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

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2009

Mr. Neal of Massachusetts (for himself, Mr. Pomeroy, Mr. Larson of Connecticut, Mr. Crowley, and Ms. Schwartz) 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, and to improve participant communication.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Defined Contribution Plan Fee Transparency Act of 2009”.

SEC. 2. DISCLOSURE TO PARTICIPANTS.

(a) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc.
plans) is amended by adding at the end the following new section:

"SEC. 4980H. FAILURE TO PROVIDE NOTICE TO PARTICI-
PANTS OF PLAN FEE INFORMATION.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any plan administrator of an applicable defined contribution plan to meet the requirements of subsection (e) with respect to any participant or beneficiary.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to any participant or beneficiary shall be $100 for each day in the noncompliance period.

"(2) NONCOMPLIANCE PERIOD.—For purposes of paragraph (1), the noncompliance period with respect to a failure is the period beginning on the date the plan administrator failed to provide notice to participants and beneficiaries in accordance with subsection (e) and ending on the date the notice to which the failure relates is provided or the failure is otherwise corrected.

"(3) SEPARATE TREATMENT OF VIOLATIONS.—

For purposes of paragraph (1), each violation with
respect to any single participant or beneficiary shall be treated as a separate violation.

“(c) LIMITATIONS ON AMOUNT OF TAX.—

“(1) AGGREGATE LIMITATION.—The total amount of tax imposed by this section with respect to any plan for any plan year shall not exceed an amount equal to the lesser of—

“(A) 10 percent of the assets of the plan, determined as of the first day of such plan year, and

“(B) $500,000.

“(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 90 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

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

“(B) such person provides the notice described in subsection (e) during the 90-day period beginning on the date such person knew, or exercising reasonable diligence would have known, that such failure existed.

“(3) RELIANCE.—To the extent any of the information required to be disclosed by a plan admin-
istrator under this section is given to the plan admin-
istrator by a service provider, the plan adminis-
istrator may rely on the completeness and accuracy of such information unless the plan administrator—

“(A) knows, or has reason to know, that the information is inaccurate or incomplete, or

“(B) has notice of facts or information that would prompt a reasonable plan adminis-
istrator to inquire into the accuracy or complete-

ness of the information.

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

“(d) LIABILITY FOR TAX.—The following shall be lia-

ble for the tax imposed by subsection (a):

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

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

“(e) NOTICE OF FEES AND EXPENSES TO PARTICI-
PANTS.—
“(1) IN GENERAL.—The requirements of this subsection are met if the plan administrator of an applicable defined contribution plan meets the requirements of paragraphs (2), (3), (4), and (5).

“(2) NOTICE OF INVESTMENT INFORMATION.—

“(A) IN GENERAL.—A plan administrator meets the requirements of this paragraph if each employee eligible to participate is, a reasonable time before the initial investment of any contribution made on behalf of such employee and at least annually thereafter, given an explanation of the plan’s fees and expenses, the key characteristics of the plan’s designated investment alternatives, and an explanation of the manner for making elections among designated investment alternatives.

“(B) REQUIREMENTS.—An explanation shall only be treated as satisfying the explanation requirement of subparagraph (A) if such explanation provides a description, to the extent applicable, of the following:

“(i) The designated investment alternatives available to a participant under the plan, the method for a participant to make investment elections, and an explanation of
any specified limitations on such elections
under the documents and instruments gov-
erning the plan, including any restrictions
on transfer to or from an investment alter-
native.

“(ii) With respect to each designated
investment alternative—

“(I) a general description of the
alternative’s investment objectives and
principal investment strategies, prin-
cipal risk and return characteristics,
and the name of the alternative’s in-
vestment manager,

“(II) whether the alternative is
actively managed or passively man-
aged in relation to an index and the
difference between active management
and passive management,

“(III) whether the alternative is
designed to be a comprehensive,
stand-alone investment for retirement
that provides varying degrees of long-
term appreciation and capital preser-
vation through a mix of equity and
fixed income exposures,
“(IV) rates of return for the investment alternative over the immediately preceding 1-, 5-, and 10-year periods (determined on either a calendar or plan year basis),

“(V) the name and returns of an appropriate broad-based securities market index over the preceding 1-, 5-, and 10-year periods, which is not administered by the service provider or an affiliate thereof unless the index is widely recognized and used, and

“(VI) fees and expenses in connection with purchases or sales of interests in the investment alternative, such as sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees and other similar fees and expenses.

“(iii) The annual total operating expenses for each designated investment alternative and, if applicable, a statement that the fees and expenses of the investment alternatives pay for services other than investment management.
“(iv) Annual fees and expenses for administration and recordkeeping which are deducted from (or reduce the income of) participants’ or beneficiaries’ accounts and which are not reflected in clause (iii), including a statement of the method used to allocate fees and expenses described in this clause to participants’ and beneficiaries’ accounts.

“(v) The existence of fees and expenses associated with participant-initiated transactions or services which may be deducted from participants’ or beneficiaries’ accounts other than fees and expenses described in clause (ii)(VI) and the method that participants and beneficiaries may utilize to obtain additional information regarding such fees and expenses.

“(vi) Fees and expenses which may be deducted from participants’ or beneficiaries’ accounts and which are not reflected in clauses (iii), (iv), or (v).

“(vii) A statement of where, and the manner in which, additional alternative-specific and generally available investment
information may be obtained (such as an Internet Web site address).

“(viii) A statement explaining that investment alternatives should be selected not only on the basis of the level of fees charged by each alternative but also on the basis of consideration of other key factors, including the alternative’s investment objective, level of risk, historic rates of return and the participant’s personal investment objective.

“(3) NOTICE OF ACCOUNT CHARGES.—

“(A) IN GENERAL.—A plan administrator meets the requirements of this paragraph if each participant and beneficiary is, at least once each calendar quarter, given an explanation describing the investment alternatives in which the participant’s or beneficiary’s account is invested as of the last day of the preceding quarter and the key characteristics of such investment alternatives.

“(B) REQUIREMENTS.—An explanation shall only be treated as satisfying the explanation requirement of subparagraph (A) if such explanation provides a description, to the extent
applicable, of the following for the preceding quarter:

“(i) As of the last day of the quarter, the different asset classes that the participant’s or beneficiary’s account is invested in and the percentage of the account allocated to each asset class.

“(ii) The total administration and recordkeeping fees and expenses described in paragraph (2)(B)(iv) which were deducted from the participant’s or beneficiary’s account during the quarter.

“(iii) The total fees and expenses for participant-initiated transactions or services described in paragraph (2)(B)(v) which were deducted from the participant’s or beneficiary’s account during the quarter.

“(iv) The total other fees and expenses described in paragraph (2)(B)(vi) which were deducted from the participant’s or beneficiary’s account during the quarter.

“(v) With respect to each investment alternative in which the participant or ben-
eficiary was invested as of the last day of
the quarter, the following:

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

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

“(III) A general statement of the
investment alternative’s principal risk
and return characteristics.

“(IV) Total annual operating ex-
penses for the investment alternative.

“(vi) Fees and expenses in connection
with purchases or sales of interests in in-
vestment alternatives which have been de-
ducted from the participant’s or bene-
ficiary’s account during the quarter.

“(vii) The statement described in
paragraph (2)(B)(viii).

“(viii) A statement regarding how a
participant or beneficiary may access the
information required to be disclosed under
paragraph (2).
“(4) Service provider disclosure.—The requirements of this paragraph are met if the plan administrator provides to participants and beneficiaries a copy of any statement received pursuant to section 4980I within 30 days after receipt of a written request for such statement.

“(5) Notice of investment menu changes.—The requirements of this paragraph are met if, in advance of any change in the investment alternatives available under the plan, the plan administrator provides the notice described in paragraph (2) to affected participants and beneficiaries with respect to the change in investment alternatives.

“(6) Form of fee disclosure.—Fees and expenses may be expressed as a dollar amount or as a percentage of assets (or a combination thereof). If fees and expenses are expressed (in part or in whole) as a percentage of assets, the disclosure shall include a generic example that illustrates how a charge that is expressed as a percentage of assets is assessed in dollars on an account balance.

“(7) Certain estimates permitted.—A plan administrator shall not be treated as failing to satisfy the requirements of paragraphs (2), (3), and (4)
solely because the plan administrator uses estimates of expenses and fees, or allocates fees and expenses among different fee classifications, in a manner that is reasonable and in good faith. For purposes of paragraph (3), an estimate shall be considered to be reasonable and in good faith if such estimate is based on fees and expenses as of the last day of the plan year immediately preceding the date the notice is provided or any subsequent date preceding the date the notice is provided. Nothing in this paragraph shall be construed to require a plan administrator to use the same estimation methodology for every investment alternative.

“(8) COMBINATION WITH OTHER NOTICES.—A plan shall not be treated as failing to satisfy the requirements of paragraphs (2), (3), and (4) solely because the information is provided in combination with other plan communications or in more than one plan communication provided contemporaneously.

“(9) MODEL STATEMENT.—The Secretary shall prescribe model statements that may be used for purposes of satisfying the requirements of paragraphs (2), (3), and (4).

“(10) ANNUAL COMPLIANCE FOR SMALL PLANS.—A plan that has fewer than 100 partici-
pants and beneficiaries as of the first day of the plan year may provide the notice described in paragraph (3) on an annual rather than a quarterly basis.

“(11) **Calendar Year Treated as Plan Year.**—The Secretary shall allow a plan administrator to treat the calendar year as the plan year for purposes of paragraph (3).

“(12) **Plain Language.**—Explanations and notices under this subsection shall be provided in a manner which is easily understandable by the typical plan participant.

“(13) **Regulations.**—The Secretary shall issue regulations that permit plan administrators—

“(A) in appropriate circumstances to provide the notice described in paragraph (2) after the initial contribution made on a participant’s behalf in the case of a plan that provides for automatic enrollment or immediate eligibility, and

“(B) in appropriate circumstances to provide the notice described in paragraph (4) after the investment menu change is effective.

“(f) **Definitions.**—
“(1) APPLICABLE DEFINED CONTRIBUTION PLAN.—The term ‘applicable defined contribution plan’ means the portion of any defined contribution plan which—

“(A) permits a participant or beneficiary to exercise control over assets in his or her account, and

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

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

“(g) REGULATORY AUTHORITY.—The Secretary shall issue regulations for purposes of this section, including regulations which—

“(1) identify and establish separate rules, if necessary, for any investment options that provide a guaranteed rate of return and do not identify specific fees, and

“(2) provide guidelines, and a safe harbor, for the selection of an appropriate broad-based securities market index for purposes of paragraph (2)(B)(ii)(V) for a designated investment alternative.”.
(b) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

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

SEC. 3. DISCLOSURE BETWEEN SERVICE PROVIDERS AND PLANS.

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

"SEC. 4980I. FAILURE TO PROVIDE NOTICE OF PLAN FEE INFORMATION TO PLAN ADMINISTRATORS.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on any service provider that fails to meet the requirements of subsection (d) with respect to any applicable defined contribution plan.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to any applicable defined contribution plan shall be $1,000 for each day in the noncompliance period.

"(2) NONCOMPLIANCE PERIOD.—For purposes of paragraph (1), the noncompliance period with respect to a failure is the period beginning on the date the service provider failed to meet the requirements
of subsection (d) and ending on the date such re-
quirements to which the failure relates are met or
the failure is otherwise corrected.

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

“(c) LIMITATIONS.—

“(1) AGGREGATE LIMITATION.—The total
amount of tax imposed by this section on any service
provider for any failure with respect to any applica-
ble defined contribution plan shall not exceed an
amount equal to the lesser of—

“(A) 10 percent of the assets of the plan,
determined as of the first day of such plan
year, and

“(B) $1,000,000.

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

“(A) the service provider subject to liability
for the tax under subsection (a) exercised rea-
sonable diligence to meet the requirements of
subsection (d), and
“(B) such service provider provides the notice described in subsection (d) during the 90-day period beginning on the date such person knew, or exercising reasonable diligence would have known, that such failure existed.

“(3) RELIANCE.—To the extent any of the information required to be disclosed by a service provider under this section is given to the service provider by a person that is not an affiliate of the service provider, the service provider may rely on the completeness and accuracy of such information unless the service provider—

“(A) knows, or has reason to know, that the information is inaccurate or incomplete, or

“(B) has notice of facts or information that would prompt a reasonable service provider to inquire into the accuracy or completeness of the information.

“(4) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.
“(5) SMALL SERVICE PROVIDERS.—This section shall apply with respect to any service provider for a plan year only if the total fees and compensation received directly or indirectly by the service provider, its affiliates and any subcontractor of the service provider in connection with the services arrangement is reasonably expected to equal or exceed $5,000.

“(6) LIMITATION ON SCOPE.—Nothing in this section shall be construed to require any service provider to provide any services with respect to any particular plan.

“(d) NOTICE OF FEES AND EXPENSES.—

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

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

“(A) An estimate of—

“(i) the total fees and expenses expected to be paid by the plan under the contract, including itemization of the fol-
ollowing components in the case of a contract that provides for both investment management and administration and recordkeeping,

“(ii) the annual fees and expenses attributable to investment management, and

“(iii) the annual fees and expenses attributable to plan administration and recordkeeping.

“(B) A detailed and itemized list of the services to be provided by the service provider, its affiliates, and any subcontractors under the contract.

“(C) A schedule of fees and expenses associated with participant-initiated transactions or services which may be deducted from participants’ or beneficiaries’ accounts.

“(D) A statement of whether the service provider reasonably expects to remit fees and expenses expected to be paid by the plan under the contract, including commissions, finders fees, sales loads and charges, to one or more third-party service providers or intermediaries and, if so, a statement of the amount expected
to be paid to each such third party and the
identity of each such third party.

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

“(F) A statement of whether the service
provider (or any affiliate thereof) may benefit
from the offering of its own proprietary invest-
ment products or those of third parties.

“(G) To the extent applicable, a statement
that the investment options available to the
plan may be offered at different price levels to
parties other than the plan.

“(3) Periodic disclosure.—A service pro-
vider meets the requirements of this paragraph if
the service provider, by the due date for filing the
section 6058 annual return for the plan year (deter-
mined without regard to extensions), provides a writ-
ten statement of the following:

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

“(B) The amount of any compensation received by the service provider during the plan year from each source other than the plan or plan sponsor in connection with the services provided to the plan by the service provider and the identity of each such source.

“(4) FORM OF FEE DISCLOSURE.—Fees and expenses may be expressed as a dollar amount or as a percentage of assets (or a combination thereof).

“(5) CERTAIN ESTIMATES PERMITTED.—A service provider shall not be treated as failing to satisfy the requirements of this subsection solely because—

“(A) the service provider that does not separately price services attributable to the components described in subparagraph (A) of paragraph (2) allocates fees and expenses among such components in a manner that is reasonable and in good faith,

“(B) the service provider uses estimates of expenses, fees and compensation if the service provider discloses the basis for such estimates if
such estimates are made in a manner that is reasonable and in good faith, or

“(C) the service provider discloses amounts under subparagraphs (D) and (E) of paragraph (2) only to the extent that such amounts are expected to exceed $5,000 for the plan year.

“(6) ALTERNATIVE METHOD OF COMPLIANCE.—A service provider shall not be treated as failing to satisfy the requirements of paragraph (2) if disclosure is made on the basis of calendar years.

“(7) PLAIN LANGUAGE.—Disclosures under this subsection shall be presented in a format which is easily understandable by the typical plan administrator.

“(8) REGULATORY AUTHORITY.—The Secretary shall issue regulations to carry out this subsection, including regulations addressing the appropriate classification of fees and expenses under subparagraph (A) of paragraph (2). Such regulations shall include safe harbor methods for the allocation of expenses under subparagraph (A) of paragraph (2) under which service providers will be treated as having reasonably allocated fees and expenses but such safe harbor methods shall not be the exclusive methods for the allocation of expenses.
“(e) Definitions.—For purposes of this section—

“(1) Applicable defined contribution plan.—The term ‘applicable defined contribution plan’ means any defined contribution plan described in clauses (iii) through (vi) of section 402(c)(8)(B).

“(2) Service provider.—The term ‘service provider’ means any person providing services to a plan under a contract. For this purpose, all corporations that provide services to a plan and are members of a controlled group of corporations within the meaning of section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) thereof) shall be treated as a single service provider.”.

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

“Sec. 4980I. Failure to provide notice of plan fee information to plan administrators.”.

SEC. 4. METHOD OF PROVIDING REQUIRED NOTICES AND DISCLOSURES.

(a) Directive to Treasury.—The Secretary of the Treasury shall issue final regulations no later than 6 months after the date of enactment of this Act under which an applicable notice shall be treated as provided in writing or in written form if—
(1) the applicable notice is posted on a secure Internet Web site that is accessible to the participant or beneficiary,

(2) a notice of the availability of such applicable notice is provided in writing or in a manner that satisfies Treasury regulation section 1.401(a)–21 at the same time that the applicable notice is otherwise required, and

(3) the notice of availability advises the recipient that he or she may request and receive the applicable notice in writing on paper at no charge and, upon request, the applicable notice is provided in writing on paper to the recipient at no charge.

(b) APPLICABLE NOTICE.—The term “applicable notice” includes any notice, report, statement, or other document required to be provided to a recipient under the following types of retirement plans: a qualified retirement plan under section 401(a) or 403(a) of the Internal Revenue Code of 1986; a section 403(b) plan under such Code; a simplified employee pension (SEP) under section 408(k) of such Code; a simple retirement plan under section 408(p) of such Code; and an eligible governmental plan under section 457(b) of such Code.
SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall apply to plan years beginning after one year after the date of the enactment of this Act.

(b) FINAL REGULATIONS.—The Secretary of the Treasury shall issue final regulations to carry out the amendments made by this Act not later than December 31, 2010.