111TH CONGRESS
1ST SESSION

H. R. _____

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

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

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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Sensible Transparency for Retirement Plans Act of 2009”.

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SEC. 2. DISCLOSURE TO PLAN ADMINISTRATORS OF DEFINED BENEFIT AND DEFINED CONTRIBUTION PENSION PLANS REGARDING COMPENSATION FOR SERVICES.

Section 408(b)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(2)) is amended—

(1) by inserting “(A)” after “(2)” ; and

(2) by adding at the end the following new sub-

paragraph:

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

“(i) IN GENERAL.—A contract or arrangement with a service provider for services described in subparagraph (A) shall not be treated as reasonable for purposes of subparagraph (A) unless, under such arrangement, the service provider is required to disclose to the plan administrator (or any other plan official with contracting authority under the terms of the plan) the services to be provided and the total compensation to be received by the service provider in connection with the arrangement to provide services to the plan. The disclosure of total compensation shall include a disclosure of the
direct compensation received by the service provider from the plan or plan sponsor and a disclosure of any indirect compensation received, in connection with the arrangement to provide services to the plan, by the service provider from a person who is not an affiliate.

“(ii) Disclosure of Total Compensation.—In any case in which a service provider and its affiliates provide multiple services to a plan, or make available plan investment options, under a single arrangement, the service provider that has entered into the arrangement to provide services to the plan shall disclose to the plan administrator the total compensation payable by the plan or plan sponsor in connection with such arrangement (including, for each investment option made available under the arrangement, the total expense ratio or similar measure of the total fees of the investment option).

“(iii) Reliance by Service Providers and Fiduciaries.—

“(I) Reliance on Information Provided by Regulated Entities.—To the extent any of the information required
to be disclosed by a service provider under this subparagraph is given to the service provider by a person that is not an affiliate and that is regulated by the Federal Government or a State, the service provider may rely on the completeness and accuracy of such information unless the service provider knows or has reason to know that the information is inaccurate or incomplete.

“(II) RELIANCE ON DISCLOSURES.—A fiduciary may rely on disclosures made pursuant to the requirements of this subsection, with respect to a plan service to which the disclosures relate, for purposes of satisfying the fiduciary’s obligations under section 404(a)(1)(B) as they relate to the requirements of section 404(a)(1)(A)(ii), and for purposes of determining whether the compensation paid for services rendered to a plan are reasonable for purposes of subparagraph (A) and may treat such disclosures as sufficient for such purposes. Nothing in this subclause shall be construed to exempt a fiduciary from taking proper notice of any other discl
sures that may be made by the service provider.

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

“(aa) alter, amend, or limit the ability of a fiduciary to satisfy the requirements of section 404(a) by considering the aggregate or total cost of a group of services for the administration of a plan, or

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

“(iv) TIMING OF DISCLOSURE.—The service provider shall provide the disclosure required by this subparagraph prior to or at the time the arrangement is entered into and within 60 days after the end of each plan year or calendar year thereafter while such arrangement remains in effect. The disclosure may be provided electronically, but only if the administrator may obtain a paper copy upon request.
“(v) FORM OF DISCLOSURE.—A service provider may provide the disclosure required under this subparagraph, regarding any matter in connection with the amount of fees or compensation received for any service, in the form of a reasonable and representative estimate, if the service provider indicates any such estimate as being such an estimate and discloses the basis for such estimate. For purposes of disclosure under this subparagraph, fees and expenses may be expressed as a dollar amount, a percentage of assets, a formula, or other method sufficient to allow the fiduciary to evaluate the total compensation paid under the arrangement.

“(vi) REGULATORY AUTHORITY.—The Secretary shall issue regulations implementing this subparagraph. Such regulations shall require the disclosure to be concise, written in a manner designed to be understood by the typical plan administrator, and calculated to assist the plan administrator in comparing the aggregate compensation received by different service providers for providing similar services and determining what compensation is paid directly or
indirectly by the plan. Such regulations may provide for categories of service providers who shall not be subject to this subparagraph if the Secretary determines that such service providers do not provide significant services meriting the disclosure required by this subparagraph.

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

SEC. 3. DISCLOSURE TO PARTICIPANTS AND BENEFICIARIES OF INDIVIDUAL ACCOUNT PLANS REGARDING INVESTMENTS AND FEES.

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

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

(2) by inserting after section 110 (29 U.S.C. 1030) the following new section:
"SEC. 111. DISCLOSURES TO PARTICIPANTS AND BENEFICIARIES OF INDIVIDUAL ACCOUNT PLANS.

(a) Disclosure Requirements.—

(1) Advance notice of fees and available investment options.—The plan administrator of an individual account plan which permits a participant or beneficiary to exercise control over the assets in the account of the participant or beneficiary shall provide to the participant or beneficiary—

(A) a description of the direct fees and expenses that may be charged against the participant or beneficiary’s account, and

(B) a description of the investment options available for election under the plan.

The notice shall be provided at least 10 business days prior to the earliest date provided for under the plan for the participant’s initial investment of any contribution made on behalf of such participant and at least 10 business days prior to the effective date of any material change in the information. In the case of a plan that provides for immediate eligibility or that contains an automatic contribution arrangement (as defined in subparagraphs (A) and (B) of section 514(e)(2)), the initial notice may be provided within any reasonable period prior to such initial in-
vestment. With respect to the notice required under this paragraph, the Secretary shall prescribe regulations creating exceptions to the 10-day notice requirement in circumstances similar to those described in section 101(i)(2)(C), and such notice may be combined with any similar notice that may be required under section 404(c)(5) or under this section.

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

“(A) include an explanation of any fees and expenses for plan administrative services that will be charged against the individual account of the participant or beneficiary,

“(B) include an explanation of any fees and expenses that may be charged against the individual account of a participant or beneficiary for services provided on an individual basis, rather than plan basis, including fees and expenses for using plan features or services, and

“(C) if fees of investment options are used to defray costs of plan administration or other plan costs, include a statement describing the fact that fees of investments defray other plan costs.
“(3) DESCRIPTION OF INVESTMENT OPTIONS.—

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

“(A) set forth, with respect to each available investment option—

“(i) the name of the investment option,

“(ii) the investment objectives and principal investment strategies of the investment option,

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

“(iv) the fees associated with the investment option, including fees for purchase and sale of the option and the total annual operating expenses of the option expressed as percentage,

“(v) the historical return of the investment option derived net of fees and expenses for the previous year, 5 years, and 10 years (or since inception if later),

“(vi) whether the investment option is diversified among various classes of assets so as to minimize the risk of large losses or should be combined with other invest-
ment options so as to obtain such diversification,

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

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

“(B) include a statement explaining that investment options should not be evaluated solely on the basis of the charges for each option but should also be based on careful consideration of other key factors, including the risk level of the option, the investment objectives of the option, the principal investment strategies of the option, and historical returns derived by the option,

“(C) be presented in a manner which is designed to be understood by the typical participant and include such information as the Secretary determines necessary to permit participants and beneficiaries to assess the services
for which charges will or could be assessed
against the account, and

“(D) include, for each investment option, under regulations issued by the Secretary, an illus-
trative example showing the estimated annual dollar fees and expenses expressed as a percentage of assets for each $1,000 invested.

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

“(5) ESTIMATIONS.—For purposes of providing the notice required under this subsection, the plan administrator may provide a reasonable and representative estimate of fees and charges, if the plan administrator indicates any such estimate as being an estimate and discloses the basis for the estimate.

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

“(c) REGULATIONS REGARDING CERTAIN PROD-
ucts.—The Secretary shall prescribe regulations address-
ing the disclosure of fees for any investment options that
provide a contracted guaranteed rate of return and that do not identify specific fees. Such regulations shall ensure that participants and beneficiaries receive sufficient information to allow them to make informed comparisons among the investment options available in the plan.”.

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

(1) in subsection (a)(2)—

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

(B) in subparagraph (B)(ii)—

(i) in subclause (II), by striking “diversified, and” and inserting “diversified,”;

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

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

“(IV) with respect to the portion of a participant’s account for which the participant has the right to direct the investment of assets, the information described in subparagraph (C).”;

and

(C) by inserting after subparagraph (B) the following new subparagraphs:
“(C) Periodic Account Information for Participants and Beneficiaries.—For purposes of subparagraph (B)(ii)(IV), the information described in this subparagraph consists of the following, indicating the portion of each amount described in clauses (i) through (vii) attributable to each investment option elected in connection with the participant’s account:

“(i) the starting balance of the participant’s account,

“(ii) contributions made during the quarter, itemizing separately totals for employer and totals for employee contributions,

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

“(iv) any direct charges to the participant or beneficiary’s account during the quarter,

“(v) the ending balance of the account,

“(vi) the participant’s asset allocation to each investment option as of the end of
the quarter, expressed as an amount and

as a percentage, and

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

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

“(E) Model Statement.—The Secretary
shall prescribe a model pension benefit state-
ment that may be used for purposes of satis-
ifying the requirements of this subparagraph
and subparagraph (B)(ii).

“(F) Annual Compliance for Small
Plans and with Respect to Certain Infor-
mation.—In the case of a plan providing for
investment as described in paragraph
(1)(A)(i)—

“(i) if the plan has 100 or fewer par-
ticipants and beneficiaries, the plan may
provide the pension benefit statement under paragraph (1) on an annual rather than a quarterly basis, and

“(ii) the plan may comply with the requirements of subparagraph (B)(ii)(IV) on an annual rather than a quarterly basis.”;

and

(2) by adding at the end the following new subsections:

“(d) ASSISTANCE TO EMPLOYERS AND PLAN PARTICIPANTS AND BENEFICIARIES.—The Secretary shall make available to employers educational and compliance materials designed to assist such employers in complying with the requirements of this section and make available to participants and beneficiaries educational materials designed to assist participants and beneficiaries in understanding the disclosures provided by this section.

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

(e) ENFORCEMENT.—Section 502(c)(7) of such Act (29 U.S.C. 1132(c)(7)) is amended—
(1) by inserting “(A)” after “(7)”; and

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

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

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

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

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

“(iii) No penalty shall be assessed under this sub-
paragraph against any person solely because the person
relied upon information provided to such person by an un-
affiliated person which is regulated by the Federal Government or a State, unless the person knows or has reason to know that the information is inaccurate or incomplete.”

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

“Sec. 111. Disclosures to participants and beneficiaries of individual account plans.
“Sec. 112. Repeal and effective date.”.

SEC. 4. EFFECTIVE DATE.

The Secretary shall issue proposed and then final regulations under sections 2 and 3 within one year after the date of the enactment of this Act. The amendments made by section 2 shall apply to contracts entered into in plan years beginning at least one year after the date of the issuance of the final regulations. The amendments made by section 3 shall apply to plan years beginning at least one year after the date of the issuance of the final regulations.