

117TH CONGRESS
2D SESSION

S. 4097

To improve access for diverse-owned asset management firms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2022

Mr. KAINE (for himself, Mr. BOOKER, Mrs. MURRAY, Mr. MENENDEZ, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To improve access for diverse-owned asset management firms, 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 “Too Narrow to Succeed
5 Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to improve access for di-
8 verse-owned, including women- and minority-owned, asset
9 management firms by—

1 (1) increasing transparency regarding the asset
2 management firm selection processes of Federal in-
3 stitutional investors;

4 (2) identifying common and potential barriers
5 that limit business opportunities for diverse-owned
6 asset management firms and developing strategies to
7 remove these barriers; and

8 (3) enabling both public and private retirement
9 funds to adopt broader and more inclusive selection
10 processes to reduce systemic risk and maximize re-
11 turns, consistent with administrators' fiduciary re-
12 sponsibilities.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) **ASSET MANAGEMENT FIRM.**—The term
16 “asset management firm” means any investment
17 firm that—

18 (A) manages a portfolio of securities or
19 other assets for a defined benefit plan or other
20 institutional investor; or

21 (B) offers investment options, such as mu-
22 tual, private equity, real estate, or other com-
23 mingled funds, to participate in a defined con-
24 tribution or other comparable retirement plan.

1 (2) DIVERSE-OWNED.—The term “diverse-
2 owned”, when used with respect to an asset manage-
3 ment firm, means any threshold or other require-
4 ments determined appropriate by the Secretary
5 under section 4(a)(3).

6 (3) FEDERAL INSTITUTIONAL INVESTOR.—The
7 term “Federal institutional investor” means each of
8 the following:

9 (A) The Federal Retirement Thrift Invest-
10 ment Board.

11 (B) The entity that administers—

12 (i) the funds of the Pension Benefit
13 Guaranty Corporation established under
14 section 4005 of the Employee Retirement
15 Income Security Act of 1974 (29 U.S.C.
16 1305);

17 (ii) the funds of the National Railroad
18 Retirement Investment Trust established
19 under section 15(j) of the Railroad Retire-
20 ment Act of 1974 (45 U.S.C. 231n(j));

21 (iii) the funds of the Federal Reserve
22 System Retirement Plan;

23 (iv) the funds of the Federal Reserve
24 System Thrift Plan;

1 (v) the funds of the Tennessee Valley
 2 Authority Retirement System;

3 (vi) the funds of the Tennessee Valley
 4 Authority Retirement System Savings and
 5 Deferral Retirement Plan;

6 (vii) the funds of the Army and Air
 7 Force Exchange Service Retirement Sys-
 8 tem;

9 (viii) the funds of the Navy Exchange
 10 Service Command Retirement Plan; or

11 (ix) the endowment funds of the
 12 Smithsonian Institution.

13 (C) Any other Federal entity that admin-
 14 isters a fund—

15 (i) with more than \$1,000,000,000 in
 16 assets invested for which the entity uses
 17 the services of, or contracts with, an asset
 18 management firm; and

19 (ii) that the Secretary determines is
 20 similar to the Thrift Savings Fund or a
 21 fund described in subparagraph (B).

22 (4) FEDERAL INVESTMENTS.—The term “Fed-
 23 eral investments” means investments of sums in a
 24 fund administered by a Federal institutional inves-
 25 tor.

1 (5) SECRETARY.—The term “Secretary” means
2 the Secretary of Labor.

3 (6) SUBCONTRACTOR ASSET MANAGEMENT
4 FIRM.—The term “subcontractor asset management
5 firm” means an asset management firm that—

6 (A) enters into a contract (including a sub-
7 contract) with an asset management firm that
8 is the primary manager of Federal investments,
9 through the use of services or by contract, for
10 a Federal institutional investor; and

11 (B) under the terms of the contract, man-
12 ages Federal investments of the Federal institu-
13 tional investor.

14 **SEC. 4. IMPROVING ACCESS FOR DIVERSE-OWNED ASSET**
15 **MANAGEMENT FIRMS.**

16 (a) ANNUAL REPORTS BY FEDERAL INSTITUTIONAL
17 INVESTORS THAT INVEST IN EXTERNALLY MANAGED AS-
18 SETS.—

19 (1) ANNUAL REPORTS.—

20 (A) REPORTS REQUIRED.—By not later
21 than December 31, 2022, and annually there-
22 after, each Federal institutional investor that
23 uses the services of, or contracts with, an asset
24 management firm to manage Federal invest-
25 ments shall prepare and submit a report to the

Secretary on the usage of diverse-owned asset management firms by the Federal institutional investor.

(B) INCLUSION OF SUBCONTRACTOR ASSET MANAGEMENT FIRMS.—The report under subparagraph (A) shall also include all subcontractor asset management firms of the Federal institutional investor.

(2) CONTENT OF REPORTS.—Each report described in paragraph (1) shall include, with respect to any fund administered by the Federal institutional investor that uses the services of, or contracts with, an asset management firm—

(A) the amounts of assets in such fund that are managed by non-diverse-owned asset management firms and by diverse-owned asset management firms, as determined by the Secretary under paragraph (3), disaggregated by race, ethnicity, and gender;

(B) the challenges, if any, the Federal institutional investor faces in reporting on diverse-owned and non-diverse-owned asset management firms;

(C) the challenges the Federal institutional investor faces in selecting diverse-owned asset

1 management firms (including through subcon-
2 tractor asset management firms) to manage in-
3 vestments of sums in the fund administered by
4 the Federal institutional investor;

5 (D) the actions taken during the reporting
6 period, or planned to be taken, by the Federal
7 institutional investor to alleviate barriers that
8 limit participation of diverse-owned asset man-
9 agement firms; and

10 (E) the actions taken during the reporting
11 period, or planned to be taken, by the Federal
12 institutional investor to increase opportunities
13 for diverse-owned asset management firms to
14 compete for contracts.

15 (3) DIVERSE-OWNED.—The Secretary shall
16 evaluate industry benchmarks to determine the
17 threshold or other requirements necessary for an
18 asset management firm to qualify as diverse-owned.

19 (4) PUBLIC AVAILABILITY.—The Secretary
20 shall make each report submitted under paragraph
21 (1) publicly available.

22 (b) SENSE OF CONGRESS RELATING TO DIVERSE-
23 OWNED ASSET MANAGEMENT FIRMS AND COVERED PRI-
24 VATE SECTOR PLANS.—It is the sense of Congress that
25 the Advisory Council on Employee Welfare and Pension

1 Benefit Plans (commonly known as the “ERISA Advisory
2 Council”) routinely consider barriers to the usage of di-
3 verse-owned asset management firms among covered pri-
4 vate sector plans, and methods to overcome such barriers.

5 (c) SURVEY OF FUND MANAGEMENT BEST PRAC-
6 TICES.—

7 (1) IN GENERAL.—The Secretary shall—

8 (A) conduct a survey of the best practices
9 in fund asset management with respect to in-
10 creasing the utilization and capacity of diverse-
11 owned asset management firms; and

12 (B) prepare and submit a report to Con-
13 gress not less often than every 3 years, or more
14 frequently as the Secretary considers to be ap-
15 propriate.

16 (2) REQUIREMENTS OF SURVEY.—The Sec-
17 retary shall survey a sample of public and private-
18 sector pension plans subject to the Employee Retire-
19 ment Income Security Act of 1974 (29 U.S.C. 1001
20 et seq.) and other retirement funds that are engaged
21 in (or looking to engage in) strategies to improve ac-
22 cess to, and representation by, diverse-owned asset
23 management firms.

24 (3) REPORT.—The Secretary shall make pub-
25 licly available a report to Congress on the best prac-

1 tices of pension funds and other retirement funds
2 with respect to implementing strategies to improve
3 access to diverse-owned asset management firms.

4 The report shall include—

5 (A) the challenges pension funds and other
6 retirement funds may face in adopting or exe-
7 cuting strategies to engage more with diverse-
8 owned asset management firms as the primary
9 institutional fund manager or as subcontractor
10 asset management firms, including women- and
11 minority-owned asset management firms; and

12 (B) an identification of the strategies
13 adopted to implement programs.

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