

110TH CONGRESS
1ST SESSION

S. _____

To amend the Employee Retirement Income Security Act of 1974 to provide special reporting and disclosure rules for individual account plans and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. HARKIN (for himself and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Employee Retirement Income Security Act of 1974 to provide special reporting and disclosure rules for individual account plans 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defined Contribution
5 Fee Disclosure Act of 2007”.

1 **SEC. 2. SPECIAL REPORTING AND DISCLOSURE RULES FOR**
2 **INDIVIDUAL ACCOUNT PLANS.**

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

6 (1) by redesignating section 111 (29 U.S.C.
7 1031) as section 113; and

8 (2) by inserting after section 110 (29 U.S.C.
9 1030) the following new sections:

10 “DISCLOSURE TO EMPLOYERS SPONSORING DEFINED
11 CONTRIBUTION PLANS

12 “SEC. 111. (a) SERVICE DISCLOSURE STATE-
13 MENT.—The plan administrator of an individual account
14 plan which includes a qualified cash or deferred arrange-
15 ment (or any other plan official with contracting authority
16 under the terms of the plan) may not enter into any con-
17 tract with any person for services to the plan unless such
18 plan administrator or other official has received, reason-
19 ably in advance of entering into the contract, a written
20 statement from such person which—

21 “(1) describes the services for the plan that will
22 be provided under the contract and identifies any
23 other entity that will be performing such services
24 under the contract (including any other affiliated or
25 third party service providers) pursuant to a direct
26 contract with the plan administrator (or any other

1 plan official with contracting authority under the
2 plan), and

3 “(2) provides the expected total annual charges
4 for the services for the plan that will be provided
5 under the contract including a reasonable allocation
6 of such total annual charges among all relevant com-
7 ponent charges.

8 For purposes of paragraph (2), the expected total annual
9 charges and each component charge may be provided in
10 the form of a dollar amount or in the form of a formula,
11 such as a percent of assets or a dollar charge. The form
12 of the such charges shall be consistent throughout the dis-
13 closure.

14 “(b) MINIMUM ALLOCATION REQUIREMENTS.—

15 “(1) IN GENERAL.—The allocation required
16 under subsection (a)(2) shall, pursuant to rules pre-
17 scribed by the Secretary, provide the following com-
18 ponent charges (to the extent such services for the
19 plan are provided under the contract):

20 “(A) Charges for investment management.

21 “(B) Charges for recordkeeping and ad-
22 ministration.

23 “(C) Sales charges, including commissions,
24 and charges for advisory services.

1 “(D) Any other charges not described in
2 subparagraphs (A), (B), and (C).

3 “(2) ESTIMATIONS.—To the extent the actual
4 charges or percentages required to be disclosed
5 under subsection (a)(2) are not known, the service
6 provider may provide a reasonable and representa-
7 tive estimate and shall indicate any such estimate as
8 being such an estimate. If any estimate of a material
9 charge provided under such subsection is subse-
10 quently determined to be materially incorrect, the
11 service provider shall provide the correct amount in
12 an amended report as soon as is reasonable after
13 such correct amount is known. Such amended report
14 or, in the case of a plan year in which no estimate
15 of a material charge has been determined to be ma-
16 terially incorrect, a report setting forth such fact,
17 shall be provided not less often than annually.

18 “(3) DEFINITIONS.—The Secretary shall pro-
19 vide by regulation definitions of the terms used in
20 this subsection.

21 “(c) DISCLOSURE OF FINANCIAL RELATIONSHIPS.—

22 “(1) IN GENERAL.—The statement required
23 under subsection (a) shall include a written disclo-
24 sure of—

1 “(A) any payments which the service pro-
2 vider receives from an unaffiliated person other
3 than the plan or plan sponsor in connection
4 with the provision of services to the plan, in-
5 cluding any payments received for including
6 certain investment options as part of a menu of
7 investment options,

8 “(B) any financial or personal relationship
9 with the plan sponsor, the plan, or another per-
10 son providing services to the plan, if such rela-
11 tionship results in the service provider deriving
12 any material benefit in addition to those al-
13 ready identified in the contract in connection
14 with its services to the plan, and

15 “(C) such other similar arrangements ben-
16 efitting the service provider as may be specified
17 by the Secretary.

18 “(2) INCLUSIONS.—Disclosures described under
19 paragraph (1)(B) shall include the extent to which
20 the service provider uses its own proprietary invest-
21 ment products. Disclosures under this subsection
22 may include a description of any applicable prohib-
23 ited transaction exemption under section 408. Noth-
24 ing in this subsection affects the operation of section
25 406 or 408.

1 “(d) DISCLOSURE OF IMPACT OF SHARE CLASSES.—
2 The statement required under subsection (a) shall, to the
3 extent applicable, disclose that the share prices of certain
4 mutual fund investments may be different from the share
5 price outside of the plan due to the existence of different
6 share classes and the basis for these differences.

7 “(e) DISCLOSURE OF CERTAIN ARRANGEMENTS IN
8 CONNECTION WITH FREE OR DISCOUNTED SERVICES OR
9 REBATES BY SERVICE PROVIDERS.—

10 “(1) IN GENERAL.—In any case in which serv-
11 ices are provided to the plan, or to the plan sponsor
12 in connection with the plan, by any service provider
13 without charge or for fees set at a discounted rate
14 or subject to rebate, the statement required under
15 this section shall include a description of the extent
16 to which, and the amount by which, consideration is
17 otherwise obtained by the service provider, the plan,
18 or the plan sponsor for such services, directly or in-
19 directly, by means of any charges against the ac-
20 count of the participant or beneficiary.

21 “(2) EXCEPTION.—The Secretary may provide
22 an exception to the requirement under paragraph (1)
23 for small plans, if such requirements are determined
24 by the Secretary to be overly burdensome on such
25 plans.

1 “(f) MODEL STATEMENT.—The Secretary shall pre-
2 scribe a model statement that may be used for purposes
3 of satisfying the requirements of this section.

4 “(g) UPDATING.—Each contract with a service pro-
5 vider entered into as described in subsection (a) shall re-
6 quire that the service provider provide to the plan adminis-
7 trator, during the term of the contract, an updated written
8 statement described in subsection (a)—

9 “(1) at least annually, and

10 “(2) as soon as practicable after any material
11 change in the information provided in the statement.

12 “(h) AVAILABILITY TO PARTICIPANTS.—The plan
13 sponsor or plan administrator shall provide to participants
14 and beneficiaries a copy of any statement received pursu-
15 ant to this section within 30 days after receipt of a written
16 request for such statement.

17 “(i) LIMITATION.—The requirements of this section
18 shall apply with respect to any contract for services only
19 if the total cost for such services under such contract
20 equals or exceeds the greater of—

21 “(1) \$5,000 per plan year, or

22 “(2) 0.01 percent of the value of plan assets as
23 of the last day of the preceding plan year.

1 “(j) QUALIFIED CASH OR DEFERRED ARRANGE-
2 MENT.—For purposes of this section, the term ‘qualified
3 cash or deferred arrangement’ includes—

4 “(1) an arrangement described in section
5 401(k)(2) of the Internal Revenue Code of 1986,
6 and

7 “(2) an annuity contract described in section
8 403(b) of such Code that is subject to this Act.

9 “(k) ELECTRONIC MEDIA.—Any disclosure required
10 under this section may be provided through an electronic
11 medium under rules prescribed by the Secretary. Such
12 rules shall be similar to those applicable under the Inter-
13 nal Revenue Code of 1986 with respect to notices to par-
14 ticipants in pension plans. The Secretary shall have the
15 authority to modify such rules as appropriate to take into
16 account new developments, including new forms of elec-
17 tronic media.

18 “(l) REGULATIONS REGARDING CERTAIN PROD-
19 UCTS.—The Secretary shall prescribe regulations identi-
20 fying any investment alternatives that may not have spe-
21 cific fees associated with the investment, including invest-
22 ment alternatives that provide a guaranteed rate of return.

23 “(m) PLAN ASSETS.—This section shall not apply to
24 any contract under which payment for services is made
25 in a manner that does not involve assets of the plan.

1 “INVESTMENT ELECTION INFORMATION

2 “SEC. 112. (a) ADVANCE NOTICE OF AVAILABLE IN-
3 VESTMENT OPTIONS.—The plan administrator of an indi-
4 vidual account plan which permits a participant or bene-
5 ficiary to exercise control over the assets in the account
6 of the participant or beneficiary shall provide to the partic-
7 ipant or beneficiary with respect to each plan year notice
8 of the investment options available for election under the
9 plan at least 15 days prior to—

10 “(1) the participant’s initial investment of any
11 contribution made on behalf of such participant, and

12 “(2) the effective date of any material change
13 in investment options.

14 In the case of an automatic contribution arrangement (as
15 defined in paragraphs (A) and (B) of section 514(e)(2)),
16 the notice required under paragraph (1) may be provided
17 within any reasonable period prior to such initial invest-
18 ment. With respect to the notice required under paragraph
19 (2), the Secretary shall prescribe regulations creating ex-
20 ceptions to the 15-day notice requirement in cir-
21 cumstances similar to those described in section
22 101(i)(2)(C).

23 “(b) INFORMATION INCLUDED IN NOTICE.—The no-
24 tice required under subsection (a) shall—

1 “(1) set forth, with respect to each available in-
2 vestment option—

3 “(A) the name of the option,

4 “(B) the investment objectives of the op-
5 tion,

6 “(C) the risk level associated with the op-
7 tion,

8 “(D) whether the option is a comprehen-
9 sive investment designed to achieve long-term
10 retirement security or should be combined with
11 other options,

12 “(E) whether the investment option is ac-
13 tively or passively managed,

14 “(F) a comparison to a nationally recog-
15 nized market-based index or other investment
16 option that is recommended in the retirement
17 industry as a benchmark investment option, as
18 identified by the Secretary,

19 “(G) where, and the manner in which, ad-
20 ditional plan- and option-specific and generally
21 available investment information regarding the
22 option may be obtained,

23 “(H) the historical return and percentage
24 fee assessed against amounts invested under the
25 option, and

1 “(I) include, together with any form nec-
2 essary for making the election of investment op-
3 tions, a statement explaining that investment
4 options should be selected not only on the basis
5 of the level of fees charged by each option but
6 also on the basis of careful consideration of
7 other key factors, including the risk level of the
8 option and historical returns by the option, and

9 “(2) include an investment comparison chart,
10 relating to all investment options available under the
11 plan, as provided in subsection (c).

12 “(c) INVESTMENT COMPARISON CHART.—

13 “(1) IN GENERAL.—

14 “(A) IN GENERAL.—The notice provided
15 under this section shall include an investment
16 comparison chart consisting of a comparison
17 chart of the potential service fees that could be
18 assessed against the account of the participant
19 or beneficiary with respect to the plan year.
20 The investment comparison chart shall be pre-
21 sented in a manner which is easily understood
22 by the average participant and include such in-
23 formation as the Secretary determines nec-
24 essary to permit participants and beneficiaries
25 to assess the potential services that could be

1 provided in connection with the investment op-
2 tions and the potential fees that could be as-
3 sessed against their accounts for such services.

4 “(B) FORM.—For purposes of this sub-
5 section, the potential service fees may be pro-
6 vided in the form of a dollar amount or in the
7 form of a formula, such as a percent of assets
8 or a dollar charge for each instance that a par-
9 ticipant or beneficiary enters into a specified
10 transaction. The form of the potential service
11 fees shall be consistent throughout the disclo-
12 sure.

13 “(2) CATEGORIZATION OF FEES.—The invest-
14 ment comparison chart shall provide information in
15 relation to 4 categories of fees paid by the partici-
16 pant or beneficiary, as follows:

17 “(A) Fees that vary depending on the in-
18 vestment options selected by the participant or
19 beneficiary, including expense ratios and invest-
20 ment-specific asset-based fees.

21 “(B) Fees that are assessed as a percent-
22 age of the total assets in the account of the
23 participant or beneficiary, regardless of the in-
24 vestment option selected. Such category shall
25 include a statement noting fees and expenses of

1 1 or more investment alternatives which pay for
2 services other than investment management and
3 a statement explaining that investment options
4 should be selected not only on the basis of the
5 level of fees charge by each option but also on
6 the basis of careful consideration of other key
7 factors, including the risk level of the option
8 and historical returns by the option.

9 “(C) Administration and transaction-based
10 fees, including plan loan origination fees, pos-
11 sible redemption fees, and possible surrender
12 charges, that are either automatically deducted
13 each year or result from certain transactions
14 engaged in by the participant or beneficiary.

15 “(D) Fees and expenses which may be de-
16 ducted from participants’ or beneficiaries’ ac-
17 counts and which are not reflected in subpara-
18 graphs (A), (B), and (C).

19 “(d) MODEL NOTICE.—The Secretary shall prescribe
20 a model notice that may be used for purposes of satisfying
21 the requirements of this section, including a model invest-
22 ment comparison chart.

23 “(e) ESTIMATIONS.—To the extent the actual charges
24 or percentages required to be disclosed under subsection
25 (b) or (c) are not known, the plan administrator may pro-

1 vide a reasonable and representative estimate and shall in-
2 dicate any such estimate as being such an estimate. If any
3 estimate of material information provided under this sub-
4 section is subsequently determined to be materially incor-
5 rect, the plan administrator shall provide the correct
6 amount in an amended report as soon as is reasonable
7 after such correct amount is known.

8 “(f) ELECTRONIC MEDIA.—Any disclosure required
9 under this section may be provided through an electronic
10 medium under rules prescribed by the Secretary. Such
11 rules shall be similar to those applicable under the Inter-
12 nal Revenue Code of 1986 with respect to notices to par-
13 ticipants in pension plans. The Secretary shall have the
14 authority to modify such rules as appropriate to take into
15 account new developments, including new forms of elec-
16 tronic media.

17 “(g) REGULATIONS REGARDING CERTAIN PROD-
18 UCTS.—The Secretary shall prescribe regulations identi-
19 fying any investment alternatives that may not have spe-
20 cific fees associated with them, including investment alter-
21 natives that provide a guaranteed rate of return. In addi-
22 tion, the Secretary shall prescribe regulations providing
23 for distinct reporting of investment alternatives that—

24 “(1) are difficult to value with reasonable cer-
25 tainty on an annual basis, or

1 tals for employer and totals for em-
2 ployee contributions,

3 “(dd) interest earnings on the ac-
4 count balance during the quarter,

5 “(ee) actual or estimated fees as-
6 sessed from the account during the
7 quarter, expressed in dollars or as an
8 expense ratio,

9 “(ff) the ending balance of the
10 account,

11 “(gg) the participant’s asset allo-
12 cation, categorized by investment op-
13 tion, including the current asset value,
14 the changes in the asset value during
15 the quarter, and the net return for
16 the quarter, expressed as an amount
17 and as a percentage, and

18 “(hh) the performance of the in-
19 vestment options selected by the par-
20 ticipant during the quarter as com-
21 pared to at least 1 nationally recog-
22 nized market-based index, as identi-
23 fied by the Secretary.

1 actions engaged in by the participant or
2 beneficiary, and

3 “(IV) fees and expenses that may be
4 deducted from participants’ or bene-
5 ficiaries’ accounts that are not reflected in
6 subclauses (I), (II), and (III).

7 For purposes of this clause, the service fees
8 may be provided in the form of a dollar amount
9 or in the form of a formula, such as a percent
10 of assets or a dollar charge for each instance
11 that a plan participant or beneficiary enters
12 into a specified transaction. The form of the
13 service fees shall be consistent throughout the
14 disclosure.

15 “(ii) OTHER INFORMATION.—The plan ad-
16 ministrator shall include in such quarterly pen-
17 sion benefit statement information relating to
18 the historical return and risk of each invest-
19 ment option and the estimated amount that the
20 participant needs to save each month to retire
21 at age 65.

22 “(iii) ESTIMATIONS.—To the extent that
23 the actual charges or percentages required to be
24 disclosed under this subparagraph are not
25 known, the plan administrator may provide a

1 reasonable and representative estimate and
2 shall indicate any such estimate as being such
3 an estimate. If any estimate of material infor-
4 mation provided under this clause is subse-
5 quently determined to be materially incorrect,
6 the plan administrator shall provide the correct
7 amount in an amended statement as soon as is
8 reasonable after such correct amount is known.

9 “(iv) MODEL STATEMENT.—The Secretary
10 shall prescribe a model quarterly pension ben-
11 efit statement that may be used for purposes of
12 satisfying the requirements of this subpara-
13 graph or subparagraph (B)(ii).

14 “(v) EXCEPTION FOR SMALL EMPLOY-
15 ERS.—Any plan described in paragraph
16 (1)(A)(i) that has fewer than 100 participants
17 and beneficiaries may provide the pension ben-
18 efit statement under such paragraph on an an-
19 nual rather than a quarterly basis.”; and

20 (2) by adding at the end the following new sub-
21 sections:

22 “(d) ASSISTANCE TO SMALL EMPLOYERS.—The Sec-
23 retary shall make available to small employers—

24 “(1) educational and compliance materials de-
25 signed to assist such employers in selecting and

1 monitoring service providers for individual account
2 plans, investment options under such plans, and fees
3 relating to such options, without any bias as to the
4 size of the service provider and the way any par-
5 ticular service provider delivers plan services, and

6 “(2) services designed to assist small employers
7 in finding and understanding affordable investment
8 options for such plans.

9 “(e) ASSISTANCE TO PLAN SPONSORS AND PLAN
10 PARTICIPANTS AND BENEFICIARIES.—The Secretary shall
11 provide assistance to plan sponsors of individual account
12 plans and participants and beneficiaries under such plans
13 with any questions or problems regarding compliance with
14 the requirements of this section.

15 “(f) ELECTRONIC MEDIA.—Any disclosure required
16 under this section may be provided through an electronic
17 medium under rules prescribed by the Secretary. Such
18 rules shall be similar to those applicable under the Inter-
19 nal Revenue Code of 1986 with respect to notices to par-
20 ticipants in pension plans. The Secretary shall have the
21 authority to modify such rules as appropriate to take into
22 account new developments, including new forms of elec-
23 tronic media.

24 “(g) REGULATIONS REGARDING CERTAIN PROD-
25 UCTS.—The Secretary shall prescribe regulations identi-

1 fying any investment alternatives that may not have fees
2 associated with them, including investment alternatives
3 that provide a guaranteed rate of return. In addition, the
4 Secretary shall prescribe regulations providing for distinct
5 reporting of investment alternatives that—

6 “(1) are difficult to value with reasonable cer-
7 tainty on an annual basis, or

8 “(2) do not have generally accepted benchmarks
9 for comparison purposes.”.

10 (c) ENFORCEMENT.—Section 502(c)(7) of such Act
11 (29 U.S.C. 1132(c)(7)) is amended by striking “section
12 101.” and inserting “section 101, or to provide a state-
13 ment to participants and beneficiaries or to plan adminis-
14 trators in accordance with section 105(a)(2)(B)(ii), 111,
15 or 112.”

16 (d) CONFORMING AMENDMENT.—The table of con-
17 tents in section 1 of such Act, as amended by section 2,
18 is amended by striking the item relating to section 111
19 and inserting the following new items:

“Sec. 111. Disclosure to employers sponsoring defined contribution plans.

“Sec. 112. Investment election information.

“Sec. 113. Repeal and effective date.”.

20 (e) EFFECTIVE DATE.—

21 (1) FINAL REGULATIONS.—The Secretary of
22 Labor shall issue final regulations to carry out the
23 amendments made by this section not later than De-
24 cember 31, 2008.

1 (2) APPLICATION OF PROVISIONS.—The amend-
2 ments made by this section shall apply to plan years
3 beginning after December 31, 2009.

4 **SEC. 3. ANNUAL PUBLICATION OF SURVEY DATA.**

5 (a) IN GENERAL.—Part 1 of subtitle B of title I of
6 the Employee Retirement Income Security Act of 1974
7 (29 U.S.C. 1021 et seq.), as amended by section 2, is
8 amended—

9 (1) by redesignating section 113 as section 114;
10 and

11 (2) by inserting after section 112 the following
12 new section:

13 “ANNUAL PUBLICATION OF SURVEY DATA

14 “SEC. 113. On an annual basis, the Secretary shall
15 survey and publish, on the Internet website of the Depart-
16 ment of Labor, data on plan investment options and me-
17 dian fee levels of index, lifecycle investment options, bal-
18 anced investment options, and other investment options as
19 the Secretary deems relevant.”.

20 (b) CONFORMING AMENDMENT.—The table of con-
21 tents in section 1 of such Act is amended by striking the
22 item relating to section 113 and inserting the following
23 new items:

“Sec. 113. Investment election information.

“Sec. 114. Repeal and effective date.”.

1 **SEC. 4. ENFORCEMENT COORDINATION AND REVIEW BY**
2 **THE DEPARTMENT OF LABOR.**

3 (a) IN GENERAL.—Section 502 of the Employee Re-
4 tirement Income Security Act of 1974 (29 U.S.C. 1132)
5 is amended by adding at the end the following new sub-
6 section:

7 “(n) ENFORCEMENT COORDINATION OF CERTAIN
8 DISCLOSURE REQUIREMENTS AND REVIEW BY THE DE-
9 PARTMENT OF LABOR.—

10 “(1) IN GENERAL.—

11 “(A) NOTIFICATION AND ACTION.—The
12 Secretary shall notify the applicable regulatory
13 authority (including, as determined appropriate
14 by the Secretary, the Securities and Exchange
15 Commission or the Comptroller of the Cur-
16 rency) in any case in which the Secretary deter-
17 mines that a service provider is engaged in a
18 pattern or practice that precludes compliance
19 by plan administrators with section 111 or 112.
20 The Secretary shall, in consultation with the
21 applicable authority, take such timely enforce-
22 ment action under this title as is necessary to
23 assure that such pattern or practice ceases and
24 desists and assess any appropriate penalties.

25 “(B) DISSEMINATION.—The Secretary
26 shall widely disseminate to employee pension

1 benefit plans covered by this title and their par-
2 ticipants and beneficiaries the identity of any
3 service providers with respect to such plans
4 found to be engaged in any pattern or practice
5 that precludes compliance by plan administra-
6 tors with section 111 or 112 and the particulars
7 of such pattern or practice. Prior to the dis-
8 semination of the identity of any service pro-
9 viders identified and determined by the Sec-
10 retary to be engaged in such a pattern or prac-
11 tice, such service provider shall receive a notice
12 of intent to disseminate, an opportunity to re-
13 quest an administrative hearing, and a timely
14 appeal to the Secretary.

15 “(C) REGULATIONS.—The Secretary shall
16 issue regulations for the administration and en-
17 forcement of this subsection.

18 “(2) ANNUAL AUDIT OF REPRESENTATIVE SAM-
19 PLING OF INDIVIDUAL ACCOUNT PLANS.—The Sec-
20 retary shall annually audit a representative sampling
21 of individual account plans covered by this title to
22 determine compliance with the requirements of sec-
23 tions 111 and 112. The Secretary shall annually re-
24 port the results of such audit and any related rec-
25 ommendations of the Secretary to the Committee on

1 Education and Labor of the House of Representa-
2 tives and the Committee on Health, Education,
3 Labor, and Pensions of the Senate.”.

4 (b) REVIEW AND REPORT TO THE CONGRESS BY
5 SECRETARY OF LABOR RELATING TO REPORTING AND
6 DISCLOSURE REQUIREMENTS.—

7 (1) STUDY.—As soon as practicable after the
8 date of the enactment of this Act, the Secretary of
9 Labor shall review the reporting and disclosure re-
10 quirements of part 1 of subtitle B of this title and
11 related provisions of the Pension Protection Act of
12 2006.

13 (2) REPORT.—Not later than 18 months after
14 the date of the enactment of this Act, the Secretary
15 shall make such recommendations as the Secretary
16 considers appropriate to the appropriate committees
17 of the Congress to consolidate, simplify, standardize,
18 and improve the applicable reporting and disclosure
19 requirements so as to simplify reporting for em-
20 ployee pension benefit plans and ensure that needed
21 understandable information is provided to partici-
22 pants and beneficiaries of such plans.