

AMENDMENT TO H.R. 2989

OFFERED BY MR. KLINE OF MINNESOTA

Strike title I and insert the following (and make necessary conforming changes to the table of contents):

**1 TITLE I—DISCLOSURE REGARD-
2 ING COMPENSATION FOR
3 SERVICES TO PENSION PLANS**

**4 SEC. 101. DISCLOSURE TO PLAN ADMINISTRATORS OF DE-
5 FINED BENEFIT AND DEFINED CONTRIBU-
6 TION PENSION PLANS REGARDING COM-
7 PENSATION FOR SERVICES.**

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

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

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

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

17 “(i) IN GENERAL.—A contract or arrange-
18 ment with a service provider for services de-
19 scribed in subparagraph (A) shall not be treat-

1 ed as reasonable for purposes of subparagraph
2 (A) unless, under such arrangement, the service
3 provider is required to disclose to the plan ad-
4 ministrators (or any other plan official with con-
5 tracting authority under the terms of the plan)
6 the services to be provided and the total com-
7 pensation to be received by the service provider
8 in connection with the arrangement to provide
9 services to the plan. The disclosure of total
10 compensation shall include a disclosure of the
11 direct compensation received by the service pro-
12 vider from the plan or plan sponsor and a dis-
13 closure of any indirect compensation received,
14 in connection with the arrangement to provide
15 services to the plan, by the service provider
16 from a person who is not an affiliate.

17 “(ii) DISCLOSURE OF TOTAL COMPENSA-
18 TION.—In any case in which a service provider
19 and its affiliates provide multiple services to a
20 plan, or make available plan investment options,
21 under a single arrangement, the service pro-
22 vider that has entered into the arrangement to
23 provide services to the plan shall disclose to the
24 plan administrator the total compensation pay-
25 able by the plan or plan sponsor in connection

1 with such arrangement (including, for each in-
2 vestment option made available under the ar-
3 rangement, the total expense ratio or similar
4 measure of the total fees of the investment op-
5 tion).

6 “(iii) RELIANCE BY SERVICE PROVIDERS
7 AND FIDUCIARIES.—

8 “(I) To the extent any of the informa-
9 tion required to be disclosed by a service
10 provider under this subparagraph is given
11 to the service provider by a person that is
12 not an affiliate and that is regulated by
13 the Federal Government or a State, the
14 service provider may rely on the complete-
15 ness and accuracy of such information un-
16 less the service provider knows or has rea-
17 son to know that the information is inac-
18 curate or incomplete.

19 “(II) A fiduciary may rely on disclo-
20 sures made pursuant to the requirements
21 of this subsection, with respect to a plan
22 service to which the disclosures relate, for
23 purposes of satisfying the fiduciary’s obli-
24 gations under section 404(a)(1)(B) as they
25 relate to the requirements of section

1 404(a)(1)(A)(ii), and for purposes of deter-
2 mining whether the compensation paid for
3 services rendered to a plan are reasonable
4 for purposes of section 408(b)(2) and may
5 treat such disclosures as sufficient for such
6 purposes. Nothing in this subclause shall
7 be construed to exempt a fiduciary from
8 taking proper notice of any other disclo-
9 sures that may be made by the service pro-
10 vider.

11 “(iv) TIMING OF DISCLOSURE.—The serv-
12 ice provider shall provide the disclosure re-
13 quired by this subparagraph prior to or at the
14 time the arrangement is entered into and within
15 60 days after the end of each plan year or cal-
16 endar year thereafter while such arrangement
17 remains in effect. The disclosure may be pro-
18 vided electronically, but only if the adminis-
19 trator may obtain a paper copy upon request.

20 “(v) FORM OF DISCLOSURE.—A service
21 provider may provide the disclosure required
22 under this subparagraph, regarding any matter
23 in connection with the amount of fees or com-
24 pensation received for any service, in the form
25 of a reasonable and representative estimate, if

1 the service provider indicates any such estimate
2 as being such an estimate and discloses the
3 basis for such estimate. For purposes of disclo-
4 sure under this subparagraph, fees and ex-
5 penses may be expressed as a dollar amount, a
6 percentage of assets, a formula, or other meth-
7 od sufficient to allow the fiduciary to evaluate
8 the total compensation paid under the arrange-
9 ment.

10 “(vi) REGULATORY AUTHORITY.—The Sec-
11 retary shall issue regulations implementing this
12 subparagraph. Such regulations shall require
13 the disclosure to be concise, written in a man-
14 ner designed to be understood by the typical
15 plan administrator, and calculated to assist the
16 plan administrator in comparing the aggregate
17 compensation received by different service pro-
18 viders for providing similar services and deter-
19 mining what compensation is paid directly or
20 indirectly by the plan. Such regulations may
21 provide for categories of service providers who
22 shall not be subject to this subparagraph if the
23 Secretary determines that such service pro-
24 viders do not provide significant services mer-

1 iting the disclosure required by this subpara-
2 graph.

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

9 **SEC. 102. DISCLOSURE TO PARTICIPANTS AND BENE-**
10 **FICIARIES OF INDIVIDUAL ACCOUNT PLANS**
11 **REGARDING INVESTMENTS AND FEES.**

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

15 (1) by redesignating section 111 (29 U.S.C.
16 1031) as section 112; and

17 (2) by inserting after section 110 (29 U.S.C.
18 1030) the following new section:

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

21 “(a) **DISCLOSURE REQUIREMENTS.**—

22 “(1) **ADVANCE NOTICE OF FEES AND AVAIL-**
23 **ABLE INVESTMENT OPTIONS.**—The plan adminis-
24 trator of an individual account plan which permits
25 a participant or beneficiary to exercise control over

1 the assets in the account of the participant or bene-
2 ficiary shall provide to the participant or bene-
3 ficiary—

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

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

9 The notice shall be provided at least 10 business
10 days prior to the earliest date provided for under the
11 plan for the participant’s initial investment of any
12 contribution made on behalf of such participant and
13 at least 10 business days prior to the effective date
14 of any material change in the information. In the
15 case of a plan that provides for immediate eligibility
16 or that contains an automatic contribution arrange-
17 ment (as defined in subparagraphs (A) and (B) of
18 section 514(e)(2)), the initial notice may be provided
19 within any reasonable period prior to such initial in-
20 vestment. With respect to the notice required under
21 this paragraph, the Secretary shall prescribe regula-
22 tions creating exceptions to the 10-day notice re-
23 quirement in circumstances similar to those de-
24 scribed in section 101(i)(2)(C), and such notice may

1 be combined with any similar notice that may be re-
2 quired under section 404(c)(5) or under this section.

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

5 “(A) include an explanation of any fees
6 and expenses for plan administrative services
7 that will be charged against the individual ac-
8 count of the participant or beneficiary,

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

16 “(C) if fees of investment options are used
17 to defray costs of plan administration or other
18 plan costs, include a statement describing the
19 fact that fees of investments defray other plan
20 costs.

21 “(3) DESCRIPTION OF INVESTMENT OPTIONS.—
22 The notice required under paragraph (1)(B) shall—

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

1 “(i) the name of the investment op-
2 tion,

3 “(ii) the investment objectives and
4 principal investment strategies of the in-
5 vestment option,

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

8 “(iv) the fees associated with the in-
9 vestment option, including fees for pur-
10 chase and sale of the option and the total
11 annual operating expenses of the option ex-
12 pressed as percentage,

13 “(v) the historical return of the in-
14 vestment option derived net of fees and ex-
15 penses for the previous year, 5 years, and
16 10 years (or since inception if later),

17 “(vi) whether the investment option is
18 diversified among various classes of assets
19 so as to minimize the risk of large losses
20 or should be combined with other invest-
21 ment options so as to obtain such diver-
22 sification,

23 “(vii) whether the investment option
24 is actively managed or passively managed
25 in relation to an index and the difference

1 between active management and passive
2 management,

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

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

15 “(C) be presented in a manner which is de-
16 signed to be understood by the typical partici-
17 pant and include such information as the Sec-
18 retary determines necessary to permit partici-
19 pants and beneficiaries to assess the services
20 for which charges will or could be assessed
21 against the account, and

22 “(D) include, for each investment option,
23 under regulations issued by the Secretary, an il-
24 lustrative example showing the estimated an-

1 nual dollar fees and expenses expressed as a
2 percentage of assets for each \$1,000 invested.

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

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

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

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

1 (b) QUARTERLY BENEFIT STATEMENTS.—Section
2 105 of such Act (29 U.S.C. 1025) is amended—

3 (1) in subsection (a)(2)—

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

6 (B) in subparagraph (B)(ii)—

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

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

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

13 “(IV) with respect to the portion
14 of a participant’s account for which
15 the participant has the right to direct
16 the investment of assets, the informa-
17 tion described in subparagraph (C).”;
18 and

19 (C) by inserting after subparagraph (B)
20 the following new subparagraphs:

21 “(C) PERIODIC ACCOUNT INFORMATION
22 FOR PARTICIPANTS AND BENEFICIARIES.—For
23 purposes of subparagraph (B)(ii)(IV), the infor-
24 mation described in this subparagraph consists
25 of the following, indicating the portion of each

1 amount described in clauses (i) through (vii) at-
2 tributable to each investment option elected in
3 connection with the participant's account:

4 “(i) the starting balance of the par-
5 ticipant's account,

6 “(ii) contributions made during the
7 quarter, itemizing separately totals for em-
8 ployer and totals for employee contribu-
9 tions,

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

13 “(iv) any direct charges to the partici-
14 pant or beneficiary's account during the
15 quarter,

16 “(v) the ending balance of the ac-
17 count,

18 “(vi) the participant's asset allocation
19 to each investment option as of the end of
20 the quarter, expressed as an amount and
21 as a percentage, and

22 “(vii) a copy of the most recently up-
23 dated information described in subpara-
24 graphs(A)(iv), (A)(v), and (D) of section
25 111(a)(3).

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

8 “(E) MODEL STATEMENT.—The Secretary
9 shall prescribe a model pension benefit state-
10 ment that may be used for purposes of satis-
11 fying the requirements of this subparagraph
12 and subparagraph (B)(ii).

13 “(F) ANNUAL COMPLIANCE FOR SMALL
14 PLANS AND WITH RESPECT TO CERTAIN INFOR-
15 MATION.—In the case of a plan providing for
16 investment as described in paragraph
17 (1)(A)(i)—

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

23 “(ii) the plan may comply with the re-
24 quirements of subparagraph (B)(ii)(IV) on

1 an annual rather than a quarterly basis.”;

2 and

3 (2) by adding at the end the following new sub-
4 sections:

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

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

19 (c) ENFORCEMENT.—Section 502(c)(7) of such Act
20 (29 U.S.C. 1132(c)(7)) is amended—

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

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

24 “(B)(i) Any plan administrator or other person who
25 fails or refuses to provide a statement to participants and

1 beneficiaries in accordance with section 105(a)(2)(B)(ii)
2 or 111(b) shall be assessed by the Secretary a civil penalty
3 of up to \$100 a day from the date of the failure or refusal
4 to the date on which such statement or notice is so pro-
5 vided.

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

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

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

18 “(iii) No penalty shall be assessed under this sub-
19 paragraph against any person solely because the person
20 relied upon information provided to such person by an un-
21 affiliated person which is regulated by the Federal Govern-
22 ment or a State, unless the person knows or has reason
23 to know that the information is inaccurate or incom-
24 plete.”.

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

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

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

5 **SEC. 103. EFFECTIVE DATE.**

6 The Secretary shall issue proposed and then final reg-
7 ulations under sections 101 and 102 within one year after
8 the date of the enactment of this Act. The amendments
9 made by section 101 shall apply to contracts entered into
10 in plan years beginning at least one year after the date
11 of the issuance of the final regulations. The amendments
12 made by section 102 shall apply to plan years beginning
13 at least one year after the date of the issuance of the final
14 regulations.

