Congressional Budget Office
Cost Estimate

September 22, 2023

At a Glance

Pension Legislation

As ordered reported by the House Committee on Education and the Workforce on September 14, 2023

On September 14, 2023, the House Committee on Education and the Workforce ordered to be reported four bills related to the investments of retirement plans. This single, comprehensive document provides estimates for those bills.

None of the bills would affect direct spending or revenues, so pay-as-you-go procedures would not apply. All four bills would increase spending subject to appropriation by insignificant amounts. None of the bills would increase on-budget deficits in any of the four consecutive 10-year periods beginning in 2034. Two of the bills would impose private-sector mandates but none would impose intergovernmental mandates. Details of the estimated costs of each bill are discussed in the text below.

Bill	Change in the Deficit Over the 2023-2033 Period ($ in Millions)	Changes in Spending Subject to Appropriation Over the 2023-2028 Period (Outlays, $ in Millions)	Mandate Effects?
H.R. 5337	0	*	Yes
H.R. 5338	0	*	Excluded
H.R. 5339	0	*	No
H.R. 5340	0	*	Yes

* = between zero and $500,000.

Detailed estimate begins on the next page.

See also
CBO's Cost Estimates Explained, *CBO Describes Its Cost-Estimating Process*, *Glossary*

Bill Summaries

On September 14, 2023, the Committee on Education and the Workforce ordered to be reported four bills related to the investments of retirement plans. This document provides estimates for each piece of legislation.

Generally, the bills would:

- Change the standards that the fiduciaries of private pension plans must use when making investment decisions, including decisions on whether and how to vote proxies and decisions about selecting plan employees.
- Require plans to provide information to participants investing in brokerage windows, which allow participants to select from a broad variety of investments.

Background

Under the Employee Retirement Income Security Act of 1974 (ERISA), fiduciaries of private pension plans must act in the interest of plan participants, including when making investment decisions. The rule "Financial Factors in Selecting Plan Investments," issued on November 13, 2020, required fiduciaries to make investment decisions based solely on "pecuniary factors." That rule included a "tiebreaker" standard, under which fiduciaries could consider other benefits when "alternative investment options are economically indistinguishable." A related rule, "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights," issued on December 16, 2020, guided whether and how fiduciaries were to exercise proxy votes. That rule stated that fiduciaries must make such decisions "for the exclusive purpose of providing benefits to participants."

On December 1, 2022, the Department of Labor (DOL) issued a new rule, "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," which clarified how plan fiduciaries may consider climate change and other environmental, social, or governance (commonly referred to as ESG) factors when making investment decisions. Under the new regulation, fiduciaries may consider "the economic effects of climate change and other environmental, social, or governance factors," but investment decisions "may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives, and may not sacrifice investment return or take on additional investment risk."

For additional background, see CBO's estimate of H.J. Res. 30, which disapproved the 2022 rule. The resolution was approved by the Congress but vetoed by the President, so that rule remains in effect.

Estimated Federal Cost

The costs of the legislation fall within budget function 600 (income security).

Basis of Estimate

CBO and the staff of the Joint Committee on Taxation (JCT) estimate that none of the bills would affect expected revenues or net direct spending. CBO estimates that implementing each of the bills would affect spending subject to appropriation. This cost estimate does not include any effects of interaction among the bills. If all four bills were combined and enacted as a single piece of legislation, CBO expects that the net difference in estimated costs would be insignificant.

H.R. 5337, the Retirement Proxy Protection Act, would specify plans' obligations relating to proxy voting. It would reinstate many of the provisions included in the December 2020 rule "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights."

H.R. 5338, the No Discrimination in My Benefits Act, would require that any selection of plan employees or service providers be made "without regard to race, color, religion, sex, or national origin."

H.R. 5339, the RETIRE Act, would reinstate many of the provisions in the November 2020 rule "Financial Factors in Selecting Plan Investments."

H.R. 5340, the Providing Complete Information to Retirement Investors Act, would require the provision of additional information to plan participants before they select nonstandard investments. In self-directed pension plans, such as 401(k)s, participants generally select from a menu of designated investment alternatives offered by the plan. Some plans also offer "brokerage windows," which allow participants access to a broad variety of investments.

Direct Spending and Revenues

Enacting H.R. 5337, H.R. 5338, or H.R. 5339 could affect federal revenues if the amount that individuals or employers contribute to tax-preferred plans changed. Additionally, premiums (which are recorded as offsetting receipts and reduce direct spending) received by the Pension Benefit Guaranty Corporation could be affected because those premiums are based in part on the amount of plan assets.

However, because fiduciaries must maximize investment performance, CBO and JCT do not expect H.R. 5337, H.R. 5338, or H.R. 5339 to substantially affect investment outcomes. Projections of investment returns are inherently uncertain, but we expect an equally likely chance of small increases or small decreases in federal revenues and outlays stemming from this resolution. The new rule may induce individual employers and workers to raise or lower their pension contributions, but CBO and JCT project that total contributions will not change and thus there would be no effect on expected revenues and net direct spending.

Under H.R. 5340, plans would be required to warn participants in brokerage windows about the extra potential risk associated with those investments. CBO and JCT do not expect

H.R. 5340 to significantly change participants' investment choices, and to the extent that they do change, we expect an equally likely chance of small increases or small decreases in federal revenues and outlays.

Spending Subject to Appropriation

CBO estimates that each of the bills would increase spending subject to appropriation by insignificant amounts, less than $500,000 over the 2023-2028 period. The administrative burden on DOL to issue the regulations associated with the legislation would be minimal. Based on experience with similar changes, CBO estimates that administrative costs would be insignificant. Any such spending would be subject to the availability of appropriated funds.

Pay-As-You-Go Considerations: None.

Increase in Long-Term Net Direct Spending and Deficits: None.

Mandates

H.R. 5337 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting ERISA plan fiduciaries from prioritizing a non-pecuniary objective when exercising shareholder rights. CBO estimates that the cost of the mandate would not exceed the private-sector threshold established in UMRA ($198 million in 2023, adjusted annually for inflation). The bill would not impose any intergovernmental mandates.

CBO has not reviewed **H.R. 5338** for intergovernmental or private-sector mandates. Section 4 of UMRA excludes from the application of that act any legislative provisions that would establish or enforce statutory rights prohibiting discrimination. CBO has determined that this legislation falls within that exclusion because it would prohibit discrimination in hiring or retaining personnel based on race, color, religion, sex, or national origin.

H.R. 5339 would not impose any private-sector or intergovernmental mandates as defined in UMRA.

H.R. 5340 would impose a private-sector mandate as defined in UMRA by requiring pension plans that offer brokerage windows to warn participants of potential risk associated with alternative investments. Because of the small burden associated with providing an additional warning, CBO estimates that the cost of the mandate would not exceed the private-sector threshold established in UMRA ($198 million in 2023, adjusted annually for inflation). The bill would not impose any intergovernmental mandates.

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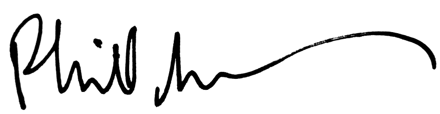

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