



AMERICAN BENEFITS COUNCIL

November 23, 2009

BRIEF SUMMARY OF THE SENSIBLE TRANSPARENCY FOR RETIREMENT PLANS ACT

On November 20, Representative John Kline (R-MN), ranking Republican member on the House of Representatives Education and Labor Committee, introduced the Sensible Transparency for Retirement Plans Act.

This summary notes some of the major differences between the Kline bill and the 401(k) Fair Disclosure and Pension Security Act (H.R. 2989), as approved by the House of Representatives Education and Labor Committee.

Disclosure from service providers to plan fiduciaries:

- Disclosure of total compensation, including direct and indirect compensation. (H.R. 2989 requires disclosure in four categories: recordkeeping and administration, investment, transaction based, and other.)
- No “unbundling” is required but for each investment option must provide the total expense ratio or similar measure of the total fees of the investment option.
- Allows service providers to rely on information provided by unrelated service providers that are regulated by the Federal Government or a State (unless the service provider knows or has reason to know that the information is inaccurate or incomplete. (H.R. 2989 originally included this provision but deleted it from later versions.)
- Fiduciaries may rely on disclosures from service providers made pursuant to the new requirements and may treat such disclosures as sufficient for purposes of 404(a)(1)(B) as they relate to the requirements of 404(a)(1)(A)(ii). However, fiduciary must still take proper notice of any other disclosures provided. (H.R. 2989 bill does not have fiduciary protections.)

- Disclosure must be provided before the arrangement is entered into and within 60 days after the end of the plan year or calendar year thereafter. (H.R. 2989 requires new notice as soon as is reasonable after a material change and at least an annual notice if nothing changes.)
- Disclosure can be in dollars or percentage of assets or formula. H.R. 2989 requires dollars which can be estimated.
- Allows the U.S. Department of Labor (DOL) to make exceptions in regulations for categories of service providers who will not be subject to the disclosure requirements. (H.R. 2989 exempts service providers with compensation less than \$5,000.)

Disclosure from plan fiduciary to participants

- Requires an explanation of any fees and expenses that will be charged against the individual's account, those that may be charged against the individual's account on an individual basis (I read this as transaction-based fees), and whether fees of investment options are used to defray costs of plan administration or other plan costs.
- The description of investment options is very similar except that the Kline bill does not have a fee comparison chart, does not require division of fees into categories (H.R. 2989 has the four categories above further divided by four more categories) and simply requires disclosure of 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 a percentage. (H.R. 2989 requires dollar amounts, although they can be estimated.) The Kline bill requires generic dollar examples for \$1,000 invested. The bill also requires a description of the principal risks associated with the investment option while H.R. 2989 asks for a description of the level of risk.
- The Kline bill allows electronic disclosure but only if the individual is notified they can receive a paper copy upon request at no charge. (H.R. 2989 ties it initially to the current IRS requirements.)

Quarterly statements

- This is very similar to H.R. 2989 except the Kline bill does not require actual or estimated charges in dollar amounts that reduced the account. It does require any direct charges to the participants account be reflected on the statement.

Enforcement

- The Kline bill has the same \$100 per day penalty for failing to provide statements or notices to plan participants (per participant) but does not include the H.R. 2989 provision of \$1,000 per day penalty for service providers failing to provide the disclosures to fiduciaries.

Required investment option

- Kline bill does not require a particular investment option. (H.R. 2989 requires a passively managed fund that is either equities, bonds, or both.)

Effective date

- Kline bill directs DOL to issue proposed and final regulations within one year of enactment. H.R. 2989 requires it within 270 days of enactment.
- Provisions of Kline bill are effective either one year after the date of the issuance of the final regulations or to plan years beginning at least one year after the date of the issuance of final regulations. H.R. 2989 would be effective one year after enactment, only allowing 95 days to review and comply with the regulations, assuming DOL meets its deadline.