

Suspend the Rules and Pass the Bill, H.R. 2265, with an amendment

(The amendment strikes all after the enacting clause and inserts a new text)

117TH CONGRESS
1ST SESSION

H. R. 2265

To amend the Investment Company Act of 1940 to postpone the date of payment or satisfaction upon redemption of certain securities in the case of the financial exploitation of specified adults, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2021

Mrs. WAGNER introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Investment Company Act of 1940 to postpone the date of payment or satisfaction upon redemption of certain securities in the case of the financial exploitation of specified adults, 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 “Financial Exploitation
5 Prevention Act of 2021”.

1 **SEC. 2. REDEMPTION OF CERTAIN SECURITIES POST-**
2 **PONED.**

3 (a) IN GENERAL.—Section 22 of the Investment
4 Company Act of 1940 (15 U.S.C. 80a–22) is amended by
5 adding at the end the following:

6 “(h) REQUIREMENTS WITH RESPECT TO NON-INSTITI-
7 TUTIONAL DIRECT AT-FUND ACCOUNTS.—

8 “(1) ELECTION.—

9 “(A) IN GENERAL.—A registered open-end
10 investment company and a transfer agent de-
11 scribed under paragraph (2) may elect to com-
12 ply with the requirements under paragraph (2)
13 and subsection (i) by notifying the Commission
14 of such election.

15 “(B) EFFECT OF ELECTION.—Paragraph
16 (2) and subsection (i) shall only apply to a reg-
17 istered open-end investment company and a
18 transfer agent that have made the election
19 under subparagraph (A).

20 “(2) REQUIREMENTS.—In the case of a cus-
21 tomer who is a holder of a non-institutional account
22 held directly with a registered open-end investment
23 company and serviced by a transfer agent (a ‘direct-
24 at-fund account’), the company and transfer agent
25 shall—

1 “(A) request from such customer the name
2 and contact information of at least one indi-
3 vidual who—

4 “(i) is at the time of such request an
5 adult; and

6 “(ii) may be contacted with respect to
7 such account;

8 “(B) document and retain the information
9 received pursuant to subparagraph (A); and

10 “(C) disclose to such customer in writing
11 (including through electronic delivery) that such
12 company or transfer agent may contact an indi-
13 vidual specified pursuant to subparagraph (A)
14 with respect to the account of such customer
15 to—

16 “(i) address possible financial exploi-
17 tation of such customer;

18 “(ii) confirm the contact information
19 or health status of the customer; or

20 “(iii) identify any legal guardian, ex-
21 ecutor, trustee, or holder of a power of at-
22 torney of the customer.

23 “(i) REDEMPTION OF CERTAIN SECURITIES POST-
24 PONED.—

1 “(1) IN GENERAL.—Notwithstanding subsection
2 (e), a registered open-end investment company or a
3 transfer agent acting on behalf of such company
4 may postpone the date of payment or satisfaction
5 upon redemption of any redeemable security in ac-
6 cordance with its terms for more than seven days
7 after the tender of such security to such company or
8 its agent designated for that purpose for redemption
9 if such company or agent reasonably believes that—

10 “(A) the redemption is requested by a se-
11 curity holder who is a specified adult; and

12 “(B) financial exploitation has occurred, is
13 occurring, or has been attempted with respect
14 to such redemption.

15 “(2) DURATION.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraphs (B) and (C), a registered open-
18 end investment company or a transfer agent
19 acting on behalf of such company may postpone
20 the date of payment or satisfaction upon re-
21 demption of a redeemable security under para-
22 graph (1) for a period of not more than 15
23 business days.

24 “(B) EXTENSION UPON DETERMINATION
25 OF EXPLOITATION.—The period described in

1 subparagraph (A) may be extended by an addi-
2 tional 10 business days if the registered open-
3 end investment company or a transfer agent
4 acting on behalf of such company—

5 “(i) reasonably believes that—

6 “(I) the redemption is requested
7 by a security holder who is a specified
8 adult; and

9 “(II) financial exploitation has
10 occurred, is occurring, or has been at-
11 tempted with respect to such redemp-
12 tion;

13 “(ii) subject to subparagraph (D), not
14 later than 2 days after making a deter-
15 mination under clause (i), notifies the indi-
16 viduals specified by such security holder
17 under subsection (h)(2)(A) in writing (in-
18 cluding through electronic delivery) of the
19 extension of the period described in sub-
20 paragraph (A) under this subparagraph
21 and the reason for such extension;

22 “(iii) initiates an internal review of
23 the facts and circumstances relating to the
24 determination under clause (i);

1 “(iv) holds amounts related to the de-
2 layed payment or satisfaction upon re-
3 demption of the redeemable security in a
4 demand deposit account; and

5 “(v) documents and retains records
6 related to carrying out clause (iv) and in-
7 cludes such records in the first required
8 account statement of the security holder
9 provided after the date on which the deter-
10 mination is made under clause (i).

11 “(C) EXTENSION BY GOVERNMENT.—A
12 State regulator, administrative agency of com-
13 petent jurisdiction, or court of competent juris-
14 diction may extend the period described in sub-
15 paragraph (A).

16 “(D) NOTIFICATION.—

17 “(i) EXCEPTION.—Subparagraph
18 (B)(ii) shall not apply if a registered open-
19 end investment company or transfer agent
20 acting on behalf of such company reason-
21 ably believes that an individual required to
22 be notified under such subparagraph is,
23 has been, or will subject the security holder
24 who identified such individual under sub-
25 section (h)(2)(A) to financial exploitation.

1 “(ii) REASONABLE EFFORTS.—An
2 open-end investment company or transfer
3 agent acting on behalf of such company
4 shall be considered in compliance with sub-
5 paragraph (B)(ii) if such company or
6 transfer agent makes a reasonable effort to
7 contact the individuals specified by a secu-
8 rity holder under subsection (h)(2)(A).

9 “(E) INTERNAL PROCEDURES.—An open-
10 end investment company or transfer agent act-
11 ing on behalf of such company shall establish
12 procedures to carry out the requirements under
13 this subsection, including procedures—

14 “(i) related to the identification and
15 reporting of matters related to the finan-
16 cial exploitation of specified adults;

17 “(ii) to determine whether to release
18 or reinvest delayed redemption proceeds,
19 taking into account the facts and cir-
20 cumstances of each case, should the inter-
21 nal review under subparagraph (B)(iii)
22 support the reasonable belief described in
23 subparagraph (B)(i);

24 “(iii) identifying each employee of the
25 company or transfer agent with authority

1 to establish, extend, or terminate a period
2 described in paragraph (1) or subpara-
3 graph (A);

4 “(iv) in the case of a transfer agent,
5 that are reasonably designed to ensure that
6 the employees of such transfer agent com-
7 ply with this subsection; and

8 “(v) in the case of an open-end invest-
9 ment company, establishing periodic re-
10 porting requirements under which a trans-
11 fer agent acting on behalf of such company
12 shall notify such company of—

13 “(I) each extension under sub-
14 paragraph (B) authorized by such
15 transfer agent;

16 “(II) each finding by the transfer
17 agent under subparagraph (B)(i);

18 “(III) each notification under
19 subparagraph (B)(ii) carried out by
20 such transfer agent; and

21 “(IV) the results of each internal
22 review initiated by the transfer agent
23 under subparagraph (B)(iii).

24 “(F) INFORMATION INCLUDED IN CERTAIN
25 STATEMENTS.—An open-end investment com-

1 pany shall include in each prospectus or state-
2 ment of additional information a notification
3 that the company or transfer agent acting on
4 behalf of such company may postpone redemp-
5 tion of certain securities under this subsection.

6 “(G) RECORD RETENTION.—An open-end
7 investment company or transfer agent acting on
8 behalf of such company shall—

9 “(i) document and retain records of—

10 “(I) each postponement of re-
11 demption under subparagraph (A),
12 (B), and (C);

13 “(II) each finding under subpara-
14 graph (B)(i);

15 “(III) the name and position of
16 each employee described in subpara-
17 graph (E)(iii);

18 “(IV) each notification carried
19 out under subparagraph (B)(ii); and

20 “(V) the results of each internal
21 review initiated under subparagraph
22 (B)(iii); and

23 “(ii) make such records available to
24 the Commission at the request of the Com-
25 mission.

1 “(3) SPECIFIED ADULT DEFINED.—In this sub-
2 section, the term ‘specified adult’ means—

3 “(A) an individual age 65 or older; or

4 “(B) an individual age 18 or older who a
5 registered open-end investment company or a
6 transfer agent acting on behalf of such com-
7 pany reasonably believes has a mental or phys-
8 ical impairment that renders the individual un-
9 able to protect the individual’s own interests.”.

10 (b) RECOMMENDATIONS.—

11 (1) IN GENERAL.—Not later than 1 year after
12 the date of the enactment of this section, the Securi-
13 ties and Exchange Commission, in consultation with
14 the entities specified in paragraph (2), shall submit
15 to Congress a report that includes recommendations
16 regarding the regulatory and legislative changes nec-
17 essary to address the financial exploitation of secu-
18 rity holders who are specified adults (as defined in
19 subsection (i)(3) of section 22 of the Investment
20 Company Act of 1940 (15 U.S.C. 80a–22), as added
21 by this section).

22 (2) CONSULTATION.—The entities specified in
23 this paragraph are as follows:

24 (A) The Commodity Futures Trading
25 Commission.

1 (B) The Director of the Bureau of Con-
2 sumer Financial Protection.

3 (C) The Financial Industry Regulatory Au-
4 thority.

5 (D) The North American Securities Ad-
6 ministrators Association.

7 (E) The Board of Governors of the Fed-
8 eral Reserve System.

9 (F) The Comptroller of the Currency.

10 (G) The Federal Deposit Insurance Cor-
11 poration.

12 **SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.**

13 The budgetary effects of this Act, for the purpose of
14 complying with the Statutory Pay-As-You-Go Act of 2010,
15 shall be determined by reference to the latest statement
16 titled “Budgetary Effects of PAYGO Legislation” for this
17 Act, submitted for printing in the Congressional Record
18 by the Chairman of the House Budget Committee, pro-
19 vided that such statement has been submitted prior to the
20 vote on passage.