

113TH CONGRESS
2D SESSION

H. R. 5877

To amend the Employee Retirement Income Security Act of 1974 and title 5, United States Code, to require plans to establish policies addressing firm-specific risks in asset management services, greater diversification in investment strategies, and the inclusion of diverse asset managers and minority brokerage firms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 2014

Mr. MEEKS (for himself and Ms. WATERS) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Employee Retirement Income Security Act of 1974 and title 5, United States Code, to require plans to establish policies addressing firm-specific risks in asset management services, greater diversification in investment strategies, and the inclusion of diverse asset managers and minority brokerage 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “American Pension In-
3 vestments Modernization Act of 2014”.

4 **SEC. 2. CONSIDERATION OF FIRM-SPECIFIC RISKS AND IN-**
5 **CLUSION OF DIVERSE ASSET MANAGERS IN**
6 **ERISA PLANS.**

7 (a) IN GENERAL.—Section 404(a) of the Employee
8 Retirement Income Security Act of 1974 (29 U.S.C.
9 1104(a)) is amended—

10 (1) in paragraph (1)—

11 (A) in subparagraph (C), by striking
12 “and” at the end;

13 (B) by designating subparagraph (D) as
14 subparagraph (E); and

15 (C) by inserting after subparagraph (C)
16 the following:

17 “(D) in any case in which the fiduciary ap-
18 points an investment manager or managers to man-
19 age any assets of a plan under section 402(c)(3), or
20 business enterprise or enterprises for brokerage and
21 investment banking services, by establishing policies
22 under which the fiduciary will consider—

23 “(i) the concentration level of the plan’s
24 exposure to firm-specific risks, including oper-
25 ational, compliance, and fraud risks;

1 “(ii) the inclusion, to the greatest extent
2 feasible, of minority business enterprises for
3 brokerage and investment banking services; and

4 “(iii) the utilization of diverse asset man-
5 agers, taking into consideration the investment
6 opportunities they offer in sectors, strategies,
7 geographies, and demographics not meaning-
8 fully available to the plans.”; and

9 (2) by inserting at the end the following:

10 “(3)(A) For purposes of this subsection, the term
11 ‘minority business enterprise’ means any business entity—

12 “(i) not less than 51 percent of which is owned
13 by one or more individuals described in subpara-
14 graph (C) or, in the case of any publicly owned busi-
15 ness, not less than 51 percent of the stock of which
16 is owned by such individuals; or

17 “(ii)(I) not less than 35 percent of which is
18 owned by one or more individuals described in sub-
19 paragraph (C) or, in the case of any publicly owned
20 business, not less than 35 percent of the stock of
21 which is owned by such individuals; and

22 “(II) the management and daily business oper-
23 ations of which are controlled by one or more indi-
24 viduals described in subparagraph (C).

1 “(B) For purposes of this subsection, the term ‘di-
 2 verse asset manager’ means a minority business enterprise
 3 that manages an investment portfolio of at least
 4 \$100,000,000 and not more than \$25,000,000,000.

5 “(C) An individual described in this subparagraph
 6 is—

7 “(i) an African-American, Hispanic-American,
 8 Asian Pacific American, Subcontinent Asian Amer-
 9 ican, or Native American;

10 “(ii) a woman; or

11 “(iii) a veteran (as defined in section 101(2) of
 12 title 38, United States Code).”.

13 (b) ISSUANCE OF GUIDANCE BY SECRETARY OF
 14 LABOR.—Not later than 1 year after the date of the enact-
 15 ment of this Act, the Secretary of Labor shall issue guid-
 16 ance relating to the requirement imposed by section
 17 404(a)(1)(D) of such Act (as amended by subsection (a)).
 18 In issuing guidance under this subsection, the Secretary
 19 of Labor shall consider successful practices from State,
 20 local, and private-sector retirement systems’ utilization of
 21 diverse and emerging asset managers and of minority
 22 business enterprises for brokerage and investment banking
 23 services, including established efforts, programs, plans,
 24 and goals designed to increase their participation in finan-
 25 cial services, and providing pension plans with greater ac-

cess to investment opportunities that may otherwise be overlooked.

SEC. 3. CONSIDERATION OF FIRM-SPECIFIC RISKS AND INCLUSION OF DIVERSE ASSET MANAGERS IN THE THRIFT SAVINGS PLAN.

(a) IN GENERAL.—Section 8472 of title 5, United States Code, is amended by adding at the end the following:

“(k) In establishing policies under subsection (f)(1)(A), the Board shall take into account the guidance issued by the Secretary of Labor pursuant to section 404(a)(1)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)).”.

(b) CONFORMING AMENDMENT.—Section 8477(b)(1)(C) of such title is amended by inserting after “of this title,” the following: “and consistent with the policies developed under section 8472(k),”.

SEC. 4. ACTIVE MANAGEMENT OPTION UNDER THE THRIFT SAVINGS PLAN.

(a) IN GENERAL.—Subchapter III of chapter 84 of title 5, United States Code, is amended by inserting at the end the following:

“§ 8440g. Active management option

“(a) The Board shall provide employees and Members and former employees or Members the option to partici-

1 pate in actively managed funds within such employee or
2 Member's Thrift Savings Fund account. Such option or
3 options shall allow not more than 20 percent of an em-
4 ployee or Member's (or former employee or Member's)
5 funds to be actively managed.

6 “(b) Notwithstanding the requirement of subsection
7 (a), the Board may not subject more than 20 percent of
8 the total assets under management of the Thrift Savings
9 Fund to active management.

10 “(c) The Board shall promulgate guidelines regarding
11 the active management of funds under this section. In pro-
12 mulgating such guidelines, the Board shall consider mod-
13 ern and successful practices from State, local, and private-
14 sector retirement systems' utilization of active manage-
15 ment strategies in order to—

16 “(1) reduce market downside risks to the best
17 extent possible, including dramatic swings in major
18 market indexes;

19 “(2) take advantage of research and investment
20 opportunities offered by small-, minority-, women-
21 and veteran-owned firms that specialize in less tradi-
22 tional asset classes, or less efficient market segments
23 with high-growth potentials, including investments in
24 sectors, strategies, geographies and demographics

1 that are not meaningfully available to large passively
2 invested funds; and

3 “(3) take advantage of more effective portfolio
4 designs that diversify across active and passive in-
5 vestment strategies and managers.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for such subchapter is amended by adding after the item
8 relating to section 8440f the following new item:

 “8440g. Active management option.”.

9 **SEC. 5. REPORTS.**

10 Not later than 1 year after the issuance of guidance
11 under section 2(b) and annually thereafter, the Secretary
12 of Labor and the Chairman of the Federal Retirement
13 Thrift Investment Board shall submit a report to Congress
14 on the progress achieved and efforts being made to imple-
15 ment the amendments made by sections 2 and 3, respec-
16 tively. Such report shall include such recommendations as
17 the Secretary and the Chairman, respectively, deem nec-
18 essary or appropriate. In addition, each report shall in-
19 clude—

20 (1) an assessment of the extent to which com-
21 pliance with the requirements contained in such
22 amendments is being achieved;

23 (2) a summary of the enforcement actions
24 taken by each of the agencies assigned administra-

1 tive enforcement responsibilities for such require-
2 ments;

3 (3) to the extent feasible, with respect to the
4 Thrift Savings Plan and terminated plans within the
5 meaning of title IV of the Employee Retirement In-
6 come Security Act of 1974—

7 (A) a list of all asset management firms
8 (minority-owned and others) to which plan
9 funds were allocated, and the amount allocated
10 to each asset management firm;

11 (B) the fees charged by each asset man-
12 agement firm, including proceeds from security
13 lending, if any;

14 (C) the list of all firms (minority-owned
15 and others) used for brokerage and investment
16 banking services, and the amount of trans-
17 actions executed; and

18 (D) the fees charged by each firm used for
19 brokerage and investment banking services.

20 **SEC. 6. EFFECTIVE DATE.**

21 The amendments made by sections 2 and 3 shall
22 apply with respect to plan years beginning at least 9
23 months after the issuance of guidance under section 2(b).

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