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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Defined Contribution Plan Fee Transparency Act of 2007”.

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 PARTICIPANTS 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) ANNUAL AGGREGATE LIMITATION.—The total amount of tax imposed by this section with respect to any plan administrator for any plan year shall not exceed $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) 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 liable 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 PARTICIPANTS.—

“(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) ENROLLMENT NOTICE.—

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

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

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

“(ii) With respect to each investment
alternative—

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

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

“(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.
“(iii) Annual asset-based fees for each investment alternative which reduce the investment alternative’s rate of return and, if applicable, a statement that the fees and expenses of one or more 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) Fees and expenses in connection with purchases or sales of interests in investment alternatives.

“(vi) 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 (v) and the method that
participants and beneficiaries may utilize
to obtain additional information regarding
such fees and expenses.

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

“(viii) A statement explaining that in-
vestment 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 ob-
jective, level of risk, historic rates of return
and the participant’s personal investment
objective.

“(3) ANNUAL NOTICE.—

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

“(B) Written explanation safe harbor.—An explanation shall be treated as satisfying the written explanation requirement of subparagraph (A) if such explanation is in writing and provides a description, to the extent applicable, of the following:

“(i) 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 fees and expenses described in paragraph (2)(B)(vi) which were deducted from the participant’s or beneficiary’s account.

“(iii) Fees and expenses for administration and recordkeeping that were deducted from a participant’s or beneficiary’s account (to the extent not disclosed in clause (ii));

“(iv) With respect to each investment alternative selected by the participant or beneficiary, the following:
“(I) The percentage of the participant’s or beneficiary’s account that is invested in such alternative.

“(II) Whether the investment alternative is actively or passively managed.

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

“(IV) Annual asset-based fees for each investment alternative which reduced the investment alternative’s rate of return.

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

“(VI) Fees and expenses in connection with purchases or sales of interests in investment alternatives which have been or may be deducted from the participant’s or beneficiary’s account.
“(v) The statement described in paragraph (2)(B)(viii).

“(vi) 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—

“(A) 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, and

“(B) posts a copy of such statement on any Intranet or Internet website maintained for the purpose of providing participants and beneficiaries access to plan information.

“(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 shall provide the notice described in paragraph (2) to affected participants and benefi-
ficiaries 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).

“(7) ALTERNATIVE METHODS OF COMPLIANCE.—

“(A) IN GENERAL.—The Secretary shall allow any explanation under this section to be provided by using new technologies in the same manner as new technologies are allowed with respect to other explanations and notices required under section 401(a).

“(B) 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).

“(C) REGULATIONS.—The Secretary shall issue regulations that permit plan administrators—

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

“(8) Reasonable estimates permitted.—A plan administrator shall not be treated as failing to satisfy the requirements of paragraphs (2), (3), and (5) solely because the plan administrator uses reasonable estimates of expenses and fees or reasonably allocates fees and expenses among different fee classifications. For purposes of paragraph (3), an estimate shall be considered as reasonable 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.

“(9) Combination with other notices.—A plan shall not be treated as failing to satisfy the requirements of paragraphs (2), (3), and (5) solely because the information is provided in combination with other plan communications or in more than one plan communication provided contemporaneously.

“(10) Model statement.—The Secretary shall prescribe model statements that may be used
for purposes of satisfying the requirements of paragraphs (2), (3), and (5).

“(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 of Treasury shall issue regulations for purposes of this section, including regulations addressing the appropriate classification of fees and expenses and the disclosure of fees and expenses in investment alternatives that do not have explicit fees, including investment alternatives that provide a guaranteed rate of return.”.

(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.”.

(c) **Effective Date.**—The amendments made by this section shall apply to plan years beginning on or after January 1, 2009.

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 ON AMOUNT OF TAX.—

“(1) AGGREGATE LIMITATION.—The total
amount of tax imposed by subsection (a) with re-
spect to any service provider for any calendar year
shall not exceed $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 no-
tice 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) 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.

“(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), (3), (4), and (5).

“(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 following components in the case of a contract that provides for both investment management and administration and recordkeeping;
“(ii) annual fees and expenses for investment management; and

“(iii) annual fees and expenses for administration and recordkeeping.

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

“(C) A statement of whether the service provider reasonably expects to remit fees and expenses expected to be paid by the plan under the contract 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.

“(D) 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 expected to be received from each such source and the identity of each such source.

“(3) PERIODIC DISCLOSURE.—A service provider meets the requirements of this paragraph if the service provider, within 90 days following the
end of each plan year, provides a written 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 (C) 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) REASONABLE 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) reasonably allocates fees and expenses among such components;
“(B) the service provider uses reasonable estimates of expenses, fees and compensation if the service provider discloses the basis for such estimates; or

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

“(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, as the plan administrator specifies.

“(7) 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).

“(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(e)(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.”.

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