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IN THE HOUSE OF REPRESENTATIVES

DECEMBER 7, 2017

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115TH CONGRESS
1ST SESSION

H. R. 4604

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

Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following:

“(e) SAFE HARBOR FOR ANNUITY SELECTION.—

“(1) IN GENERAL.—With respect to the selection of an insurer and a guaranteed retirement income contract, the requirements of subsection (a)(1)(B) will be deemed to be satisfied if a fiduciary—

“(A) engages in an objective, thorough, and analytical search for the purpose of identifying insurers from which to purchase such contracts;

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

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

“(ii) considers the cost (including fees and commissions) of the guaranteed retirement income contract offered by the insurer in relation to the benefits and product features of the contract and adminis-
trative services to be provided under such contract; and

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

“(i) at the time of the selection, the insurer is financially capable of satisfying its obligations under the guaranteed retirement income contract; and

“(ii) the relative cost of the selected guaranteed retirement income contract as described in subparagraph (B)(ii) is reasonable.

“(2) FINANCIAL CAPABILITY OF THE INSURER.—A fiduciary will be deemed to satisfy the requirements of paragraphs (1)(B)(i) and (1)(C)(i) if—

“(A) the fiduciary obtains written representations from the insurer that—

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

“(ii) the insurer, at the time of selection and for each of the immediately preceding 7 plan years—

“(I) operates under a certificate of authority from the insurance com-
missioner of its domiciliary State which has not been revoked or sus-
pended;

“(II) has filed audited financial statements in accordance with the laws of its domiciliary State under ap-
licable statutory accounting prin-
ciples;

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

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

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

“(iv) the insurer will notify the fidu-
ciary of any change in circumstances oc-
curring after the provision of the represen-
tations in clauses (i), (ii), and (iii) which
would preclude the insurer from making
such representations at the time of
issuance of the guaranteed retirement in-
come contract; and

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

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

“(4) TIME OF SELECTION.—

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

“(i) the time that the insurer and the
contract are selected for distribution of
benefits to a specific participant or beneficiary; or

“(ii) if the fiduciary periodically reviews the continuing appropriateness of the conclusion described in paragraph (1)(C) with respect to a selected insurer, taking into account the considerations described in such paragraph, the time that the insurer and the contract are selected to provide benefits at future dates to participants or beneficiaries under the plan.

Nothing in the preceding sentence shall be construed to require the fiduciary to review the appropriateness of a selection after the purchase of a contract for a participant or beneficiary.

“(B) Periodic Review.—A fiduciary will be deemed to have conducted the periodic review described in subparagraph (A)(ii) if the fiduciary obtains the written representations described in clauses (i), (ii), and (iii) of paragraph (2)(A) from the insurer on an annual basis, unless the fiduciary receives any notice described in paragraph (2)(A)(iv) or otherwise becomes aware of facts that would cause the fiduciary to question such representations.
“(5) LIMITED LIABILITY.—A fiduciary which satisfies the requirements of this subsection shall not be liable following the distribution of any benefit, or the investment by or on behalf of a participant or beneficiary pursuant to the selected guaranteed retirement income contract, for any losses that may result to the participant or beneficiary due to an insurer’s inability to satisfy its financial obligations under the terms of such contract.

“(6) DEFINITIONS.—For purposes of this subsection—

“(A) INSURER.—The term ‘insurer’ means an insurance company, insurance service, or insurance organization, including affiliates of such companies.

“(B) GUARANTEED RETIREMENT INCOME CONTRACT.—The term ‘guaranteed retirement income contract’ means an annuity contract for a fixed term or a contract (or provision or feature thereof) which provides guaranteed benefits annually (or more frequently) for at least the remainder of the life of the participant or the joint lives of the participant and the partici-
pant’s designated beneficiary as part of an individual account plan.”.