

## Summary of The Defined Contribution Plan Fee Transparency Act of 2009

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 quarterly.

- **Enrollment Notice.** Before employees 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 returns over the prior 1, 5 and 10-year periods in comparison to a benchmark. The employer must indicate whether the alternative is passively managed (as with an index fund) or actively managed, the difference between these two investment styles, 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 requires employers to disclose the annual operating expenses for each investment alternative (together with a translation of these asset-based fees into illustrative dollar amounts), 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. The bill requires all this information about plan investments to be provided to employees annually as well.
- **Quarterly Notices.** The bill requires employers every quarter to provide participants with information about the investments they have selected and the fees applicable to their accounts. These quarterly notices 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, and whether such alternatives were passively or actively managed. The statement would also summarize for participants what asset classes their account is invested in, with percentage breakdowns. On fees, the quarterly notices must describe the annual operating expenses for each investment alternative (together with a translation of these asset-based fees into illustrative dollar amounts), 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 and quarterly notices and to issue regulations that will (1) allow for maximum use of electronic technologies in delivering retirement plan notices, (2) address delivery of the enrollment notice in automatic enrollment and immediate eligibility situations, (3) provide guidelines for the selection of benchmarks against which the investment performance of plan investment alternatives will be compared, and (4) evaluate the need for separate fee disclosure rules for products with guaranteed rates of return.
- **Failure to Comply.** Employers that fail to provide participant notices will face a tax of \$100 a day per failure per participant with annual exposure capped at the lesser of \$500,000 or 10% of the assets in the plan. Employers that have a failure despite exercising reasonable diligence to provide the notices and that promptly self-correct will not be liable for the tax.

**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 detailed information about proposed fees and service offerings to plan administrators in advance of a contract for plan services. Providers must give the employer an estimate of total fees, a detailed and itemized list of all the services to be provided under the contract, and a schedule of any transaction charges that participants may face. Providers that offer multiple bundled services must separate the fees charged under the contract into fees for investment management and fees for administration and recordkeeping and must also disclose any amounts that will be paid to intermediaries or other third-parties. In order to highlight any potential conflicts of interest, 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. Providers will likewise have to disclose whether they may benefit from the offering of proprietary investment products or those of third parties and must tell employers if the investment products offered to the plan are available at other price levels. Plan service providers must also provide this detailed disclosure statement to employers every year the contract is in place and prior to any material modification of the contract.

- **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 the lesser of \$1,000,000 or 10% of the assets in the plan. Service providers that have a failure despite exercising reasonable diligence to provide the notices and that promptly self-correct will not be liable for the tax.

**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.