

110TH CONGRESS
1ST SESSION

H. R. 3765

To amend the Internal Revenue Code of 1986 to provide transparency with respect to fees and expenses charged to participant-directed defined contribution plans.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 4, 2007

Mr. NEAL of Massachusetts (for himself and Mr. LARSON of Connecticut) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide transparency with respect to fees and expenses charged to participant-directed defined contribution plans.

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 Plan Fee Transparency Act of 2007”.

6 **SEC. 2. DISCLOSURE TO PARTICIPANTS.**

7 (a) IN GENERAL.—Chapter 43 of the Internal Rev-
8 enue Code of 1986 (relating to qualified pension, etc.

1 plans) is amended by adding at the end the following new
2 section:

3 **“SEC. 4980H. FAILURE TO PROVIDE NOTICE TO PARTICI-**
4 **PANTS OF PLAN FEE INFORMATION.**

5 “(a) IMPOSITION OF TAX.—There is hereby imposed
6 a tax on the failure of any plan administrator of an appli-
7 cable defined contribution plan to meet the requirements
8 of subsection (e) with respect to any participant or bene-
9 ficiary.

10 “(b) AMOUNT OF TAX.—

11 “(1) IN GENERAL.—The amount of the tax im-
12 posed by subsection (a) on any failure with respect
13 to any participant or beneficiary shall be \$100 for
14 each day in the noncompliance period.

15 “(2) NONCOMPLIANCE PERIOD.—For purposes
16 of paragraph (1), the noncompliance period with re-
17 spect to a failure is the period beginning on the date
18 the plan administrator failed to provide notice to
19 participants and beneficiaries in accordance with
20 subsection (e) and ending on the date the notice to
21 which the failure relates is provided or the failure is
22 otherwise corrected.

23 “(3) SEPARATE TREATMENT OF VIOLATIONS.—
24 For purposes of paragraph (1), each violation with

1 respect to any single participant or beneficiary shall
2 be treated as a separate violation.

3 “(c) LIMITATIONS ON AMOUNT OF TAX.—

4 “(1) ANNUAL AGGREGATE LIMITATION.—The
5 total amount of tax imposed by this section with re-
6 spect to any plan administrator for any plan year
7 shall not exceed \$500,000.

8 “(2) TAX NOT TO APPLY TO FAILURES COR-
9 RECTED WITHIN 90 DAYS.—No tax shall be imposed
10 by subsection (a) on any failure if—

11 “(A) any person subject to liability for the
12 tax under subsection (a) exercised reasonable
13 diligence to meet the requirements of subsection
14 (e), and

15 “(B) such person provides the notice de-
16 scribed in subsection (e) during the 90-day pe-
17 riod beginning on the date such person knew, or
18 exercising reasonable diligence would have
19 known, that such failure existed.

20 “(3) WAIVER BY SECRETARY.—In the case of a
21 failure which is due to reasonable cause and not to
22 willful neglect, the Secretary shall waive part or all
23 of the tax imposed by subsection (a) to the extent
24 that the payment of such tax would be excessive or
25 otherwise inequitable relative to the failure involved.

1 “(d) LIABILITY FOR TAX.—The following shall be lia-
2 ble for the tax imposed by subsection (a):

3 “(1) In the case of a plan other than a multi-
4 employer plan, the employer maintaining the plan.

5 “(2) In the case of a multiemployer plan, the
6 plan.

7 “(e) NOTICE OF FEES AND EXPENSES TO PARTICI-
8 PANTS.—

9 “(1) IN GENERAL.—The requirements of this
10 subsection are met if the plan administrator of an
11 applicable defined contribution plan meets the re-
12 quirements of paragraphs (2), (3), (4), and (5).

13 “(2) ENROLLMENT NOTICE.—

14 “(A) IN GENERAL.—A plan administrator
15 meets the requirements of this paragraph if
16 each employee eligible to participate is, before
17 the initial investment of any contribution made
18 on behalf of such employee, given a written ex-
19 planation of the plan’s fees and expenses, the
20 key characteristics of the plan’s investment al-
21 ternatives and an explanation of the manner for
22 making elections among investment alter-
23 natives.

24 “(B) WRITTEN EXPLANATION SAFE HAR-
25 BOR.—An explanation shall be treated as satis-

1 fying the written explanation requirement of
2 subparagraph (A) if such explanation is in writ-
3 ing and provides a description, to the extent ap-
4 plicable, of the following:

5 “(i) The investment alternatives avail-
6 able to a participant under the plan and
7 the method for a participant making in-
8 vestment elections.

9 “(ii) With respect to each investment
10 alternative—

11 “(I) a general description of the
12 alternative’s investment objectives,
13 risk and return characteristics, his-
14 toric rates of return, and the name of
15 the alternative’s investment manager;

16 “(II) whether the alternative is
17 actively or passively managed; and

18 “(III) whether the alternative is
19 designed to be a comprehensive,
20 stand-alone investment for retirement
21 that provides varying degrees of long-
22 term appreciation and capital preser-
23 vation through a mix of equity and
24 fixed income exposures.

1 “(iii) Annual asset-based fees for each
2 investment alternative which reduce the in-
3 vestment alternative’s rate of return and,
4 if applicable, a statement that the fees and
5 expenses of one or more investment alter-
6 natives pay for services other than invest-
7 ment management.

8 “(iv) Annual fees and expenses for ad-
9 ministration and recordkeeping which are
10 deducted from (or reduce the income of)
11 participants’ or beneficiaries’ accounts and
12 which are not reflected in clause (iii), in-
13 cluding a statement of the method used to
14 allocate fees and expenses described in this
15 clause to participants’ and beneficiaries’
16 accounts.

17 “(v) Fees and expenses in connection
18 with purchases or sales of interests in in-
19 vestment alternatives.

20 “(vi) The existence of fees and ex-
21 penses associated with participant-initiated
22 transactions or services which may be de-
23 ducted from participants’ or beneficiaries’
24 accounts other than fees and expenses de-
25 scribed in clause (v) and the method that

1 participants and beneficiaries may utilize
2 to obtain additional information regarding
3 such fees and expenses.

4 “(vii) Fees and expenses which may
5 be deducted from participants’ or bene-
6 ficiaries’ accounts and which are not re-
7 flected in clauses (iii) through (vi).

8 “(viii) A statement explaining that in-
9 vestment alternatives should be selected
10 not only on the basis of the level of fees
11 charged by each alternative but also on the
12 basis of consideration of other key factors,
13 including the alternative’s investment ob-
14 jective, level of risk, historic rates of return
15 and the participant’s personal investment
16 objective.

17 “(3) ANNUAL NOTICE.—

18 “(A) IN GENERAL.—A plan administrator
19 meets the requirements of this paragraph if
20 each participant and beneficiary is, within 90
21 days following the end of each plan year, given
22 a written explanation describing the investment
23 alternatives that the participant or beneficiary
24 had selected as of the last day of the plan year

1 and the key characteristics of such investment
2 alternatives.

3 “(B) WRITTEN EXPLANATION SAFE HAR-
4 BOR.—An explanation shall be treated as satis-
5 fying the written explanation requirement of
6 subparagraph (A) if such explanation is in writ-
7 ing and provides a description, to the extent ap-
8 plicable, of the following:

9 “(i) The different asset classes that
10 the participant’s or beneficiary’s account is
11 invested in and the percentage of the ac-
12 count allocated to each asset class.

13 “(ii) The total fees and expenses de-
14 scribed in paragraph (2)(B)(vi) which were
15 deducted from the participant’s or bene-
16 ficiary’s account.

17 “(iii) Fees and expenses for adminis-
18 tration and recordkeeping that were de-
19 ducted from a participant’s or beneficiary’s
20 account (to the extent not disclosed in
21 clause (ii));

22 “(iv) With respect to each investment
23 alternative selected by the participant or
24 beneficiary, the following:

1 “(I) The percentage of the par-
2 ticipant’s or beneficiary’s account that
3 is invested in such alternative.

4 “(II) Whether the investment al-
5 ternative is actively or passively man-
6 aged.

7 “(III) A general statement of the
8 investment alternative’s risk and re-
9 turn characteristics.

10 “(IV) Annual asset-based fees for
11 each investment alternative which re-
12 duced the investment alternative’s
13 rate of return.

14 “(V) Historic rates of return for
15 the investment alternative over the
16 immediately preceding 1, 5, and 10-
17 year periods. For this purpose, the pe-
18 riods may be calendar or plan years.

19 “(VI) Fees and expenses in con-
20 nection with purchases or sales of in-
21 terests in investment alternatives
22 which have been or may be deducted
23 from the participant’s or beneficiary’s
24 account.

1 “(v) The statement described in para-
2 graph (2)(B)(viii).

3 “(vi) A statement regarding how a
4 participant or beneficiary may access the
5 information required to be disclosed under
6 paragraph (2).

7 “(4) SERVICE PROVIDER DISCLOSURE.—The re-
8 quirements of this paragraph are met if the plan ad-
9 ministrator—

10 “(A) provides to participants and bene-
11 ficiaries a copy of any statement received pur-
12 suant to section 4980I within 30 days after re-
13 ceipt of a written request for such statement,
14 and

15 “(B) posts a copy of such statement on
16 any Intranet or Internet website maintained for
17 the purpose of providing participants and bene-
18 ficiaries access to plan information.

19 “(5) NOTICE OF INVESTMENT MENU
20 CHANGES.—The requirements of this paragraph are
21 met if, in advance of any change in the investment
22 alternatives available under the plan, the plan ad-
23 ministrator shall provide the notice described in
24 paragraph (2) to affected participants and bene-

1 ficiaries with respect to the change in investment al-
2 ternatives.

3 “(6) FORM OF FEE DISCLOSURE.—Fees and ex-
4 penses may be expressed as a dollar amount or as
5 a percentage of assets (or a combination thereof).

6 “(7) ALTERNATIVE METHODS OF COMPLI-
7 ANCE.—

8 “(A) IN GENERAL.—The Secretary shall
9 allow any explanation under this section to be
10 provided by using new technologies in the same
11 manner as new technologies are allowed with
12 respect to other explanations and notices re-
13 quired under section 401(a).

14 “(B) CALENDAR YEAR TREATED AS PLAN
15 YEAR.—The Secretary shall allow a plan admin-
16 istrator to treat the calendar year as the plan
17 year for purposes of paragraph (3).

18 “(C) REGULATIONS.—The Secretary shall
19 issue regulations that permit plan administra-
20 tors—

21 “(i) to provide a written notice of the
22 availability of the information described
23 under paragraphs (2), (3), (4), and (5)
24 and to make such information available
25 through new technologies, and

1 “(ii) in appropriate circumstances to
2 provide the notice described in paragraph
3 (2) after the initial contribution made on a
4 participant’s behalf in the case of a plan
5 that provides for automatic enrollment.

6 “(8) REASONABLE ESTIMATES PERMITTED.—A
7 plan administrator shall not be treated as failing to
8 satisfy the requirements of paragraphs (2), (3), and
9 (5) solely because the plan administrator uses rea-
10 sonable estimates of expenses and fees or reasonably
11 allocates fees and expenses among different fee clas-
12 sifications. For purposes of paragraph (3), an esti-
13 mate shall be considered as reasonable if such esti-
14 mate is based on fees and expenses as of the last
15 day of the plan year immediately preceding the date
16 the notice is provided or any subsequent date pre-
17 ceding the date the notice is provided.

18 “(9) COMBINATION WITH OTHER NOTICES.—A
19 plan shall not be treated as failing to satisfy the re-
20 quirements of paragraphs (2), (3), and (5) solely be-
21 cause the information is provided in combination
22 with other plan communications or in more than one
23 plan communication provided contemporaneously.

24 “(10) MODEL STATEMENT.—The Secretary
25 shall prescribe model statements that may be used

1 for purposes of satisfying the requirements of para-
 2 graphs (2), (3), and (5).

3 “(f) DEFINITIONS.—

4 “(1) APPLICABLE DEFINED CONTRIBUTION
 5 PLAN.—The term ‘applicable defined contribution
 6 plan’ means the portion of any defined contribution
 7 plan which—

8 “(A) permits a participant or beneficiary
 9 to exercise control over assets in his or her ac-
 10 count; and

11 “(B) is described in clauses (iii) through
 12 (vi) of section 402(c)(8)(B).

13 “(2) PLAN ADMINISTRATOR.—The term ‘plan
 14 administrator’ has the meaning given such term by
 15 section 414(g).

16 “(g) REGULATORY AUTHORITY.—The Secretary of
 17 Treasury shall issue regulations for purposes of this sec-
 18 tion, including regulations addressing the appropriate
 19 classification of fees and expenses and the disclosure of
 20 fees and expenses in investment alternatives that do not
 21 have explicit fees, including investment alternatives that
 22 provide a guaranteed rate of return.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
 24 for chapter 43 of such Code is amended by adding at the
 25 end the following new item:

“Sec. 4980H. Failure to provide notice to participants of plan fee information.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning on or after
3 January 1, 2009.

4 **SEC. 3. DISCLOSURE BETWEEN SERVICE PROVIDERS AND**
5 **PLANS.**

6 (a) IN GENERAL.—Chapter 43 of the Internal Rev-
7 enue Code of 1986 (relating to qualified pension, etc.
8 plans), as amended by section 2, is amended by adding
9 at the end the following new section:

10 **“SEC. 4980I. FAILURE TO PROVIDE NOTICE OF PLAN FEE**
11 **INFORMATION TO PLAN ADMINISTRATORS.**

12 “(a) IMPOSITION OF TAX.—There is hereby imposed
13 a tax on any service provider that fails to meet the require-
14 ments of subsection (d) with respect to any applicable de-
15 fined contribution plan.

16 “(b) AMOUNT OF TAX.—

17 “(1) IN GENERAL.—The amount of the tax im-
18 posed by subsection (a) on any failure with respect
19 to any applicable defined contribution plan shall be
20 \$1,000 for each day in the noncompliance period.

21 “(2) NONCOMPLIANCE PERIOD.—For purposes
22 of paragraph (1), the noncompliance period with re-
23 spect to a failure is the period beginning on the date
24 the service provider failed to meet the requirements

1 of subsection (d) and ending on the date such re-
2 quirements to which the failure relates are met or
3 the failure is otherwise corrected.

4 “(3) SEPARATE TREATMENT OF VIOLATIONS.—
5 For purposes of paragraph (1), each violation with
6 respect to any applicable defined contribution plan
7 shall be treated as a separate violation.

8 “(c) LIMITATIONS ON AMOUNT OF TAX.—

9 “(1) AGGREGATE LIMITATION.—The total
10 amount of tax imposed by subsection (a) with re-
11 spect to any service provider for any calendar year
12 shall not exceed \$1,000,000.

13 “(2) TAX NOT TO APPLY TO FAILURES COR-
14 RECTED WITHIN 90 DAYS.—No tax shall be imposed
15 by subsection (a) on any failure if—

16 “(A) the service provider subject to liability
17 for the tax under subsection (a) exercised rea-
18 sonable diligence to meet the requirements of
19 subsection (d), and

20 “(B) such service provider provides the no-
21 tice described in subsection (d) during the 90-
22 day period beginning on the date such person
23 knew, or exercising reasonable diligence would
24 have known, that such failure existed.

1 “(3) WAIVER BY SECRETARY.—In the case of a
2 failure which is due to reasonable cause and not to
3 willful neglect, the Secretary may waive part or all
4 of the tax imposed by subsection (a) to the extent
5 that the payment of such tax would be excessive or
6 otherwise inequitable relative to the failure involved.

7 “(d) NOTICE OF FEES AND EXPENSES.—

8 “(1) IN GENERAL.—The requirements of this
9 subsection are met if the service provider meets the
10 requirements of paragraphs (2), (3), (4), and (5).

11 “(2) INITIAL DISCLOSURE.—A service provider
12 meets the requirements of this paragraph if the serv-
13 ice provider, prior to entering into (or materially
14 modifying) a contract with a plan for the provision
15 of plan services, provides the plan administrator
16 with the following, in writing:

17 “(A) An estimate of—

18 “(i) the total fees and expenses ex-
19 pected to be paid by the plan under the
20 contract, including itemization of the fol-
21 lowing components in the case of a con-
22 tract that provides for both investment
23 management and administration and rec-
24 ordkeeping;

1 “(ii) annual fees and expenses for in-
2 vestment management; and

3 “(iii) annual fees and expenses for ad-
4 ministration and recordkeeping.

5 “(B) A detailed and itemized list of the
6 services to be provided by the service provider
7 under the contract.

8 “(C) A statement of whether the service
9 provider reasonably expects to remit fees and
10 expenses expected to be paid by the plan under
11 the contract to one or more third-party service
12 providers or intermediaries and, if so, a state-
13 ment of the amount expected to be paid to each
14 such third-party and the identity of each such
15 third-party.

16 “(D) A statement of whether the service
17 provider expects to receive compensation from a
18 source other than the plan or plan sponsor in
19 connection with the services provided to the
20 plan and, if so, a statement of the amount ex-
21 pected to be received from each such source and
22 the identity of each such source.

23 “(3) PERIODIC DISCLOSURE.—A service pro-
24 vider meets the requirements of this paragraph if
25 the service provider, within 90 days following the

1 end of each plan year, provides a written statement
2 of the following:

3 “(A) Fees and expenses paid by the plan
4 to the service provider under the arrangement
5 during the plan year, including itemization of
6 the components described in subparagraphs (A)
7 and (C) of paragraph (2).

8 “(B) The amount of any compensation re-
9 ceived by the service provider during the plan
10 year from each source other than the plan or
11 plan sponsor in connection with the services
12 provided to the plan by the service provider and
13 the identity of each such source.

14 “(4) FORM OF FEE DISCLOSURE.—Fees and ex-
15 penses may be expressed as a dollar amount or as
16 a percentage of assets (or a combination thereof).

17 “(5) REASONABLE ESTIMATES PERMITTED.—A
18 service provider shall not be treated as failing to sat-
19 isfy the requirements of this subsection solely be-
20 cause—

21 “(A) the service provider that does not
22 separately price services attributable to the
23 components described in subparagraph (A) of
24 paragraph (2) reasonably allocates fees and ex-
25 penses among such components;

1 “(B) the service provider uses reasonable
2 estimates of expenses, fees and compensation if
3 the service provider discloses the basis for such
4 estimates; or

5 “(C) the service provider discloses amounts
6 under subparagraphs (C) and (D) of paragraph
7 (2) only to the extent that such amounts are
8 expected to exceed \$5,000.

9 “(6) ALTERNATIVE METHOD OF COMPLI-
10 ANCE.—A service provider shall not be treated as
11 failing to satisfy the requirements of paragraph (2)
12 if disclosure is made on the basis of calendar years,
13 as the plan administrator specifies.

14 “(7) REGULATORY AUTHORITY.—The Secretary
15 shall issue regulations to carry out this subsection,
16 including regulations addressing the appropriate
17 classification of fees and expenses under subpara-
18 graph (A) of paragraph (2).

19 “(e) DEFINITIONS.—For purposes of this section—

20 “(1) APPLICABLE DEFINED CONTRIBUTION
21 PLAN.—The term ‘applicable defined contribution
22 plan’ means any defined contribution plan described
23 in clauses (iii) through (vi) of section 402(c)(8)(B).

24 “(2) SERVICE PROVIDER.—The term ‘service
25 provider’ means any person providing services to a

1 plan under a contract. For this purpose, all corpora-
2 tions that provide services to a plan and are mem-
3 bers of a controlled group of corporations within the
4 meaning of section 1563(a) (determined without re-
5 gard to subsections (a)(4) and (e)(3)(C) thereof)
6 shall be treated as a single service provider.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 for chapter 43 of such Code, as so amended, is amended
9 by adding at the end the following new item:

“Sec. 4980I. Failure to provide notice of plan fee information to plan adminis-
trators.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to arrangements entered into (or
12 materially modified) on or after the 90th day after the
13 date of the enactment of this Act.

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