

Summary of The Defined Contribution Plan Fee Transparency Act of 2007

By Rep. Richard Neal

Adds new Section 4980H to the Internal Revenue Code requiring notice to plan participants and taxes for failure to comply.

New Expanded Disclosures to Retirement Plan Participants. The bill requires employers to provide employees with two separate disclosures regarding plan investments and fees – at enrollment and annually.

- **Enrollment Notice.** Before participants invest in a plan, the bill requires that for each of the plan's investment alternatives, the employer must disclose the alternative's objective and investment manager, its risk and return characteristics and its historic rates of return. The employer must indicate whether the alternative is passively managed (as with an index fund) or actively managed and whether or not the alternative is a single-alternative investment solution (such as a lifecycle or target retirement date fund). On fees, the bill would require employers to disclose the asset-based fees for each investment alternative, whether such fees pay for services beyond investment management (such as plan administration) and whether there are additional charges for buying or selling the particular alternative (such as redemption fees). Participants must be provided with information about any separate fees they will be charged for plan administration as well as a notice that certain plan services they may decide to use may have separate charges (e.g., investment advice programs, brokerage windows, plan loans). Accompanying these disclosures would be a statement that participants should not select investments based solely on fees but based on careful consideration of a range of factors including the alternatives' risk level, returns and investment objectives.
- **Annual Notice.** The bill requires employers every year to provide participants with information about the investments selected and the fees applicable to their accounts. This annual notice would describe which investment alternatives the individual participant was invested in, what percentage of the participant's total account each alternative represented, the risk and return characteristics of each such alternative, whether such alternatives were passively or actively managed and the historical returns for each such alternative. The statement would also summarize for participants what asset classes their account is invested in, with percentage breakdowns. On fees, the annual notice must describe asset-based and any sales charges for the alternatives the participant has selected, any separate charges for plan administration and any deductions for participant-initiated services. The notice must tell participants how to access investment characteristic and fee information for alternatives in which they are not invested to assist those who may want to change investments.
- **Directive to Treasury on Implementation Issues.** The bill directs the Secretary of Treasury to develop model enrollment notices and annual notices, to issue regulations that will allow for maximum use of electronic technologies in delivering the new notices and to issue regulations regarding the enrollment notice in automatic enrollment situations.
- **Failure to Comply.** Employers that fail to provide participant notices will face a tax of \$100 a day per failure with annual exposure capped at \$500,000.

Adds a new Section 4980I to the Internal Revenue Code requiring notice to plan administrators and taxes for failure to comply.

New Expanded Disclosures by Retirement Plan Service Providers. The bill requires service providers to provide various fee information to plan administrators in advance of a contract for plan services. Providers must give the employer an estimate of total fees and a detailed and itemized list of all the services to be provided under the contract. Providers that offer multiple bundled services must separate the fees charged under the contract into fees for investment management, fees for administration and recordkeeping and fees paid to intermediaries or other third-parties. Providers must also disclose whether they expect to receive payments from third-parties in connection with providing services to the plan (so-called “revenue-sharing”), and if so, must name those parties and the amount expected to be received from each. Plan service providers must also provide this detailed disclosure statement to employers every year the contract is in place and following any material modification of the contract. Employers must make such statements available to plan participants via web posting and upon written request.

- **Failure to Comply.** Service providers that fail to provide the notices to plan administrators will face a tax of \$1,000 a day per failure with annual exposure capped at \$1,000,000.

New Disclosure Requirements Apply to All Tax-Preferred Defined Contribution Plans. The bill will impose these new disclosure requirements on all tax-preferred, participant-directed defined contribution plans, including 401(k) plans, 403(b) plans and governmental 457(b) plans.