117TH CONGRESS
1ST SESSION

S. 1815

To amend the Securities Exchange Act of 1934 to require issuers to disclose to the Securities and Exchange Commission information regarding workforce management policies, practices, and performance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2021

Mr. WARNER introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To amend the Securities Exchange Act of 1934 to require issuers to disclose to the Securities and Exchange Commission information regarding workforce management policies, practices, and performance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Workforce Investment Disclosure Act of 2021’’.

SEC. 2. FINDINGS.

Congress finds the following:

(1) One of the keys to the 20th century post-war economic success of the United States was the ability to prepare workers over the course of their lives for success through multiple sectors across society. Unfortunately, during the several decades preceding the date of enactment of this Act, there has been a shift in business norms and in society. While Congress recognizes that the technology and job skills required for some jobs has changed dramatically, the private and public partnership to hire workers at different education levels and invest in them for the long-term is broken.

(2) Available data from the 10-year period preceding the date of enactment of this Act suggests that businesses are investing less in worker training during that time period, not more.

(3) In the wake of the 2008 global financial crisis, there was a well-documented decline in overall business investment. That decline coincides with the wage polarization of workers and an increase in spending on share buybacks and dividends, leading several researchers to conclude that companies are de-emphasizing investment at the expense of increasing returns for shareholders. The onset of a global

pandemic may make that trend worse, especially with respect to investments in workers.

(4) As part of the overall decline in investment described in paragraph (3), publicly traded companies are being provided with incentives to prioritize investments in physical assets over investments in their workforces, meaning that those companies are investing in robots instead of individuals. In fact, there are already signs that automation has increased during the COVID–19 pandemic.

(5) More than ever, the Federal Government, through company disclosure practices, needs to understand exactly how companies are investing in their workers. Over the several months preceding the date of enactment of this Act, companies across the United States have taken extreme actions to adapt and respond to evolving workforce challenges presented by COVID–19.

(6) JUST Capital has been tracking the responses of the Standard and Poor's 100 largest public companies to their workers and has found wide variation in the policies implemented, as well as with respect to the disclosure of those policies. Through different responses to their workforces, from layoffs to workplace safety to paid leave, the COVID–19

pandemic is exposing the myriad ways that workforce management practices of companies pose operational and reputational risks for short- and long-term financial performance.

(7) Even before the COVID–19 pandemic, there was a growing body of research establishing a relationship between measurable workforce management, which is the way that companies manage their employees, and firm performance. In a study of 2,000 large companies, Harvard Law School's Labor and Work Life Program found that forward-thinking workforce policies that prioritize workers, such as how companies train, retain, and pay their workers, are correlated with long-term financial performance.

(8) Disclosure of workforce management policies should be part of a Government-wide economic recovery strategy. Just as a set of generally accepted accounting principles (commonly known as "GAAP") was urgently adopted after the Great Depression, standardized, comparable metrics of workforce disclosure requirements in the context of the COVID–19 pandemic are critical for investors to accurately measure and project company performance, both in the present and in the future.

(9) Because many companies already track workforce metrics internally, moving towards a transparent disclosure regime would allow investors to better judge whether companies are managing risks and making the investments in their workforces that are needed for long-term growth.

(10) Businesses increasingly rely on workforce innovation and intellectual capital for competitiveness. Workplace benefits, particularly paid sick leave, medical leave, and flexible work arrangements, critically support employee mental and physical well-being.

(11) Race- and gender-based workplace discrimination have been tied to negative health outcomes, as well as lower productivity, trust, morale, and satisfaction and higher rates of absenteeism and turnover. Organizational reporting on practices to reduce discrimination can increase employee job satisfaction, performance, and engagement.

(12) According to the Centers for Disease Control and Prevention, work-related stress is the leading occupational health risk and, per the American Institute of Stress, job stress costs United States industry more than $300,000,000,000 per year in ac-

cidents, absenteeism, employee turnover, diminished productivity, and medical, legal, and insurance costs.

(13) Employee health and well-being is a key asset to delivering long-term value, with 80 percent of public companies that took concrete actions on health and well-being having seen larger improvements in financial performance.

(14) Organizational well-being interventions can create cost savings of up to 10 dollars for every dollar invested. Specifically, for every dollar that employers spend on workplace disease prevention and well-being programs, there is a $3.27 reduction in employee medical costs and a $2.73 reduction in absenteeism costs. Employers that implement workplace health promotion programs have seen reductions in sick leave, health plan costs, and workers' compensation and disability insurance costs of approximately 25 percent.

(15) The Centers for Disease Control and Prevention has found that preventable chronic conditions are a major contributor to insurance premium and employee medical claim costs, which are at an all-time high, and a Milken Institute study shows that employers paid $2,600,000,000,000 in 2016 for the indirect costs of employee chronic disease due to

work absences, lost wages, and reduced economic productivity.

(16) The COVID–19 pandemic has severely impacted employee physical, mental, and emotional well-being by increasing stress, depression, burnout, and mortality rates of chronic disease and by reducing work-life balance and financial security, with these challenges likely to persist due to uncertainty and instability even as employees return to work. Before the COVID–19 pandemic, but especially in the face of that pandemic, employers that advance policies and practices that support workforce health, safety, and well-being are likely to outperform competitors and benefit from lower costs.

SEC. 3. DISCLOSURES RELATING TO WORKFORCE MANAGEMENT.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(s) DISCLOSURES RELATING TO WORKFORCE MANAGEMENT.—

“(1) DEFINITION.—In this subsection, the term ‘contingent worker’ includes an individual performing work on a temporary basis or as an independent contractor.

"(2) REGULATIONS.—Not later than 2 years after the date of enactment of this subsection, the Commission, in consultation with the Secretary of Labor, the Secretary of Commerce, the Secretary of Treasury, and the Attorney General, shall promulgate regulations that require each issuer required to file an annual report under subsection (a) or section 15(d) to disclose in that report information regarding workforce management policies, practices, and performance with respect to the issuer.

"(3) RULES.—Consistent with the requirement under paragraph (4), each annual report filed with the Commission in accordance with the regulations promulgated under paragraph (2) shall include disclosure of the following with respect to the issuer filing the report for the year covered by the report:

"(A) Workforce demographic information, including—

"(i) the number of full-time employees, the number of part-time employees, and the number of contingent workers (including temporary and contract workers) with respect to the issuer, which shall include demographic information with respect to those categories of individuals, including information regarding race, ethnicity, and gender;

"(ii) any policies or practices of the issuer relating to subcontracting, outsourcing, and insourcing individuals to perform work for the issuer, which shall include demographic information with respect to those individuals, including information regarding race, ethnicity, and gender; and

"(iii) whether the percentage of contingent workers with respect to the issuer has changed, including temporary and contract workers, as compared with the previous annual report filed by the issuer under this subsection.

"(B) Workforce stability information, including information about the voluntary turnover or retention rate, the involuntary turnover rate, the internal hiring rate, and the internal promotion rate, and the horizontal job change rate by quintile and demographic information.

"(C) Workforce composition, including—

"(i) data on diversity (including racial, ethnic, and gender composition) for senior executives and other individuals in the workforce; and

"(ii) any policies, audits, and programming expenditures relating to diversity.

"(D) Workforce skills and capabilities, including—

"(i) information about training and cross-training of employees and contingent workers by quintile and demographic information, distinguishing between compliance training, career development training, job performance or technical training, and training tied to recognized postsecondary credentials;

"(ii) average number of hours of training for each employee and contingent worker;

"(iii) total spending on training for all employees and contingent workers;

"(iv) average spending per employee or contingent worker;

"(v) training utilization rates; and

"(vi) whether completion of training opportunities translates into value added benefit for workers, as determined by wage increases or internal promotions.

"(E) Workforce health, safety, and well-being, including information regarding—

"(i) the frequency, severity, and lost time due to injuries, physical and mental illness, and fatalities;

"(ii) the scope, frequency, and total expenditure on workplace health, safety, and well-being programs;

"(iii) the total dollar value of assessed fines under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);

"(iv) the total number of actions brought under section 13 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 662) to prevent imminent dangers;

"(v) the total number of actions brought against the issuer under section 11(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c));

"(vi) any findings of workplace harassment or workplace discrimination during the 5 fiscal year period of the issuer preceding the fiscal year in which the report is filed; and

“(vii) communication channels and grievance mechanisms in place for employees and contingent workers.

“(F) Workforce compensation and incentives, including information regarding—

“(i) total workforce costs, including salaries and wages, health benefits, other ancillary benefit costs, and pension costs;

“(ii) workforce benefits, including paid leave, health care, child care, and retirement, including information regarding benefits that are provided—

“(I) to full-time employees and not to part-time employees; or

“(II) to employees and not to contingent workers;

“(iii) total contributions made to unemployment insurance by the issuer, how many employees to whom those contributions apply, and the total amount paid in unemployment compensation to individuals who were laid off by the issuer;

"(iv) policies and practices regarding how performance, productivity, equity, and sustainability are considered when setting pay and making promotion decisions; and

"(v) policies and practices relating to any incentives and bonuses provided to employees and any policies or practices designed to counter any risks created by such incentives and bonuses.

"(G) Workforce recruiting and needs, including—

"(i) the number of new jobs created, seeking to be filled, and filled, disaggregated based on classification status;

"(ii) the share of new jobs that require a bachelor's degree or higher;

"(iii) information regarding the quality of hire for jobs described in clause (i); and

"(iv) the retention rate for individuals hired to fill the jobs described in clause (i).

"(H) Workforce engagement and productivity, including information regarding policies and practices of the issuer relating to—

"(i) engagement, productivity, and mental well-being of employees and contingent workers, as determined in consultation with the Department of Labor; and

"(ii) freedom of association and work-life balance initiatives, including flexibility and the ability of the workforce to work remotely, as determined in consultation with the Department of Labor.

"(4) DISAGGREGATION OF INFORMATION.—To the maximum extent feasible, the information described in paragraph (3) shall be disaggregated by—

"(A) the workforce composition described in subparagraph (C) of that paragraph;

"(B) wage quintiles of the employees of the issuer for the year covered by the applicable annual report; and

"(C) the employment status of individuals performing services for the issuer, including whether those individuals are full-time employees, part-time employees, or contingent workers.

"(5) TREATMENT OF EMERGING GROWTH COMPANIES.—The Commission may exempt emerging growth companies from any disclosure required under subparagraph (D), (E), (F), (G), or (H) of paragraph (3) if the Commission determines that such an exemption is necessary or appropriate in the public interest.

"(6) FALSE OR MISLEADING STATEMENTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), it shall be unlawful for any person, in any report or document filed under this subsection, to make or cause to be made any untrue statement of a material fact or omit to state a material fact required to be stated in the report or document or necessary to make the statement made, in the light of the circumstances under which it is made, not misleading.

"(B) EXCEPTION.—A person shall not be liable under subparagraph (A) if the person shows that the person had, after reasonable investigation, reasonable ground to believe, and did believe, at the time the applicable statement was made, that the statement was true and that there was no omission to state a material fact necessary to make the statement made, in the light of the circumstances under which it is made, not misleading.

"(C) NO PRIVATE RIGHT OF ACTION.—Nothing in this paragraph may be construed as creating a private right of action.

"(7) EXEMPTION.—This subsection shall not apply to an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).".

SEC. 4. BACKSTOP.

(a) DEFINITIONS.—In this section—

(1) the term "Commission" means the Securities and Exchange Commission;

(2) the term "covered issuer" means an issuer that is required to file an annual report under section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)); and

(3) the term "issuer" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(b) COMPLIANCE.—If, as of the date that is 2 years after the date of enactment of this Act, the Commission has not promulgated the regulations required under subsection (s) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as added by section 3 of this Act, a covered issuer, during the period beginning on that date and ending on the date on which the Commission promulgates those regulations, shall be deemed to be in compliance with such subsection (s) if disclosures set forth in the annual report of the covered issuer satisfy the public disclosure standards of the International Organization for Standardization's ISO 30414, or any successor standards for external workforce reporting, as supplemented or adjusted by rules, guidance, or other comments from the Commission.

SEC. 5. SEC STUDY.

(a) DEFINITIONS.—In this section, the terms "Commission" and "issuer" have the meanings given those terms in section 4(a).

(b) STUDY.—The Commission shall conduct a study about the value to investors of—

(1) information about the human rights commitments of issuers required to file annual reports under section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)), including information about any principles used to evaluate risk, constituency consultation processes, and supplier due diligence; and

(2) with respect to issuers required to file annual reports under section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)), information about—

(A) violations of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) by those issuers;

(B) violations of worker misclassification by those issuers;

(C) surveys regarding employee satisfaction, well-being, and engagement;

(D) the number and overall percentage of quality jobs, as determined by compensation above median wage and comprehensive employer-provided benefits; and

(E) information about workforce investment trends, as determined by at least a 3-year time period.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report that contains the results of the study required to be conducted under subsection (b), with recommendations for additional disclosure regulations based on the findings, and any actions the Commission plans to take to enhance disclosures based on the findings.

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