

111TH CONGRESS
1ST SESSION

H. R. 4146

To amend title I of the Employee Retirement Income Security Act of 1974 to provide for disclosure regarding compensation for services to pension plans.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2009

Mr. KLINE of Minnesota introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to provide for disclosure regarding compensation for services to pension plans.

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 “Sensible Transparency
5 for Retirement Plans Act of 2009”.

1 **SEC. 2. DISCLOSURE TO PLAN ADMINISTRATORS OF DE-**
2 **FINED BENEFIT AND DEFINED CONTRIBU-**
3 **TION PENSION PLANS REGARDING COM-**
4 **PENSATION FOR SERVICES.**

5 Section 408(b)(2) of the Employee Retirement In-
6 come Security Act of 1974 (29 U.S.C. 1108(b)(2)) is
7 amended—

8 (1) by inserting “(A)” after “(2)”; and
9 (2) by adding at the end the following new sub-
10 paragraph:

11 “(B) DISCLOSURE TO PLAN ADMINISTRATOR OF
12 PENSION PLAN REGARDING COMPENSATION FOR
13 SERVICES TO PLAN.—

14 “(i) IN GENERAL.—A contract or arrange-
15 ment with a service provider for services de-
16 scribed in subparagraph (A) shall not be treat-
17 ed as reasonable for purposes of subparagraph
18 (A) unless, under such arrangement, the service
19 provider is required to disclose to the plan ad-
20 ministrator (or any other plan official with con-
21 tracting authority under the terms of the plan)
22 the services to be provided and the total com-
23 pensation to be received by the service provider
24 in connection with the arrangement to provide
25 services to the plan. The disclosure of total
26 compensation shall include a disclosure of the

1 direct compensation received by the service pro-
2 vider from the plan or plan sponsor and a dis-
3 closure of any indirect compensation received,
4 in connection with the arrangement to provide
5 services to the plan, by the service provider
6 from a person who is not an affiliate.

7 “(ii) DISCLOSURE OF TOTAL COMPENSA-
8 TION.—In any case in which a service provider
9 and its affiliates provide multiple services to a
10 plan, or make available plan investment options,
11 under a single arrangement, the service pro-
12 vider that has entered into the arrangement to
13 provide services to the plan shall disclose to the
14 plan administrator the total compensation pay-
15 able by the plan or plan sponsor in connection
16 with such arrangement (including, for each in-
17 vestment option made available under the ar-
18 rangement, the total expense ratio or similar
19 measure of the total fees of the investment op-
20 tion).

21 “(iii) RELIANCE BY SERVICE PROVIDERS
22 AND FIDUCIARIES.—

23 “(I) RELIANCE ON INFORMATION
24 PROVIDED BY REGULATED ENTITIES.—To
25 the extent any of the information required

1 to be disclosed by a service provider under
2 this subparagraph is given to the service
3 provider by a person that is not an affiliate
4 and that is regulated by the Federal Gov-
5 ernment or a State, the service provider
6 may rely on the completeness and accuracy
7 of such information unless the service pro-
8 vider knows or has reason to know that the
9 information is inaccurate or incomplete.

10 “(II) RELIANCE ON DISCLOSURES.—A
11 fiduciary may rely on disclosures made
12 pursuant to the requirements of this sub-
13 section, with respect to a plan service to
14 which the disclosures relate, for purposes
15 of satisfying the fiduciary’s obligations
16 under section 404(a)(1)(B) as they relate
17 to the requirements of section
18 404(a)(1)(A)(ii), and for purposes of deter-
19 mining whether the compensation paid for
20 services rendered to a plan are reasonable
21 for purposes of subparagraph (A) and may
22 treat such disclosures as sufficient for such
23 purposes. Nothing in this subclause shall
24 be construed to exempt a fiduciary from
25 taking proper notice of any other disclo-

1 sures that may be made by the service pro-
2 vider.

3 “(III) CONTINUED APPLICATION OF
4 FIDUCIARY STANDARDS.—Nothing in this
5 subparagraph shall be construed to—

6 “(aa) alter, amend, or limit the
7 ability of a fiduciary to satisfy the re-
8 quirements of section 404(a) by con-
9 sidering the aggregate or total cost of
10 a group of services for the administra-
11 tion of a plan, or

12 “(bb) subject to subclause (II),
13 otherwise limit the obligations of plan
14 sponsors and fiduciaries under this
15 part.

16 “(iv) TIMING OF DISCLOSURE.—The serv-
17 ice provider shall provide the disclosure re-
18 quired by this subparagraph prior to or at the
19 time the arrangement is entered into and within
20 60 days after the end of each plan year or cal-
21 endar year thereafter while such arrangement
22 remains in effect. The disclosure may be pro-
23 vided electronically, but only if the adminis-
24 trator may obtain a paper copy upon request.

1 “(v) FORM OF DISCLOSURE.—A service
2 provider may provide the disclosure required
3 under this subparagraph, regarding any matter
4 in connection with the amount of fees or com-
5 pensation received for any service, in the form
6 of a reasonable and representative estimate, if
7 the service provider indicates any such estimate
8 as being such an estimate and discloses the
9 basis for such estimate. For purposes of disclo-
10 sure under this subparagraph, fees and ex-
11 penses may be expressed as a dollar amount, a
12 percentage of assets, a formula, or other meth-
13 od sufficient to allow the fiduciary to evaluate
14 the total compensation paid under the arrange-
15 ment.

16 “(vi) REGULATORY AUTHORITY.—The Sec-
17 retary shall issue regulations implementing this
18 subparagraph. Such regulations shall require
19 the disclosure to be concise, written in a man-
20 ner designed to be understood by the typical
21 plan administrator, and calculated to assist the
22 plan administrator in comparing the aggregate
23 compensation received by different service pro-
24 viders for providing similar services and deter-
25 mining what compensation is paid directly or

1 indirectly by the plan. Such regulations may
2 provide for categories of service providers who
3 shall not be subject to this subparagraph if the
4 Secretary determines that such service pro-
5 viders do not provide significant services mer-
6 iting the disclosure required by this subpara-
7 graph.

8 “(vii) AFFILIATE.—For purposes of this
9 subparagraph, the term ‘affiliate’ of another en-
10 tity means an affiliated person of the entity (as
11 defined in section 2(a)(3) of the Investment
12 Company Act of 1940 (15 U.S.C. 80a-
13 2(a)(3))).”.

14 **SEC. 3. DISCLOSURE TO PARTICIPANTS AND BENE-**
15 **FICIARIES OF INDIVIDUAL ACCOUNT PLANS**
16 **REGARDING INVESTMENTS AND FEES.**

17 (a) IN GENERAL.—Part 1 of subtitle B of title I of
18 the Employee Retirement Income Security Act of 1974 is
19 amended—

20 (1) by redesignating section 111 (29 U.S.C.
21 1031) as section 112; and

22 (2) by inserting after section 110 (29 U.S.C.
23 1030) the following new section:

1 **“SEC. 111. DISCLOSURES TO PARTICIPANTS AND BENE-**
2 **FICIARIES OF INDIVIDUAL ACCOUNT PLANS.**

3 “(a) DISCLOSURE REQUIREMENTS.—

4 “(1) ADVANCE NOTICE OF FEES AND AVAIL-
5 ABLE INVESTMENT OPTIONS.—The plan adminis-
6 trator of an individual account plan which permits
7 a participant or beneficiary to exercise control over
8 the assets in the account of the participant or bene-
9 ficiary shall provide to the participant or bene-
10 ficiary—

11 “(A) a description of the direct fees and
12 expenses that may be charged against the par-
13 ticipant or beneficiary’s account, and

14 “(B) a description of the investment op-
15 tions available for election under the plan.

16 The notice shall be provided at least 10 business
17 days prior to the earliest date provided for under the
18 plan for the participant’s initial investment of any
19 contribution made on behalf of such participant and
20 at least 10 business days prior to the effective date
21 of any material change in the information. In the
22 case of a plan that provides for immediate eligibility
23 or that contains an automatic contribution arrange-
24 ment (as defined in subparagraphs (A) and (B) of
25 section 514(e)(2)), the initial notice may be provided
26 within any reasonable period prior to such initial in-

1 vestment. With respect to the notice required under
2 this paragraph, the Secretary shall prescribe regula-
3 tions creating exceptions to the 10-day notice re-
4 quirement in circumstances similar to those de-
5 scribed in section 101(i)(2)(C), and such notice may
6 be combined with any similar notice that may be re-
7 quired under section 404(c)(5) or under this section.

8 “(2) DESCRIPTION OF ACCOUNT FEES.—The
9 notice required under paragraph (1)(A) shall—

10 “(A) include an explanation of any fees
11 and expenses for plan administrative services
12 that will be charged against the individual ac-
13 count of the participant or beneficiary,

14 “(B) include an explanation of any fees
15 and expenses that may be charged against the
16 individual account of a participant or bene-
17 ficiary for services provided on an individual
18 basis, rather than plan basis, including fees and
19 expenses for using plan features or services,
20 and

21 “(C) if fees of investment options are used
22 to defray costs of plan administration or other
23 plan costs, include a statement describing the
24 fact that fees of investments defray other plan
25 costs.

1 “(3) DESCRIPTION OF INVESTMENT OPTIONS.—

2 The notice required under paragraph (1)(B) shall—

3 “(A) set forth, with respect to each avail-
4 able investment option—

5 “(i) the name of the investment op-
6 tion,

7 “(ii) the investment objectives and
8 principal investment strategies of the in-
9 vestment option,

10 “(iii) the principal risks associated
11 with the investment option,

12 “(iv) the fees associated with the in-
13 vestment option, including fees for pur-
14 chase and sale of the option and the total
15 annual operating expenses of the option ex-
16 pressed as percentage,

17 “(v) the historical return of the in-
18 vestment option derived net of fees and ex-
19 penses for the previous year, 5 years, and
20 10 years (or since inception if later),

21 “(vi) whether the investment option is
22 diversified among various classes of assets
23 so as to minimize the risk of large losses
24 or should be combined with other invest-

1 ment options so as to obtain such diver-
2 sification,

3 “(vii) whether the investment option
4 is actively managed or passively managed
5 in relation to an index and the difference
6 between active management and passive
7 management, and

8 “(viii) where, and the manner in
9 which, additional information regarding
10 the investment option may be obtained,

11 “(B) include a statement explaining that
12 investment options should not be evaluated sole-
13 ly on the basis of the charges for each option
14 but should also be based on careful consider-
15 ation of other key factors, including the risk
16 level of the option, the investment objectives of
17 the option, the principal investment strategies
18 of the option, and historical returns derived by
19 the option,

20 “(C) be presented in a manner which is de-
21 signed to be understood by the typical partici-
22 pant and include such information as the Sec-
23 retary determines necessary to permit partici-
24 pants and beneficiaries to assess the services

1 for which charges will or could be assessed
2 against the account, and

3 “(D) include, for each investment option,
4 under regulations issued by the Secretary, an il-
5 lustrative example showing the estimated an-
6 nual dollar fees and expenses expressed as a
7 percentage of assets for each \$1,000 invested.

8 “(4) MODEL NOTICE.—The Secretary shall pre-
9 scribe a model notice that may be used for purposes
10 of satisfying the requirements of this subsection.

11 “(5) ESTIMATIONS.—For purposes of providing
12 the notice required under this subsection, the plan
13 administrator may provide a reasonable and rep-
14 resentative estimate of fees and charges, if the plan
15 administrator indicates any such estimate as being
16 an estimate and discloses the basis for the estimate.

17 “(b) ELECTRONIC MEDIA.—The disclosure required
18 under this section may be provided electronically, but only
19 if the plan administrator discloses that the participant or
20 beneficiary may obtain a paper copy upon request at no
21 charge and provides a paper copy upon request at no
22 charge.

23 “(c) REGULATIONS REGARDING CERTAIN PROD-
24 UCTS.—The Secretary shall prescribe regulations address-
25 ing the disclosure of fees for any investment options that

1 provide a contracted guaranteed rate of return and that
2 do not identify specific fees. Such regulations shall ensure
3 that participants and beneficiaries receive sufficient infor-
4 mation to allow them to make informed comparisons
5 among the investment options available in the plan.”.

6 (b) QUARTERLY BENEFIT STATEMENTS.—Section
7 105 of such Act (29 U.S.C. 1025) is amended—

8 (1) in subsection (a)(2)—

9 (A) by redesignating subparagraph (C) as
10 subparagraph (G);

11 (B) in subparagraph (B)(ii)—

12 (i) in subclause (II), by striking “di-
13 versified, and” and inserting “diversified,”;

14 (ii) in subclause (III), by striking the
15 period and inserting “, and”; and

16 (iii) by adding after subclause (III)
17 the following new subclause:

18 “(IV) with respect to the portion
19 of a participant’s account for which
20 the participant has the right to direct
21 the investment of assets, the informa-
22 tion described in subparagraph (C).”;

23 and

24 (C) by inserting after subparagraph (B)
25 the following new subparagraphs:

1 “(C) PERIODIC ACCOUNT INFORMATION
2 FOR PARTICIPANTS AND BENEFICIARIES.—For
3 purposes of subparagraph (B)(ii)(IV), the infor-
4 mation described in this subparagraph consists
5 of the following, indicating the portion of each
6 amount described in clauses (i) through (vii) at-
7 tributable to each investment option elected in
8 connection with the participant’s account:

9 “(i) the starting balance of the par-
10 ticipant’s account,

11 “(ii) contributions made during the
12 quarter, itemizing separately totals for em-
13 ployer and totals for employee contribu-
14 tions,

15 “(iii) investment earnings or losses on
16 the account balance during the quarter (if
17 any),

18 “(iv) any direct charges to the partici-
19 pant or beneficiary’s account during the
20 quarter,

21 “(v) the ending balance of the ac-
22 count,

23 “(vi) the participant’s asset allocation
24 to each investment option as of the end of

1 the quarter, expressed as an amount and
2 as a percentage, and

3 “(vii) a copy of the most recently up-
4 dated information described in subpara-
5 graphs (A)(iv), (A)(v), and (D) of section
6 111(a)(3).

7 “(D) ESTIMATIONS.—For purposes of pro-
8 viding the notice required under this subsection,
9 the plan administrator may provide a reason-
10 able and representative estimate of fees and
11 charges, but only if the plan administrator indi-
12 cates any estimate as being an estimate and
13 discloses the basis for the estimate.

14 “(E) MODEL STATEMENT.—The Secretary
15 shall prescribe a model pension benefit state-
16 ment that may be used for purposes of satis-
17 fying the requirements of this subparagraph
18 and subparagraph (B)(ii).

19 “(F) ANNUAL COMPLIANCE FOR SMALL
20 PLANS AND WITH RESPECT TO CERTAIN INFOR-
21 MATION.—In the case of a plan providing for
22 investment as described in paragraph
23 (1)(A)(i)—

24 “(i) if the plan has 100 or fewer par-
25 ticipants and beneficiaries, the plan may

1 provide the pension benefit statement
2 under paragraph (1) on an annual rather
3 than a quarterly basis, and

4 “(ii) the plan may comply with the re-
5 quirements of subparagraph (B)(ii)(IV) on
6 an annual rather than a quarterly basis.”;

7 and

8 (2) by adding at the end the following new sub-
9 sections:

10 “(d) ASSISTANCE TO EMPLOYERS AND PLAN PAR-
11 TICIPANTS AND BENEFICIARIES.—The Secretary shall
12 make available to employers educational and compliance
13 materials designed to assist such employers in complying
14 with the requirements of this section and make available
15 to participants and beneficiaries educational materials de-
16 signed to assist participants and beneficiaries in under-
17 standing the disclosures provided by this section.

18 “(e) ELECTRONIC MEDIA.—The disclosure required
19 under this section may be provided electronically, but only
20 if the plan administrator discloses that the participant or
21 beneficiary may obtain a paper copy upon request at no
22 charge and provides a paper copy upon request at no
23 charge.”.

24 (c) ENFORCEMENT.—Section 502(c)(7) of such Act
25 (29 U.S.C. 1132(c)(7)) is amended—

1 (1) by inserting “(A)” after “(7)”; and

2 (2) adding at the end the following new sub-
3 paragraph:

4 “(B)(i) Any plan administrator or other person who
5 fails or refuses to provide a statement to participants and
6 beneficiaries in accordance with section 105(a)(2)(B)(ii)
7 or 111(b) shall be assessed by the Secretary a civil penalty
8 of up to \$100 a day from the date of the failure or refusal
9 to the date on which such statement or notice is so pro-
10 vided.

11 “(ii) For purposes of this subparagraph, each viola-
12 tion with respect to any single participant, beneficiary, or
13 plan administrator shall be treated as a separate violation.
14 The Secretary may compromise, modify, or remit any civil
15 penalty imposed on any person under this subparagraph
16 if the Secretary determines—

17 “(I) that the person acted reasonably and in
18 good faith or that severe financial hardship would
19 otherwise occur to the plan sponsor, and

20 “(II) that such compromise, modification, or re-
21 mission is in the interests of participants and bene-
22 ficiaries.

23 “(iii) No penalty shall be assessed under this sub-
24 paragraph against any person solely because the person
25 relied upon information provided to such person by an un-

1 affiliated person which is regulated by the Federal Govern-
2 ment or a State, unless the person knows or has reason
3 to know that the information is inaccurate or incom-
4 plete.”.

5 (d) CLERICAL AMENDMENT.—The table of contents
6 in section 1 of such Act is amended by striking the item
7 relating to section 111 and inserting the following new
8 items:

“Sec. 111. Disclosures to participants and beneficiaries of individual account
plans.

“Sec. 112. Repeal and effective date.”.

9 **SEC. 4. EFFECTIVE DATE.**

10 The Secretary shall issue proposed and then final reg-
11 ulations under sections 2 and 3 within one year after the
12 date of the enactment of this Act. The amendments made
13 by section 2 shall apply to contracts entered into in plan
14 years beginning at least one year after the date of the
15 issuance of the final regulations. The amendments made
16 by section 3 shall apply to plan years beginning at least
17 one year after the date of the issuance of the final regula-
18 tions.

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