



# Retirement News Highlights

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## Lawyers Are Subpoenaing Pension Funds and Consultants for Manager Diversity Data. Here's What It Means for Transparency.

*The latest move in a discrimination lawsuit against PIMCO could make asset managers less eager to report diversity numbers.*

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Lawyers representing current and former employees of PIMCO are sending more than 40 public pension funds and consultants subpoenas and Freedom of Information Act requests seeking employee diversity data that PIMCO has shared with them over the last 10 years. Their goal is to compare the data that the firm has given to allocators and consultants in an effort to win business with information PIMCO has provided to the press and others about their employment practices.

"We are deeply concerned that PIMCO may have engaged in diversity fraud by misrepresenting to investors its commitment to diversity and equal opportunity," wrote Nancy Abrolat of Abrolat Law, in a letter accompanying a FOIA request.

The requests come as part of a larger case filed in November 2020 alleging that PIMCO and some of its executives engaged in sexual harassment and discrimination against eight current and former employees who are suing the firm. PIMCO has previously denied those claims.

Mike Reid, a spokesperson for PIMCO, said that the organization has provided diversity information to the press previously, and to "any and all clients who have requested it." He also sent Institutional Investor a diversity report from the firm, which includes a snapshot of the firm's current employee demographics and an overview of some of its diversity strategies.

Tapping pension funds is a unique approach to obtaining and comparing diversity data. These funds — and other institutions — increasingly request and collect detailed information about the demographics of employees at asset managers, a trend these lawyers are leveraging for their court case.

"As a public pension fund tasked with obtaining and assessing diversity information prior to investing, the information you have gathered from PIMCO will be a valuable part of our overall data mining for a complete and accurate assessment of the firm's diversity compliance," wrote Abrolat.

Experts are questioning whether these subpoenas will make asset managers more cautious about sharing information that could end up being used against them.

According to Nancy Abrolat, the attorney representing the ex-employees, the legal approach was borne out of necessity.

In Southern California, where the court case is being tried, the Covid-19 pandemic caused a backlog, with trials and motions being pushed back several times. According to Abrolat, this has significantly delayed her clients' motions to compel PIMCO to release documents showing their diversity metrics.

"With this log jam, we're trying to figure out who else might have these documents," Abrolat said.

"We're trying to work around the problem we have." Documents from October 7 show that Abrolat has previously asked the court to compel PIMCO to provide the data.

The subpoena and FOIA requests are seeking the data PIMCO provided to funds and consultants and the questions those groups asked.

"As a public pension fund tasked with obtaining and assessing diversity information prior to investing, the information you have gathered from PIMCO will be a valuable part of our overall data mining for a complete and accurate assessment of the firm's diversity compliance," according to a copy of the FOIA requests sent to the public pension funds.

Abrolat said the approach "may be unique, but attorneys always use subpoenas."

The documents are likely to turn up real diversity data — if the funds or consultants comply. According to one asset allocator, who spoke with Institutional Investor on the condition of anonymity, investment managers are much more forthcoming with diversity data than they used to be.

"They're all talking pretty freely about where they're at and what they're trying to do," the allocator said. "All seem to have programs in place."

Public funds are increasingly including diversity questionnaires in their request for proposals. Institutional Investor reported in April that the Los Angeles County Employees Retirement Association, the Illinois State Universities Retirement System, and the Ohio Public Employees Retirement System included questions about diversity in their RFPs.

Some managers, the allocator said, will give high-level data — just the total number of employees, how many are women, and how many identify as the government's definition of minorities. Others will break it down by race, gender identity, sexual orientation, and whether the workers are disabled. They may also provide details on the recruitment process, training, and partnership track opportunities for women and minorities.

But what they provide depends on what allocators ask for. Given asset owners' disparate approaches to collecting this information, the FOIAs and subpoenas could result in a unique trove of material. "There's more attention being paid in this area," the allocator said.

At the same time, managers may consider how to balance the desire to be fully transparent in an effort to win business with the reality that the information is now in the public domain. "Managers will have to weigh more carefully how transparent they are with LPs," said the allocator.

Robert Raben, head of the Diverse Asset Managers Initiative, which advocates for more industry diversity, said he believes asset managers should provide this information publicly. According to Raben, there are a few reasons asset managers are hesitant to share this data, though.

"One, the numbers are terrible," he said. "But they're terrible everywhere, except for the minority-owned firms. Two, white men resent being asked about this... The third is that some lawyers at these

organizations have persuaded the leadership that there are all kinds of complications of tracking and reporting gender and race.”

He also thinks refusing to release data is at odds with many asset managers’ employment marketing campaigns.

“In brochures and its website, we would see the active promotion of women and Black people,” Raben said. “But when it comes to the truth about the data, we have to go to lawyers and fight it. It’s incredible to me,” he said referring to the subpoenas.

Still, managers don’t have full discretion over disclosure of diversity data. In fact, they will be increasingly pressured to disclose more information, whether by legislators, regulators, shareholder groups, activists, and others.

The lawyers have issued subpoenas and FOIAs to the following pension funds: Florida State Board of Administration, the Teachers Retirement System of Georgia, the Teachers’ Retirement System of the State of Illinois, the Illinois Municipal Retirement Fund, the Chicago Policemen’s Annuity & Benefit Fund, the **Maryland State Retirement and Pension System**, Massachusetts PRIM, Michigan Retirement, the Minnesota State Board of Investment, the Public School and Education Employee Retirement Systems of Missouri, the Public Employees’ Retirement System of Nevada, the New Jersey Division of Pensions & Benefits, the New York State Common Retirement Fund, the New York City Employees’ Retirement System, New York State Teachers’ Retirement System, the North Carolina Retirement Systems, Ohio Public Employees Retirement System, the State Teachers Retirement System of Ohio, the Oregon Public Employees Retirement System, Pennsylvania Public School Employees’ Retirement System, the South Carolina Public Employee Benefits Authority, Tennessee Consolidated Retirement System, the Teacher Retirement System of Texas, the Virginia Retirement System, the Washington State Investment Board, the State of Wisconsin Investment Board, the California Public Employees’ Retirement System, and the California State Teachers’ Retirement System.

The firm also sent subpoenas to consulting firms including Segal Group, Aon, Cambridge Associates, Stepstone Group, Bellwether Consulting, Fiducient Advisors, Russell Investments, Callan, Marquette Associates, Meketa Investment Group, Aksia, Wilshire Associates, NEPC, New Holland, and Canterbury Consulting.

“We’re going with a wide field,” Abrolat said. “It’s not just the pension funds and consultants, but also to the diversity partners.”

She noted that the firm has also reached out to Girls Who Invest, the New York Federal Reserve, and the Securities and Exchange Commission for similar data. “We want to turn every stone,” Abrolat added.

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