

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

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.

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 “Workforce Investment
5 Disclosure Act of 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

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

17 (3) In the wake of the 2008 global financial cri-
18 sis, there was a well-documented decline in overall
19 business investment. That decline coincides with the
20 wage polarization of workers and an increase in
21 spending on share buybacks and dividends, leading
22 several researchers to conclude that companies are
23 de-emphasizing investment at the expense of increas-
24 ing returns for shareholders. The onset of a global

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

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

11 (5) More than ever, the Federal Government,
12 through company disclosure practices, needs to un-
13 derstand exactly how companies are investing in
14 their workers. Over the several months preceding the
15 date of enactment of this Act, companies across the
16 United States have taken extreme actions to adapt
17 and respond to evolving workforce challenges pre-
18 sented by COVID–19.

19 (6) JUST Capital has been tracking the re-
20 sponses of the Standard and Poor’s 100 largest pub-
21 lic companies to their workers and has found wide
22 variation in the policies implemented, as well as with
23 respect to the disclosure of those policies. Through
24 different responses to their workforces, from layoffs
25 to workplace safety to paid leave, the COVID–19

1 pandemic is exposing the myriad ways that work-
2 force management practices of companies pose oper-
3 ational and reputational risks for short- and long-
4 term financial performance.

5 (7) Even before the COVID–19 pandemic, there
6 was a growing body of research establishing a rela-
7 tionship between measurable workforce management,
8 which is the way that companies manage their em-
9 ployees, and firm performance. In a study of 2,000
10 large companies, Harvard Law School’s Labor and
11 Work Life Program found that forward-thinking
12 workforce policies that prioritize workers, such as
13 how companies train, retain, and pay their workers,
14 are correlated with long-term financial performance.

15 (8) Disclosure of workforce management poli-
16 cies should be part of a Government-wide economic
17 recovery strategy. Just as a set of generally accepted
18 accounting principles (commonly known as
19 “GAAP”) was urgently adopted after the Great De-
20 pression, standardized, comparable metrics of work-
21 force disclosure requirements in the context of the
22 COVID–19 pandemic are critical for investors to ac-
23 curately measure and project company performance,
24 both in the present and in the future.

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

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

13 (11) Race- and gender-based workplace dis-
14 crimination have been tied to negative health out-
15 comes, as well as lower productivity, trust, morale,
16 and satisfaction and higher rates of absenteeism and
17 turnover. Organizational reporting on practices to
18 reduce discrimination can increase employee job sat-
19 isfaction, performance, and engagement.

20 (12) According to the Centers for Disease Con-
21 trol and Prevention, work-related stress is the lead-
22 ing occupational health risk and, per the American
23 Institute of Stress, job stress costs United States in-
24 dustry more than \$300,000,000,000 per year in ac-

1 accidents, absenteeism, employee turnover, diminished
2 productivity, and medical, legal, and insurance costs.

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

8 (14) Organizational well-being interventions can
9 create cost savings of up to 10 dollars for every dol-
10 lar invested. Specifically, for every dollar that em-
11 ployers spend on workplace disease prevention and
12 well-being programs, there is a \$3.27 reduction in
13 employee medical costs and a \$2.73 reduction in ab-
14 senteeism costs. Employers that implement work-
15 place health promotion programs have seen reduc-
16 tions in sick leave, health plan costs, and workers'
17 compensation and disability insurance costs of ap-
18 proximately 25 percent.

19 (15) The Centers for Disease Control and Pre-
20 vention has found that preventable chronic condi-
21 tions are a major contributor to insurance premium
22 and employee medical claim costs, which are at an
23 all-time high, and a Milken Institute study shows
24 that employers paid \$2,600,000,000,000 in 2016 for
25 the indirect costs of employee chronic disease due to

1 work absences, lost wages, and reduced economic
2 productivity.

3 (16) The COVID–19 pandemic has severely im-
4 pacted employee physical, mental, and emotional
5 well-being by increasing stress, depression, burnout,
6 and mortality rates of chronic disease and by reduc-
7 ing work-life balance and financial security, with
8 these challenges likely to persist due to uncertainty
9 and instability even as employees return to work.
10 Before the COVID–19 pandemic, but especially in
11 the face of that pandemic, employers that advance
12 policies and practices that support workforce health,
13 safety, and well-being are likely to outperform com-
14 petitors and benefit from lower costs.

15 **SEC. 3. DISCLOSURES RELATING TO WORKFORCE MANAGE-**
16 **MENT.**

17 Section 13 of the Securities Exchange Act of 1934
18 (15 U.S.C. 78m) is amended by adding at the end the
19 following:

20 “(s) DISCLOSURES RELATING TO WORKFORCE MAN-
21 AGEMENT.—

22 “(1) DEFINITION.—In this subsection, the term
23 ‘contingent worker’ includes an individual per-
24 forming work on a temporary basis or as an inde-
25 pendent contractor.

1 “(2) REGULATIONS.—Not later than 2 years
2 after the date of enactment of this subsection, the
3 Commission, in consultation with the Secretary of
4 Labor, the Secretary of Commerce, the Secretary of
5 Treasury, and the Attorney General, shall promul-
6 gate regulations that require each issuer required to
7 file an annual report under subsection (a) or section
8 15(d) to disclose in that report information regard-
9 ing workforce management policies, practices, and
10 performance with respect to the issuer.

11 “(3) RULES.—Consistent with the requirement
12 under paragraph (4), each annual report filed with
13 the Commission in accordance with the regulations
14 promulgated under paragraph (2) shall include dis-
15 closure of the following with respect to the issuer fil-
16 ing the report for the year covered by the report:

17 “(A) Workforce demographic information,
18 including—

19 “(i) the number of full-time employ-
20 ees, the number of part-time employees,
21 and the number of contingent workers (in-
22 cluding temporary and contract workers)
23 with respect to the issuer, which shall in-
24 clude demographic information with re-
25 spect to those categories of individuals, in-

cluding 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

1 senior executives and other individuals in
2 the workforce; and

3 “(ii) any policies, audits, and pro-
4 gramming expenditures relating to diver-
5 sity.

6 “(D) Workforce skills and capabilities, in-
7 cluding—

8 “(i) information about training and
9 cross-training of employees and contingent
10 workers by quintile and demographic infor-
11 mation, distinguishing between compliance
12 training, career development training, job
13 performance or technical training, and
14 training tied to recognized postsecondary
15 credentials;

16 “(ii) average number of hours of
17 training for each employee and contingent
18 worker;

19 “(iii) total spending on training for all
20 employees and contingent workers;

21 “(iv) average spending per employee
22 or contingent worker;

23 “(v) training utilization rates; and

24 “(vi) whether completion of training
25 opportunities translates into value added

1 benefit for workers, as determined by wage
2 increases or internal promotions.

3 “(E) Workforce health, safety, and well-
4 being, including information regarding—

5 “(i) the frequency, severity, and lost
6 time due to injuries, physical and mental
7 illness, and fatalities;

8 “(ii) the scope, frequency, and total
9 expenditure on workplace health, safety,
10 and well-being programs;

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

15 “(iv) the total number of actions
16 brought under section 13 of the Occupa-
17 tional Safety and Health Act of 1970 (29
18 U.S.C. 662) to prevent imminent dangers;

19 “(v) the total number of actions
20 brought against the issuer under section
21 11(c) of the Occupational Safety and
22 Health Act of 1970 (29 U.S.C. 660(c));

23 “(vi) any findings of workplace har-
24 assment or workplace discrimination dur-
25 ing the 5 fiscal year period of the issuer

1 preceding the fiscal year in which the re-
2 port is filed; and

3 “(vii) communication channels and
4 grievance mechanisms in place for employ-
5 ees and contingent workers.

6 “(F) Workforce compensation and incen-
7 tives, including information regarding—

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

11 “(ii) workforce benefits, including
12 paid leave, health care, child care, and re-
13 tirement, including information regarding
14 benefits that are provided—

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

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

19 “(iii) total contributions made to un-
20 employment insurance by the issuer, how
21 many employees to whom those contribu-
22 tions apply, and the total amount paid in
23 unemployment compensation to individuals
24 who were laid off by the issuer;

1 “(iv) policies and practices regarding
 2 how performance, productivity, equity, and
 3 sustainability are considered when setting
 4 pay and making promotion decisions; and

5 “(v) policies and practices relating to
 6 any incentives and bonuses provided to em-
 7 ployees and any policies or practices de-
 8 signed to counter any risks created by such
 9 incentives and bonuses.

10 “(G) Workforce recruiting and needs, in-
 11 cluding—

12 “(i) the number of new jobs created,
 13 seeking to be filled, and filled,
 14 disaggregated based on classification sta-
 15 tus;

16 “(ii) the share of new jobs that re-
 17 quire a bachelor’s degree or higher;

18 “(iii) information regarding the qual-
 19 ity of hire for jobs described in clause (i);
 20 and

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

23 “(H) Workforce engagement and produc-
 24 tivity, including information regarding policies
 25 and practices of the issuer relating to—

1 “(i) engagement, productivity, and
2 mental well-being of employees and contin-
3 gent workers, as determined in consulta-
4 tion with the Department of Labor; and

5 “(ii) freedom of association and work-
6 life balance initiatives, including flexibility
7 and the ability of the workforce to work re-
8 motely, as determined in consultation with
9 the Department of Labor.

10 “(4) DISAGGREGATION OF INFORMATION.—To
11 the maximum extent feasible, the information de-
12 scribed in paragraph (3) shall be disaggregated by—

13 “(A) the workforce composition described
14 in subparagraph (C) of that paragraph;

15 “(B) wage quintiles of the employees of the
16 issuer for the year covered by the applicable an-
17 nual report; and

18 “(C) the employment status of individuals
19 performing services for the issuer, including
20 whether those individuals are full-time employ-
21 ees, part-time employees, or contingent workers.

22 “(5) TREATMENT OF EMERGING GROWTH COM-
23 PANIES.—The Commission may exempt emerging
24 growth companies from any disclosure required
25 under subparagraph (D), (E), (F), (G), or (H) of

1 paragraph (3) if the Commission determines that
2 such an exemption is necessary or appropriate in the
3 public interest.

4 “(6) FALSE OR MISLEADING STATEMENTS.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), it shall be unlawful for any
7 person, in any report or document filed under
8 this subsection, to make or cause to be made
9 any untrue statement of a material fact or omit
10 to state a material fact required to be stated in
11 the report or document or necessary to make
12 the statement made, in the light of the cir-
13 cumstances under which it is made, not mis-
14 leading.

15 “(B) EXCEPTION.—A person shall not be
16 liable under subparagraph (A) if the person
17 shows that the person had, after reasonable in-
18 vestigation, reasonable ground to believe, and
19 did believe, at the time the applicable statement
20 was made, that the statement was true and that
21 there was no omission to state a material fact
22 necessary to make the statement made, in the
23 light of the circumstances under which it is
24 made, not misleading.

1 “(C) NO PRIVATE RIGHT OF ACTION.—

2 Nothing in this paragraph may be construed as
3 creating a private right of action.

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

8 **SEC. 4. BACKSTOP.**

9 (a) DEFINITIONS.—In this section—

10 (1) the term “Commission” means the Securi-
11 ties and Exchange Commission;

12 (2) the term “covered issuer” means an issuer
13 that is required to file an annual report under sec-
14 tion 13(a) or section 15(d) of the Securities Ex-
15 change Act of 1934 (15 U.S.C. 78m(a), 78o(d)); and

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

19 (b) COMPLIANCE.—If, as of the date that is 2 years
20 after the date of enactment of this Act, the Commission
21 has not promulgated the regulations required under sub-
22 section (s) of section 13 of the Securities Exchange Act
23 of 1934 (15 U.S.C. 78m), as added by section 3 of this
24 Act, a covered issuer, during the period beginning on that
25 date and ending on the date on which the Commission pro-

1 mulgates those regulations, shall be deemed to be in com-
 2 pliance with such subsection (s) if disclosures set forth in
 3 the annual report of the covered issuer satisfy the public
 4 disclosure standards of the International Organization for
 5 Standardization’s ISO 30414, or any successor standards
 6 for external workforce reporting, as supplemented or ad-
 7 justed by rules, guidance, or other comments from the
 8 Commission.

9 **SEC. 5. SEC STUDY.**

10 (a) DEFINITIONS.—In this section, the terms “Com-
 11 mission” and “issuer” have the meanings given those
 12 terms in section 4(a).

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

15 (1) information about the human rights com-
 16 mitments of issuers required to file annual reports
 17 under section 13(a) of the Securities Exchange Act
 18 of 1934 (15 U.S.C. 78m(a)), including information
 19 about any principles used to evaluate risk, constitu-
 20 ency consultation processes, and supplier due dili-
 21 gence; and

22 (2) with respect to issuers required to file an-
 23 nual reports under section 13(a) of the Securities
 24 Exchange Act of 1934 (15 U.S.C. 78m(a)), informa-
 25 tion about—

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

4 (B) violations of worker misclassification
5 by those issuers;

6 (C) surveys regarding employee satisfac-
7 tion, well-being, and engagement;

8 (D) the number and overall percentage of
9 quality jobs, as determined by compensation
10 above median wage and comprehensive em-
11 ployer-provided benefits; and

12 (E) information about workforce invest-
13 ment trends, as determined by at least a 3-year
14 time period.

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

○