect a prudent assessment of the impact
11 of such factor on risk and return.

12 “(B) USE OF NON-PECUNIARY FACTORS
13 FOR INVESTMENT ALTERNATIVES.—Notwith-
14 standing paragraph (A), if a fiduciary is unable
15 to distinguish between or among investment al-
16 ternatives or investment courses of action on
17 the basis of pecuniary factors alone, the fidu-
18 ciary may use non-pecuniary factors as the de-
19 ciding factor if the fiduciary documents—

20 “(i) why pecuniary factors were not
21 sufficient to select a plan investment or in-
22 vestment course of action;

23 “(ii) how the selected investment com-
24 pares to the alternative investments with
25 regard to the composition of the portfolio

1 with regard to diversification, the liquidity
2 and current return of the portfolio relative
3 to the anticipated cash flow requirements
4 of the plan, and the projected return of the
5 portfolio relative to the funding objectives
6 of the plan; and

7 “(iii) how the selected non-pecuniary
8 factor or factors are consistent with the in-
9 terests of the participants and beneficiaries
10 in their retirement income or financial ben-
11 efits under the plan.

12 “(C) INVESTMENT ALTERNATIVES FOR
13 PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNT
14 PLANS.—In selecting or retaining investment
15 options for a pension plan described in sub-
16 section (c)(1)(A), a fiduciary is not prohibited
17 from considering, selecting, or retaining an in-
18 vestment option on the basis that such invest-
19 ment option promotes, seeks, or supports one or
20 more non-pecuniary benefits or goals, if—

21 “(i) the fiduciary satisfies the require-
22 ments of paragraph (1) and subparagraphs
23 (A) and (B) of this paragraph in selecting
24 or retaining any such investment option;
25 and

1 “(ii) such investment option is not
2 added or retained as, or included as a com-
3 ponent of, a default investment under sub-
4 section (e)(5) (or any other default invest-
5 ment alternative) if its investment objec-
6 tives or goals or its principal investment
7 strategies include, consider, or indicate the
8 use of one or more non-pecuniary factors.

9 “(D) DEFINITIONS.—For the purposes of
10 this paragraph:

11 “(i) The term ‘pecuniary factor’
12 means a factor that a fiduciary prudently
13 determines is expected to have a material
14 effect on the risk or return of an invest-
15 ment based on appropriate investment ho-
16 rizons consistent with the plan’s invest-
17 ment objectives and the funding policy es-
18 tablished pursuant to section 402(b)(1).

19 “(ii) The term ‘investment course of
20 action’ means any series or program of in-
21 vestments or actions related to a fidu-
22 ciary’s performance of the fiduciary’s in-
23 vestment duties, and includes the selection
24 of an investment fund as a plan invest-
25 ment, or in the case of an individual ac-

1 count plan, a designated investment alter-
2 native under the plan.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to actions taken by a fiduciary on
5 or after the date that is 12 months after the date of enact-
6 ment of this Act.

