

116TH CONGRESS
1ST SESSION

H. R. 1439

To amend the Employee Retirement Income Security Act of 1974 to provide a fiduciary safe harbor for the selection of a lifetime income provider, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2019

Mr. WALBERG (for himself, Ms. BLUNT ROCHESTER, Mr. DAVID P. ROE of Tennessee, Ms. SEWELL of Alabama, Mr. LOEBSACK, and Mr. MITCHELL) 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 provide a fiduciary safe harbor for the selection of a lifetime income provider, and for other purposes.

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 “Increasing Access to
5 a Secure Retirement Act of 2019”.

1 **SEC. 2. FIDUCIARY SAFE HARBOR FOR SELECTION OF LIFE-**
2 **TIME INCOME PROVIDER.**

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

6 “(e) SAFE HARBOR FOR ANNUITY SELECTION.—

7 “(1) IN GENERAL.—With respect to the selec-
8 tion of an insurer for a guaranteed retirement in-
9 come contract, the requirements of subsection
10 (a)(1)(B) will be deemed to be satisfied if a fidu-
11 ciary—

12 “(A) engages in an objective, thorough,
13 and analytical search for the purpose of identi-
14 fying insurers from which to purchase such con-
15 tracts;

16 “(B) with respect to each insurer identified
17 under subparagraph (A)—

18 “(i) considers the financial capability
19 of such insurer to satisfy its obligations
20 under the guaranteed retirement income
21 contract; and

22 “(ii) considers the cost (including fees
23 and commissions) of the guaranteed retire-
24 ment income contract offered by the in-
25 surer in relation to the benefits and prod-
26 uct features of the contract and adminis-

1 trative services to be provided under such
2 contract; and

3 “(C) on the basis of such consideration,
4 concludes that—

5 “(i) at the time of the selection, the
6 insurer is financially capable of satisfying
7 its obligations under the guaranteed retire-
8 ment income contract; and

9 “(ii) the relative cost of the selected
10 guaranteed retirement income contract as
11 described in subparagraph (B)(ii) is rea-
12 sonable.

13 “(2) FINANCIAL CAPABILITY OF THE IN-
14 SURER.—A fiduciary will be deemed to satisfy the
15 requirements of paragraphs (1)(B)(i) and (1)(C)(i)
16 if—

17 “(A) the fiduciary obtains written rep-
18 resentations from the insurer that—

19 “(i) the insurer is licensed to offer
20 guaranteed retirement income contracts;

21 “(ii) the insurer, at the time of selec-
22 tion and for each of the immediately pre-
23 ceding 7 plan years—

24 “(I) operates under a certificate
25 of authority from the insurance com-

1 missioner of its domiciliary State
2 which has not been revoked or sus-
3 pended;

4 “(II) has filed audited financial
5 statements in accordance with the
6 laws of its domiciliary State under ap-
7 plicable statutory accounting prin-
8 ciples;

9 “(III) maintains (and has main-
10 tained) reserves which satisfies all the
11 statutory requirements of all States
12 where the insurer does business; and

13 “(IV) is not operating under an
14 order of supervision, rehabilitation, or
15 liquidation;

16 “(iii) the insurer undergoes, at least
17 every 5 years, a financial examination
18 (within the meaning of the law of its domi-
19 ciliary State) by the insurance commis-
20 sioner of the domiciliary State (or rep-
21 resentative, designee, or other party ap-
22 proved by such commissioner); and

23 “(iv) the insurer will notify the fidu-
24 ciary of any change in circumstances oc-
25 curring after the provision of the represen-

1 tations in clauses (i), (ii), and (iii) which
2 would preclude the insurer from making
3 such representations at the time of
4 issuance of the guaranteed retirement in-
5 come contract; and

6 “(B) after receiving such representations
7 and as of the time of selection, the fiduciary
8 has not received any notice described in sub-
9 paragraph (A)(iv) and is in possession of no
10 other information which would cause the fidu-
11 ciary to question the representations provided.

12 “(3) NO REQUIREMENT TO SELECT LOWEST
13 COST.—Nothing in this subsection shall be construed
14 to require a fiduciary to select the lowest cost con-
15 tract. A fiduciary may consider the value of a con-
16 tract, including features and benefits of the contract
17 and attributes of the insurer (including, without lim-
18 itation, the insurer’s financial strength) in conjunc-
19 tion with the cost of the contract.

20 “(4) TIME OF SELECTION.—

21 “(A) IN GENERAL.—For purposes of this
22 subsection, the time of selection is—

23 “(i) the time that the insurer and the
24 contract are selected for distribution of

1 benefits to a specific participant or bene-
2 ficiary; or

3 “(ii) if the fiduciary periodically re-
4 views the continuing appropriateness of the
5 conclusion described in paragraph (1)(C)
6 with respect to a selected insurer, taking
7 into account the considerations described
8 in such paragraph, the time that the in-
9 surer and the contract are selected to pro-
10 vide benefits at future dates to participants
11 or beneficiaries under the plan.

12 Nothing in the preceding sentence shall be con-
13 strued to require the fiduciary to review the ap-
14 propriateness of a selection after the purchase
15 of a contract for a participant or beneficiary.

16 “(B) PERIODIC REVIEW.—A fiduciary will
17 be deemed to have conducted the periodic re-
18 view described in subparagraph (A)(ii) if the fi-
19 duciary obtains the written representations de-
20 scribed in clauses (i), (ii), and (iii) of paragraph
21 (2)(A) from the insurer on an annual basis, un-
22 less the fiduciary receives any notice described
23 in paragraph (2)(A)(iv) or otherwise becomes
24 aware of facts that would cause the fiduciary to
25 question such representations.

1 “(5) LIMITED LIABILITY.—A fiduciary which
2 satisfies the requirements of this subsection shall not
3 be liable following the distribution of any benefit, or
4 the investment by or on behalf of a participant or
5 beneficiary pursuant to the selected guaranteed re-
6 tirement income contract, for any losses that may
7 result to the participant or beneficiary due to an in-
8 surer’s inability to satisfy its financial obligations
9 under the terms of such contract.

10 “(6) DEFINITIONS.—For purposes of this sub-
11 section—

12 “(A) INSURER.—The term ‘insurer’ means
13 an insurance company, insurance service, or in-
14 surance organization, including affiliates of
15 such companies.

16 “(B) GUARANTEED RETIREMENT INCOME
17 CONTRACT.—The term ‘guaranteed retirement
18 income contract’ means an annuity contract for
19 a fixed term or a contract (or provision or fea-
20 ture thereof) which provides guaranteed bene-
21 fits annually (or more frequently) for at least
22 the remainder of the life of the participant or
23 the joint lives of the participant and the partici-

1 pant’s designated beneficiary as part of an indi-
2 vidual account plan.”.

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