LEADING PROPOSALS ON DEFINED CONTRIBUTION PLAN FEE DISCLOSURE[1, 2, 3]

ISSUE	CURRENT LAW	MILLER BILL	NEAL BILL	HARKIN/KOHL BILL	COMMENTS
IN GENERAL	The Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code generally do not impose specific rules with respect to the fees that plans pay for services. ERISA imposes disclosure requirements, such as requiring that a summary plan description be distributed to each participant or beneficiary, and imposes general fiduciary responsibilities on persons with discretionary authority and control over the plan. Further, ERISA and the Internal Revenue Code prohibit certain transactions where there may be a potential conflict of interest.	Would amend ERISA to: • mandate fee disclosures from service providers to plans; • require fee disclosures from plans to participants; and • require that a specific investment option be available under a plan that permits participants to direct the investment of their accounts and seeks the safe harbor protection of ERISA section 404(c). *Scope*. Would generally apply to defined contribution plans subject to ERISA. Some elements are limited to participant-directed plans.	Would amend the Internal Revenue Code to add two new requirements related to fees paid by plans for services. The new requirements would: • mandate fee disclosures from service providers to plans; and • require fee disclosures from plans to participants. Would not regulate the investment options that must be available under a plan. *Scope*. Would generally apply to tax-qualified retirement plans, 403(b) plans and governmental 457(b) plans. Some elements are limited to participant-directed plans.	Would amend ERISA to: • mandate fee disclosures from service providers to plans; and • require fee disclosures from plans to participants. Would not regulate the investment options that must be available under a plan. *Scope*. Would generally apply to 401(k) and 403(b) plans subject to ERISA. Some elements are limited to participant-directed plans.	Governmental, church and other non-ERISA plans would be exempt from the Miller and Harkin/Kohl bills, but not the Neal bill. Defined benefit plans, unfunded nonqualified deferred compensation plans and health plans would be exempt from all three bills.
SERVICE PROVIDER DISCLOSURES					
IN GENERAL	ERISA generally requires that plan fiduciaries discharge their duties with respect to a plan by acting solely in the interest of participants and beneficiaries and with the care, skill, prudence and diligence that a prudent	Would require that the plan administrator receive a statement reasonably in advance of entering into any contract for services for the plan. For this purpose, the offering of an investment option is treated as a	Would require that the service provider provide the plan administrator with an initial disclosure of fees and services prior to entering into (or materially modifying) any contract for services to the plan	Would require that the plan administrator receive a "service disclosure statement" prior to entering into any contract and at least annually thereafter. The statement must be updated as soon as is practicable after a	The Miller and Harkin/Kohl bills impose the service provider disclosure requirement on the plan. In contrast, the Neal bill imposes the service provider disclosure requirement on the

[1] The 401(k) Fair Disclosure for Retirement Security Act of 2009 was introduced as H.R. 1984 on April 21, 2009 by Representative George Miller (D-CA), Chairman of the House Education and Labor Committee. The bill is now contained in a larger measure, the 401(k) Fair Disclosure and Pension Security Act of 2009, H.R. 2989, which was approved by the House Education and Labor Committee on June 24, 2009 (the "Miller bill").
[2] The Defined Contribution Plan Fee Transparency Act of 2009, H.R. 2779 (the "Neal bill"), was introduced on June 9, 2009 by Representative Richard Neal (D-MA), Chairman of the House Ways and Means Subcommittee on Select Revenue Measures.
[3] The Defined Contribution Fee Disclosure Act of 2009, S. 401 (the "Harkin/Kohl bill"), was introduced on February 9, 2009 by Senator Tom Harkin (D-IA) and is co-sponsored by Senator Herb Kohl (D-WI), Chairman of the Senate Special Committee on Aging.

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	person acting in like capacity would exercise. Thus, a plan fiduciary that enters into a contract for services must act solely in the interests of participants and must act prudently. ERISA and the Internal Revenue Code prohibit certain transactions between plans and "parties in interest," such as persons providing services to the plan. ERISA and the Internal Revenue Code provide an exception for "reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for establishment or operation of the plan, if no more than reasonable compensation is paid therefor."	service. The statement must be updated as soon as is reasonable after a material change. *Scope*. The service provider disclosure requirement would apply to all defined contribution plans subject to ERISA. *De Minimis Exception*. There is an exception from the service provider disclosure requirement if the total charged for services under a contract during a plan year is less than $5,000. This $5,000 amount may be updated annually by the Department of Labor ("DOL") and may be adjusted up or down by DOL for large or small plans.	and an annual disclosure thereafter highlighting the fees actually paid under the contract. *Scope*. The service provider disclosure requirement would apply to all 401(k) plans, 403(b) programs and governmental 457(b) plans. *De Minimis Exception*. Small contracts of less than $5,000 in total cost for all services under the contract during the plan year would be exempt from the service provider disclosure statement requirement.	material change. This disclosure requirement would not apply where payment for services does not involve plan assets. *Scope*. The service provider disclosure requirement would apply to 403(b) and 401(k) plans subject to ERISA. *De Minimis Exception*. Small contracts of less than the greater of (i) $5,000 per plan year, or (ii) 0.01% of the value of plan assets as of the last day of the preceding plan year, would be exempt from the service provider disclosure statement requirement.	service provider. Under all three bills, the new service provider disclosure requirement would apply in addition to the existing fiduciary responsibility provisions of ERISA and the prohibited transaction rules. Under both the Miller and Neal bills, it appears that the service provider disclosure statement would be required even if the plan enters into a service agreement but the employer pays for the services out of its general (rather than plan) assets. Query whether, in light of the structure of ERISA, DOL would interpret the bills literally in this regard.
Contents of Initial Disclosure	Not applicable	The disclosure would, among other requirements, have to: • describe the services and specify the expected total annual cost under the contract; • itemize and separately price certain services; and • disclose the payment formula for any payments received by the service provider (or any affiliate) in connection with the contract from an entity other than the plan (*e.g.*,	The disclosure would, among other requirements, have to: • describe the services and specify the total cost under the contract; • itemize and separately price investment management and plan administration if both are provided under the contract; • state the amount expected to be paid by the plan under the contract to any third-party service providers that have a direct contractual relationship	The disclosure would, among other requirements, have to: • describe the services and specify the expected total annual charges under the contract; • identify the parties that will be providing services under the contract pursuant to a direct contract with the plan; • itemize and separately price certain services; and • disclose certain financial relationships, including any	All three bills require at least some disclosure of revenue sharing arrangements, although, as discussed, the bills take different approaches to revenue sharing disclosure. These disclosures of revenue sharing are intended to identify other sources of revenue that the plan fiduciary should take into account in determining whether the service provider's total compensation is reasonable. Additional required disclosures in this regard are discussed

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		revenue sharing).	with the plan or to any intermediaries (brokers, agents, etc.) and identify each payee separately; and • state the amount the service provider reasonably expects to receive in revenue sharing compensation and identify each source of such compensation separately. *De Minimis Exception*. Does not require disclosure of revenue sharing received and intermediary compensation paid to the extent that such amounts are not expected to exceed $5,000 for the plan year.	amounts the service provider receives from an unaffiliated third party in connection with the provision of services.	below under Disclosure Regarding Potential Contract Benefits. The Miller bill requires that payments by a service provider to its affiliates would have to be disclosed. The Neal bill specifically provides that controlled group members are treated as a single entity so payments to affiliates need not be disclosed. The Harkin/Kohl bill does not appear to require disclosure of payments to affiliates.
ITEMIZATION OF SERVICES AND EXPENSES	There are no specific rules requiring itemization. However, ERISA's fiduciary rules and prohibited transaction requirements generally impose a standard of prudence and reasonableness on plan fiduciaries that enter into service arrangements.	Would establish rules that require separate itemization and pricing of total cost among four categories of service expenses: • investment management charges; • administration and recordkeeping charges; • transaction-based charges; and • all other charges.	Would establish rules that require separate itemization and pricing of two broad categories of services: • investment management expenses; and • administration and recordkeeping expenses. Directs Treasury to issue regulations regarding the appropriate classification of fees under these two categories, including safe harbor methods for allocating expenses between investment management on the one hand, and administration and recordkeeping on the other hand. Would also require the service	Would establish rules that require a service provider to allocate total cost among four categories of service expenses: • investment management charges; • administration and recordkeeping charges; • sales charges, including commissions and charges for advisory services; and • all other charges.	Today, many service providers offer a bundle of services for a particular price. All three bills require some "unbundling of the bundle." This could be costly and difficult for bundled service providers, particularly because many providers do not currently price services separately and may not even offer such services separately. In many instances, it will be unclear whether and to what extent a particular fee is for a particular service. Consider, for example, a plan that has a single bundled service provider and is invested solely in mutual funds that do not have 12b-1 fees. In

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			provider to provide the plan administrator with a schedule of the fees associated with participant-initiated transactions or services.		effect, the plan pays for all services through asset-based fees on the underlying investments. If those asset-based fee levels are the same as those available to investors outside the plan context, why is any amount attributable to services other than investment management? How could the service provider determine an amount allocable to other services? All three bills, however, require that a bundled service provider allocate the asset-based fees between the different services it provides. Where a bundled service provider does not offer the unbundled services separately, it is unclear what a plan fiduciary can or should do with the unbundled pricing information other than to add it together and compare it to the total cost of services offered by other unbundled service providers.
Disclosure Regarding Potential Contract Benefits	ERISA imposes strict prohibited transaction rules that categorically bar transactions involving service providers and plans, unless an exemption (such as the exemption for reasonable service arrangements) applies.	Would require disclosure of the extent to which the service provider (or any affiliate) may benefit from the offering of its own investment products or those of others, including cross-selling of affiliated products or services. Would also require disclosure of any other similar arrangements	Would require disclosure of whether the service provider may benefit from the offering of its own proprietary investment products or those of third parties.	Would require disclosure of any financial or personal relationship with the plan sponsor, plan, or another service provider if the relationship results in the service provider deriving any material benefit in addition to those identified in the contract. Would also require disclosure of any other similar arrangements	The Harkin/Kohl bill has the most sweeping required disclosures regarding service provider relationships that could give rise to material benefits for the provider. The Miller and Neal bills focus instead on specific potential provider benefits that must be disclosed. All three bills specifically

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		benefitting the service provider as may be specified by the Secretary of Labor.		benefitting the service provider as may be specified by the Secretary of Labor. Specifically requires disclosure of the extent to which a service provider uses its own proprietary investments under the plan and of any payments received for including certain investment options in the plan's menu.	mention disclosure of the extent to which a provider makes proprietary investments available under the plan or is paid by another for making investments available. To the extent the provider has any discretionary fiduciary control or provides fiduciary advice regarding the investment options that are available, this would generally be considered a prohibited transaction. This is consistent with the rationale for disclosing revenue sharing: the disclosures are intended to help the plan fiduciary determine whether the service provider's total compensation is reasonable. The Miller bill's rule requiring the disclosure of the benefits of cross-selling, which was added during the Committee process, can be interpreted to require disclosure of the benefits of IRA rollovers received from the plan.
Share Classes	Mutual funds are sometimes sold in different share classes that carry different fees or fee structures. For example, a mutual fund may be available in a retail share class (available to individual investors) and one or more institutional share classes (available only to large investors, *e.g.*, plans over a certain size).	Where applicable, would require disclosure with respect to mutual fund options about whether the price of share classes within the plan is different than the price of share classes available outside the plan.	If applicable, requires a statement that the investment options available to the plan may be offered at different price levels to parties other than the plan.	Same as Miller bill.	These requirements appear to be intended to encourage plans to consider using institutional share classes, rather than retail share classes, to the extent practicable. Some institutional share classes may not include fees that provide for all necessary plan services. As a result, use of an institutional share class may

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	Similar pricing differences can exist among non-mutual fund investments.				result in the addition of a separate plan-level fee, *e.g.*, for administration and recordkeeping. In this respect, the bills appear to be intended to lead plan fiduciaries to consider separate pricing for administration and recordkeeping services versus investment management. It appears under all three bills, though not clearly, that disclosure of other share classes is required even if those share classes are not available to the plan. The Miller and Harkin/Kohl bills explicitly reference mutual fund share classes while the Neal provision is structured more generically and so would appear to require disclosure of pricing differences in other investments offered to the plan, such as separate accounts, collective trusts, annuities, etc.
"FREE" OR OTHER DISCOUNTED SERVICES	Not applicable	Requires a special disclosure where services are provided on a free or discounted basis or where fees are subject to rebate. The special disclosure requires a description of the extent to which, and the amount by which, fees are otherwise obtained for such services by means of charges against participant	None	Same as Miller bill except the Secretary of Labor may provide an exception for small plans if this requirement is determined by the Secretary to be overly burdensome.	The "free" or discounted service rule in the Miller and Harkin/Kohl bills is intended to discourage providers from characterizing services as free or discounted and to force providers to allocate a cost to each plan service. Query how this rule applies where a mutual fund provider

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		accounts.			provides a retail mutual fund to a plan and does not charge a separate recordkeeping fee. If the plan cannot qualify for a different share class, is any amount attributable to recordkeeping or administration, whether for purposes of this rule or the unbundling rule described above?
MANNER OF DISCLOSURE	Not applicable	Charges for plan administration and recordkeeping, and charges for investment management, must each be disclosed as an aggregate dollar amount (and may also be disclosed as a percentage). Transaction-based charges must be itemized separately as either dollar amounts or as a percentage of applicable base amounts.	Provides that fees and expenses may be expressed as either a dollar amount or a percentage of assets (or a combination thereof).	Provides that fees and expenses may be expressed as either a dollar amount or a formula, such as a percentage, but also requires that the form of fee disclosure must be consistent throughout the statement. This will preclude disclosing some charges in dollar form and others in percentage of assets form.	The Miller bill's disclosure requirement that administration/recordkeeping and investment management charges must be disclosed on the basis of dollars may be challenging for some service providers that may not currently capture this information on a plan-by-plan basis. Systems changes to capture this information could be costly.
USE OF ESTIMATES	Not applicable	Permits the use of reasonable and representative estimates and requires disclosure of such as estimates. The estimate must be based on reasonable assumptions stated in the disclosure (which shall include the previous year's experience or, in the case of a new plan, a reasonable estimate, taking into account the plan's participants and beneficiaries).	Permits (i) the use of reasonable, good faith estimates, including the basis for such estimates; and (ii) reasonable, good faith allocation of fees between investment management and plan administration.	Permits the use of reasonable and representative estimates to the extent the actual amount of a service cost is not known. Estimates must be indicated as being estimates. Requires a correction as soon as is reasonable after an estimate is determined to be materially incorrect. If no corrections have been needed, the service provider must state that fact on an annual basis.	The Harkin/Kohl bill limits the use of estimates to situations in which the actual amount of a service cost is not known. This suggests that perhaps estimates cannot be used if there is any way the actual service cost could be determined. This would limit the ability to use estimates. The Harkin/Kohl bill also requires correction as soon as is reasonable if an estimate proves to be materially incorrect. The "as soon as is reasonable" requirement suggests that

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					estimate corrections may be needed on a periodic basis. For example, if something changes mid-year that casts significant doubt on an estimate, a service provider could be required to correct the estimate mid-year. As a result, it is conceivable that numerous corrections would be required, for example, in a particularly volatile market.
Reliance on Information from Others		Does not permit service providers to rely definitively on information provided by their own service providers or business partners.	To the extent information a service provider must disclose is provided by a third-party, the service provider may rely on that information unless it knows, or has reason to know, that the information is inaccurate or incomplete, or it has notice of facts that would prompt a reasonable service provider to inquire into the accuracy or completeness of the information.	Same as Miller bill.	The Miller bill deleted a prior provision that allowed service providers to rely on data received from their own service providers under certain limited circumstances. The deleted provision appeared to place a greater burden to investigate data received than under current law. Currently, no one would investigate the accuracy of, for example, an expense ratio provided by a mutual fund. Presumably, the same reliance would continue in practice since the cost of investigation would be exorbitant and thus not justified by a prudent fiduciary analysis. The Neal provision is not as restrictive as the prior Miller provision but still raises the issue as to whether this new reliance standard is, in fact, more demanding than current law.

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ANNUAL DISCLOSURE	Not applicable	For any year in which service provider information has not changed materially, would require an annual disclosure of that fact.	Would require an annual disclosure of the following: • fees paid by the plan under the contract; • investment management fees; • administration and recordkeeping fees; • payments to third-party service providers; and • any revenue sharing payments received by the service provider. *De Minimis Exception*. Does not require disclosure of revenue sharing received and intermediary compensation paid to the extent that such amounts do not exceed $5,000 on an annual basis.	Would require a disclosure at least annually of all of the information provided in the initial disclosure, discussed above.	The Neal and Harkin/Kohl bills require a full report by service providers to plan administrators on an annual basis. This is not required under the Miller bill. For some providers, the annual disclosure requirement would be a departure from prevailing practices.
TIMING OF ANNUAL DISCLOSURE	Not applicable	The statement would be required (i) reasonably in advance of any service contract; and (ii) as soon as is reasonable after the occurrence of a material change is known.	The statement would be required (i) prior to entering into any service contract; (ii) prior to any material modification, and (iii) following the plan year by the due date for the filing of the Form 5500, without extensions (July 31st for calendar year plans). Allows a service provider to use the calendar year in lieu of the plan year.	The statement would be required (i) reasonably in advance of any service contract; (ii) at least annually thereafter; and (iii) as soon as practicable after any material change in the information provided in the statement.	
DEFINITION OF SERVICE	Not applicable	Defines service as a service provided directly or indirectly with respect to a plan or a financial product in which the	None	None	Query whether the Miller bill's definition requires identification to the plan administrator of entities providing services to a

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		plan is invested.			service provider. If so, what limits would apply to this rule, since a large service provider may have thousands of its own service providers and subcontractors?
REVIEW OF NEW DISCLOSURES BY DOL		DOL is directed to periodically review the accuracy and sufficiency of service provider disclosures.	None	None	It is unclear what the Miller bill's requirement will mean, in light of DOL's current authority to audit compliance with ERISA.
PARTICIPANT DISCLOSURE: IN GENERAL					
IN GENERAL	See below.	Would require disclosure of: • information related to the plan's investment options; and • information about a participant's particular investments and the fees and expenses paid by the participant.	Would require disclosure of: • information related to the plan's investment options; • information about a participant's particular investments and the fees and expenses paid by the participant; and • at a participant's request, the service provider disclosures described above.	Would require disclosure of: • information related to the plan's investment options; • information about a participant's particular investments and the fees and expenses paid by the participant; and • at a participant's request, the service provider disclosures described above.	The availability of service provider disclosures to participants under the Neal and Harkin/Kohl bills (within 30 days of a written request) could indirectly require the disclosure of proprietary business information, *i.e.*, the prices and pricing structure that providers utilize. The Miller bill from the prior Congress contained a provision on the availability of service provider disclosures to participants but it was dropped. The Neal bill from the prior Congress would have required web posting of the service provider disclosures but now would require an affirmative and written participant request.
RELIANCE ON INFORMATION FROM OTHERS		None	To the extent information a plan administrator must disclose is provided by a service provider, the plan administrator may rely	None	It is possible the Neal bill's legal standard for reliance on service provider information would be seen as more demanding than

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			on that information unless it knows, or has reason to know, that the information is inaccurate or incomplete, or it has notice of facts that would prompt a reasonable plan administrator to inquire into the accuracy or completeness of the information.		current law.
Participant Disclosure: Investment Options					
In General	ERISA requires a plan to provide participants with summary plan descriptions that describe the plan's investment options. In addition, plans that are intended to satisfy section 404(c) of ERISA, which provides a limited safe harbor from fiduciary responsibility for participant investment decisions, must provide more extensive disclosures of investment option information.	Would require that ERISA plans that permit participants to direct their own investments provide each participant with a notice regarding the investment options available under the plan. Very generally, the notice would provide: • a statement indicating which components of the charges (both direct and indirect) for each investment option are charged to participant accounts and how such components are to be paid; • information about each of the investment options (described further below); • a statement explaining that options should be selected not only on the basis of fees but also upon consideration of other key facts, including the level of risk and historical returns; and • a plan fee comparison chart	Would require that tax-qualified retirement plans, 403(b) plans, and governmental 457 plans that permit participants to direct their own investments provide each participant with a notice regarding the investment options available under the participant-directed portion of the plan. Very generally, the notice would provide: • information about each of the investment options, including the fees embedded in any option (described further below); • fees charged to participant accounts apart from the investment option, including plan-level administrative, recordkeeping and other service fees that are deducted from accounts; and • a statement explaining that options should be selected not only on the basis of fees but	Would require that ERISA plans that permit participants to direct their own investments provide each participant with a notice regarding the investment options available under the plan. Very generally, the notice would provide, among other things: • information about each of the investment options (described further below); • a statement explaining that options should be selected not only on the basis of fees but also upon consideration of other key factors, including the level of risk and historical returns; and • an investment comparison chart relating to the fees charged under the plan (described further below).	The notice of investment options under the Miller and Harkin/Kohl bills is not a condition of fiduciary relief under section 404(c) of ERISA but rather is a free-standing disclosure requirement.

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		(described further below).	also upon consideration of other key facts, including the investment's objective, level of risk, historical returns and the participant's personal investment objective.		
INVESTMENT OPTION INFORMATION	DOL regulations require extensive disclosures for plans that are intended to be ERISA section 404(c) plans. These disclosures include a description of the investment alternatives under the plan, a general description of the investment objectives and risk and return characteristics of each alternative, a description of any transaction fees and expenses that affect account balances as well as the provision of prospectuses for mutual fund offerings in the plan.	Would require disclosure of a range of information about each of a plan's available investment options, including: • the name of the option; • the investment objectives of the option; • the level of risk associated with the option; • whether the option is diversified among various asset classes so as to minimize risk of large losses or should be combined with other options to obtain such diversification; • whether the option is actively or passively managed and the difference between active and passive management; and • where additional plan-specific, option-specific, and generally available investment information regarding the option may be obtained.	Would require disclosure of a range of information about each of a plan's available investment options, including: • the investment objectives and principal investment strategies of the option; • the option's risk and return characteristics; • the option's investment manager; • whether the option is actively or passively managed and the difference between active and passive management; • whether the investment is designed to be a comprehensive, stand-alone investment for retirement that provides varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures; • the option's returns over the preceding 1-, 5-, and 10-year periods; • the option's annual operating expenses and a statement of whether such fees pay for	Would require disclosure of a range of information about each of a plan's available investment options, including: • the name of the option; • the investment objectives of the option; • the level of risk associated with the option; • whether the option is a comprehensive investment designed to achieve long-term retirement security; • whether the option is actively or passively managed; • historical return and percentage fees assessed; and • where additional plan-specific and generally available investment information may be obtained.	Note that the Miller and Harkin/Kohl bills require disclosure of the "risk level" associated with each investment option; the Neal bill requires disclosure of "risk characteristics." The bills take somewhat different approaches to disclosing whether an investment option should be used on its own or combined with other options. The Miller bill requires disclosure regarding whether the option is diversified among various asset classes. The Neal bill requires disclosure regarding whether the option is one with varying degrees of equity and fixed income exposure (suggesting a target date fund that changes allocations over time). The Harkin/Kohl bill focuses on whether the option is intended to achieve "long-term retirement security," which may be particularly difficult to assess. As a general matter, the bills do not speak to how the new disclosure rules would apply to

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			services other than investment management; • fees and expenses in connection with purchases or sales of interests in such option; and • where additional option-specific and generally available investment information may be obtained.		open brokerage windows. Presumably disclosure is not required with respect to brokerage window investments but none of the bills makes this clear.
Fee Comparison Chart	Not applicable	Would require disclosure of a plan fee comparison chart. The chart would disclose all potential service and investment fees that could be assessed against a participant's account. In general, fees would have to be organized based on whether the fees: • vary depending on the investment options selected by the participant (*e.g.*, expense ratios), noting any charges for one or more investment options that pay for services other than investment management; • are assessed as a percentage of total assets regardless of investment selection; • are administration and transaction-based fees that are not assessed as a percentage of the total assets in the account and are automatically deducted or deducted based on	Does not require a separate fee chart, but as part of the disclosure related to each investment alternative would require disclosure of: • annual operating expenses for the investment option and a statement of whether such fees pay for services other than investment management; and • fees and expenses in connection with purchases or sales of interests in the investment option. Would also require disclosure of: • annual fees for administration and recordkeeping, including the method of allocating such fees to participants; • the existence of fees and expenses associated with participant-initiated services or transactions and the method participants may utilize to get more information on such	Would require disclosure of an investment comparison chart. The chart would disclose all potential service fees that could be assessed against a participant's or beneficiary's account. In general, fees would have to be organized based on whether the fees: • vary depending on the investment options selected by the participant (*e.g.*, expense ratios); • are assessed as a percentage of total assets regardless of investment selection, noting whether fees of any investment options pay for services other than investment management; • are administration and transaction-based fees that are automatically deducted or deducted based on transactions; or	As noted above, all three bills require a statement that fees should not be the sole basis for making investment decisions. It is reasonably clear, however, that the presence of these detailed fee disclosures would have the effect of elevating the significance of fees above other considerations. It seems likely that participants will find the Miller bill's fee comparison chart, with its component disclosures within four categories and its requirement to further subdivide the four categories of fees based on their purpose, difficult to understand. All three bills require a disclosure as to whether the asset-based fees on plan investment options finance services other than investment management (such as recordkeeping). They do not require discussion of service

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		transactions; or • are of another type that may be deducted from participants' or beneficiaries' accounts and not described above. The plan fee comparison chart would also include a disclosure of the purpose for each fee, *e.g.*, for investment management, transactions, plan administration and recordkeeping, or other identified services. Thus, disclosures would have to be broken down into at least the initial four categories, with some types of charges (such as administrative charges) divided into separate elements and then potentially divided again based on the purpose of the fee. The plan fee comparison chart would include, for each option, a history of the returns derived net of fees and expenses for the previous year, five years, and ten years (or since inception, if shorter).	fees; and • any fees and expenses not otherwise disclosed.	• are of another type not reflected in the three categories above.	provider revenue sharing at the participant level.
BENCHMARK REQUIREMENTS	Not applicable	The plan fee comparison chart would include, for each option, an appropriate benchmark as determined periodically by DOL in consultation with the Securities and Exchange Commission ("SEC"). See the discussion of the bill's benchmarking study under	The notice regarding available investment options would, for each option, require a comparison of that option's returns to a "broad-based securities market index." The index could not be administered by the service provider or any affiliate unless the index is	The notice regarding available investment options would, for each option, require a comparison to a "nationally recognized market-based index … that is recommended in the retirement industry as a benchmark investment option" and identified by DOL.	There are numerous questions about the requirement in all three bills to compare each investment option's returns to a benchmark. For example, there are no recognized benchmarks for many common types of investment options. In this regard, it is not certain how the bills'

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		Studies and Surveys below.	widely recognized and used. Directs Treasury to issue regulations providing guidelines, and a safe harbor, for the selection of an appropriate broad-based securities market index.	Directs DOL to prescribe regulations providing for distinct reporting of investment options that do not have generally accepted benchmarks.	benchmarking requirements would apply to managed account or target date options that are comprised of more than one underlying investment option. These issues may well be addressed by the Harkin/Kohl bill's provision directing DOL to provide for distinct reporting of options that do not have accepted benchmarks and the Miller bill's provision regarding DOL authority to prescribe alternative methods of disclosure (see discussion below). The issues may also be addressed somewhat by the Neal bill's directive to Treasury to issue guidelines for selection of the benchmark. It is possible that the selection by a plan administrator of a benchmark could be considered investment advice that gives rise to fiduciary responsibility, which would be inconsistent with one of ERISA's core principles against mandatory investment advice.
REGULATORY AUTHORITY REGARDING ALTERNATIVE DISCLOSURES	Not applicable	For purposes of the participant-level disclosures (other than quarterly benefit statements), DOL has the authority to provide alternative methods of disclosure for particular investment options, such as options that provide a guaranteed rate of return and that	Directs Treasury to issue regulations on how options with guaranteed returns and without explicitly stated fees should report fee information.	Directs DOL to prescribe regulations identifying any investment options that may not have specific charges, including options that provide a guaranteed rate of return. Directs DOL to prescribe regulations providing for distinct	As noted above, the Miller bill's authority with respect to alternative methods of disclosure could provide products with no reasonable benchmarks an exemption from the benchmark requirement and could provide for suitable disclosure regimes regarding products with a non-

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		do not identify specific fees.		reporting of investment options that are hard to value.	investment component, such as annuity contracts. The Neal and Harkin/Kohl provisions appear to provide similar authority on the latter issue but likely with respect to a narrower class of products. It is unclear why the Miller bill's delegation of authority in this area does not apply to the requirements regarding service provider disclosure and participant benefit statements. The Neal bill's delegation in the area likewise does not apply to service provider disclosure.
MANNER OF DISCLOSURE	Not applicable	Provides that fees and expenses in the plan fee comparison chart may be expressed as either a dollar amount or as a formula, as appropriate. If presented as a formula, the chart must provide examples of how the formula would apply.	Provides that fees and expenses in the notice of investment options may be expressed as either a dollar amount or as a percentage of assets (or a combination thereof). If fees are disclosed as a percentage of assets, the disclosure must contain a generic example that illustrates how a percentage of assets charge is assessed in dollars on an account balance.	Provides that fees and expenses in the investment comparison fee chart may be expressed as either a dollar amount or a formula, such as a percentage, but also requires that the form of fee disclosure must be consistent throughout the statement. This will preclude disclosing some charges in dollar form and others in percentage of assets form.	Both the Miller and Neal bills require examples of how charges levied on a formula or percentage basis apply to participant accounts.
USE OF ESTIMATES	Not applicable	Permits the use of reasonable and representative estimates and requires disclosure of such as estimates. Estimates must be based on reasonable assumptions stated in the disclosure (such as the previous year's experience, or in the case of a new plan, a	Permits the use of reasonable, good faith estimates and reasonable, good faith allocation of fees between categories. Provides that fees as of the last day of the plan year are deemed reasonable estimates.	Permits the use of reasonable and representative estimates to the extent the actual charges or percentages under the investment option disclosure and investment comparison fee chart are not known. Estimates must be indicated as being estimates.	The Harkin/Kohl bill limits the use of estimates to situations in which the actual charge or percentage is not known. This suggests that perhaps estimates cannot be used if there is any way the actual charge or percentage could be determined.

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		reasonable estimate taking into account the plan's participants and beneficiaries).		Requires a correction as soon as is reasonable after an estimate is determined to be materially incorrect.	This could limit the ability to use estimates.
TIMING	Not applicable	The investment option notice and plan fee comparison chart must be provided a reasonable time period prior to (1) a participant's initial opportunity to direct investments, and (2) the effective date of any material change in investment options.	The investment option notice would be due (i) a reasonable time before the initial investment of any contribution on behalf of the participant; (ii) in advance of any change in the investment alternatives under the plan; and (iii) annually.	The investment option notice and investment comparison fee chart would be due, with respect to each plan year at least 15 days prior to (i) a participant's initial investment; and (ii) the effective date of any material change in investment options.	The Neal bill directs Treasury to create an exception allowing after-the-fact notices for plans with automatic enrollment or immediate eligibility features to the extent appropriate. The Miller bill appears to recognize the timing issues for automatic enrollment and immediate eligibility plans but would still apply the same rule that the notice be provided at a reasonable time prior to the initial investment. The Harkin/Kohl bill contains the same recognition with respect to automatic enrollment plans, providing that the 15-day rule would not apply but disclosures would still be required a reasonable period prior to the initial investment. All three bills seem to recognize that it will be difficult to meet the timing rules for notice of a change of investment menu options in some circumstances (e.g., the need to replace an investment option on an emergency basis). Yet they address the issue differently. The Neal bill directs Treasury to

ISSUE	CURRENT LAW	MILLER BILL	NEAL BILL	HARKIN/KOHL BILL	COMMENTS
					permit the notice of investment menu change to be provided after-the-fact in appropriate circumstances. The Harkin/Kohl bill gives DOL authority to provide exceptions to the requirement for a 15-day advance notice of investment menu changes. The Miller bill gives similar authority to DOL but says the notice of investment menu change must always be provided at least ten days in advance. So it is unclear what a fiduciary should do under the Miller bill if faced with a choice between the need to replace an investment option on an emergency basis and the need to comply with the 10-day rule.
PARTICIPANT DISCLOSURE: QUARTERLY NOTICES					
IN GENERAL	Participants in defined contribution plans subject to ERISA (other than a "one-participant retirement plan") who have the right to direct their investments must be given quarterly benefit statements.	Would expand the existing quarterly benefit statement requirement for ERISA plans that permit participants to direct investments. Plans with 100 or fewer participants and beneficiaries may provide the benefit statement on an annual rather than a quarterly basis.	Would require a quarterly notice regarding investment and fee information for the portion of any tax-qualified retirement plan, 403(b) plan and governmental 457(b) plan that provides for participant investment direction. Same rule as the Miller bill allowing small plans to provide the notice annually.	Same as Miller bill.	
CONTENTS	Current law requires disclosure of assets held in each investment, including the value of assets held in the form of employer	The statement would have to disclose, for the preceding quarter:	The quarterly notice would have to disclose, for the preceding quarter:	The statement would have to disclose, for the preceding quarter: • the starting account balance;	The Neal bill requires disclosure of a participant's asset allocation, *e.g.*, 25% domestic equities. It is not clear how

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	securities and information about vesting. Participants must also be provided with an explanation of the benefits of diversification and the risks of excessive investment concentration.	• the starting account balance; • contributions made during the quarter, itemizing employer and employee contributions; • earnings or losses on the account balance during the quarter (if any); • actual or estimated charges that reduced the account during the quarter, expressed in dollars or, if estimated, such estimated dollar charges as are derived from an expense ratio; • any other charges to the participant or beneficiary in connection with the account; • the ending balance; • the participant's asset allocation to each investment option, expressed as an amount and as a percentage; and • how to obtain the most recently updated version of the plan fee comparison chart. The plan administrator <u>may</u> include certain other information in the quarterly benefit statement relating to the historical return and risk of each investment option and the estimated amount the participant needs to contribute each month or year so as to retire at Social Security retirement age.	• the different asset classes that the participant's or beneficiary's account is invested in as of the last day of the preceding quarter and the percentage of the account allocated to each asset class; • fees for recordkeeping and administration that were deducted from the participant's account; and • fees from participant-initiated transactions that were deducted from the participant's account. In addition, for each investment, the notice would have to disclose for the preceding quarter: • the percentage of the account invested in each alternative; • whether the alternative is actively or passively managed; • the alternative's risk and return characteristics; • annual operating expenses for the alternative; • fees and expenses for sales or purchases of the alternative; • a statement explaining that options should be selected not only on the basis of fees but also upon consideration of other key facts, including the level of risk and historical returns; and	• the participant's vesting status; • contributions made during the quarter, itemizing employer and employee contributions; • earnings during the quarter; • actual or estimated fees assessed during the quarter (expressed in dollars or as an expense ratio); • ending balance; • the participant's allocation across investment options; • current asset value of each option; • changes in the asset value of each option; • net return for each option; and • the performance of each investment option selected by the participant as compared to at least one nationally recognized market-based index, as identified by DOL. The statement <u>must</u> include the historical risk and return of each investment option and the estimated amount that the participant needs to save each month to retire at age 65. Would also require the following additional information about service fees charged against the participant's account if requested by a participant (to be provided within 30 days of the participant's request):	detailed the asset allocation disclosure would have to be and whether there is a generally accepted approach regarding characterizations of asset classes. There will inevitably be questions about how the bills' disclosure requirements should apply to particular investments. For example, enhanced benefits under annuity contracts (*e.g.*, guaranteed minimum income benefits) may be payable only in certain circumstances and it may be difficult to determine the net return on such a benefit and the fees assessed during the quarter. In this regard, see Regulatory Authority Regarding Alternative Disclosures above. The disclosure of estimated charges assessed for the past quarter under the Miller bill will require the use of numerous simplifying assumptions, especially where a participant changes investments. Accordingly, the estimates will in many cases be materially incorrect. This is likely to cause confusion for participants. The Harkin/Kohl bill requires benchmarking here in the quarterly statements as well, raising the same issues noted above in the discussion of

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			• a statement regarding how a participant may access the information on investment options in the enrollment notice.	• fees that vary depending on the investment options selected, including expense ratios, investment-specific asset-based fees, redemption fees, wrap fees, and surrender charges; • fees that are assessed as a percentage of total account assets; • administration and transaction-based fees; and • fees that may be deducted from accounts that are not reflected above.	benchmarking requirements in the investment options notice.
MANNER OF DISCLOSURE	Not applicable	Requires disclosures in the quarterly statements be provided on a dollar basis.	Provides that fees and expenses may be expressed as either a dollar amount or as a percentage of assets (or a combination thereof). If fees are disclosed as a percentage of assets, the quarterly notice must contain a generic example that illustrates how a percentage of assets charge is assessed in dollars on an account balance. Provides that the quarterly notice may be combined with other plan disclosures.	Generally provides that fees in the quarterly notice may be expressed as a dollar amount or an expense ratio. However, with respect to the fee information available upon request, provides that the form of fee disclosure must be consistent. This will preclude disclosing some such charges in dollar form and others in percentage of assets form.	The Miller bill would require participant-specific disclosure on a dollar basis in either estimated or actual form. Pursuing personalized estimates raises the problems noted above. Pursuing personalized actual dollar amounts, particularly for asset-based charges, would require major new systems investments and could materially increase the cost of plan administration.
USE OF ESTIMATES	Not applicable	Permits the use of reasonable and representative estimates and requires disclosure of such as estimates. The estimate must be based on reasonable assumptions set forth in the statement, such as	Permits the use of reasonable, good faith estimates and reasonable, good faith allocation of fees between categories. Provides that fees as of the last day of the plan year are deemed	Permits the use of reasonable and representative estimates to the extent the actual charges or percentages included in the quarterly statement are not known. Estimates must be indicated as being estimates.	The Harkin/Kohl bill limits the use of estimates to situations in which the actual charge or percentage is not known. This suggests that perhaps estimates cannot be used if there is any way the actual charge or

ISSUE	CURRENT LAW	MILLER BILL	NEAL BILL	HARKIN/KOHL BILL	COMMENTS
		the previous year's experience.	reasonable estimates.	Requires a correction as soon as is reasonable after an estimate is determined to be materially incorrect.	percentage could be determined. This could limit the ability to use estimates.
DEFINITION OF SERVICE	Not applicable	Defines service in the same way applicable to service provider disclosure discussed above, raising the same issues regarding disclosure of subcontractors.	None	None	
TIMING	Quarterly benefit statements are due within 45 days of the end of each calendar quarter.	Same as current law, except that plans with 100 or fewer participants and beneficiaries may provide benefit statements on an annual basis, rather than a quarterly basis.	Must be provided each quarter but how soon after the close of the quarter is not specified. Same annual rule for small plans as Miller bill.	Same as Miller bill.	
SERVICE PROVIDER AND PARTICIPANT DISCLOSURE: ENFORCEMENT					
SERVICE PROVIDER DISCLOSURE	Current law imposes a variety of dollar penalties for a failure to provide requisite plan information. ERISA provides extensive remedies for breaches of fiduciary duty. In addition, the penalties for a prohibited transaction, including entering into an unreasonable service arrangement with a party in interest, are onerous. Very generally, ERISA and the Internal Revenue Code impose penalties that may be as much as 100% of the amount involved in the transaction. In addition, DOL takes the	DOL would be responsible for enforcing the disclosure requirements. DOL would have authority to assess a penalty against the service provider of up to $1,000 per day with respect to each disclosure violation, from the date of the initial violation until the date on which such violation is corrected, subject to a total maximum penalty of 10% of the amount involved.	Treasury would be responsible for enforcing the disclosure requirements. An excise tax of $1,000 per day would be owed by the service provider for any disclosure failure. The maximum penalty for any service provider with respect to a disclosure failure to a plan administrator would be the lesser of $1,000,000 or 10% of the assets of the plan. *Exceptions*. No tax would apply if the service provider exercised reasonable diligence and corrected the error within 90 days of the date the service	DOL would be responsible for enforcing the disclosure requirements. DOL would have authority to assess a penalty against the plan administrator of up to $100 per day for a failure.	It is possible that a failure by a plan to receive the service provider disclosure would also give rise to prohibited transaction penalties and expose the plan administrator to liability for breach of fiduciary duty. Thus, the cumulative penalties associated with noncompliance with the service provider disclosure regime could be larger than they appear. The Neal bill provides for a self-correction regime not found in the Miller and Harkin/Kohl bills. The Harkin/Kohl bill creates a single penalty structure for each of the three different disclosures: the service provider disclosure

Issue	Current Law	Miller Bill	Neal Bill	Harkin/Kohl Bill	Comments
	position that a failure to provide the investment option information required under section 404(c) of ERISA causes the plan to fail to be a 404(c) plan, which could expose the plan fiduciaries to enhanced liability for participant investment decisions.		provider knew or should have known of the failure. Treasury would also have authority to waive the penalty if the failure was due to reasonable cause.		statement, the participant investment election disclosure and the participant quarterly benefit statement. The penalty does not fit the service provider disclosure very well since it is targeted to disclosures that are made to participants and beneficiaries, not plans.
Participant Disclosure	Not applicable	DOL would be responsible for enforcing the disclosure requirements. DOL would have authority to assess a penalty against the plan administrator of up to $100 per day for a failure to satisfy any of the participant-level disclosures required under the bill. A failure with respect to any participant or beneficiary is a separate failure for penalty purposes.	Treasury would be responsible for enforcing the disclosure requirements. An excise tax of $100 per day would be owed by the plan administrator for a failure to satisfy any of the participant-level disclosures under the bill. A failure with respect to any participant or beneficiary is a separate failure for penalty purposes. The maximum penalty with respect to any plan for any plan year would be the lesser of $500,000 or 10% of the assets of the plan. *Exceptions*. No tax would apply if the plan administrator exercised reasonable diligence and corrected the error within 90 days of the date the plan administrator knew or should have known of the failure. Treasury would also have authority to waive the penalty if the failure was due to reasonable	Same as Miller bill.	The Neal bill contains a cap on the maximum penalty imposed on a plan administrator for participant disclosure failures and contains a self-correction regime. Neither is found in the Miller and Harkin/Kohl bills.

ISSUE	CURRENT LAW	MILLER BILL	NEAL BILL	HARKIN/KOHL BILL	COMMENTS
			cause.		
ENFORCEMENT DIRECTIVES	Not applicable	Directs DOL to coordinate enforcement activity with other agencies if it determines that a service provider is engaged in a pattern or practice that precludes compliance by plans with the new disclosure requirements. Directs DOL to annually audit a representative sampling of plans to determine compliance with the bill and to report the results of such audits and any related recommendations to the House Education and Labor Committee and the Senate HELP Committee.	None	Very similar to Miller bill.	The Harkin/Kohl bill specifically mentions coordination with the SEC and the Comptroller of the Currency, but is silent on other government bodies.
PUBLIC DISCLOSURE PENALTY	Not applicable	Provides that DOL shall widely disseminate information regarding any service provider that has been engaged in a pattern or practice with the intent to preclude compliance with the new disclosure requirements by plan administrators. The service provider will receive prior notice of such dissemination, and an opportunity to request a hearing and to appeal to the Secretary.	None	Same as Miller bill.	DOL's power to publicly identify a service provider as noncompliant appears to be unprecedented and could have a devastating effect on any provider so identified.
INVESTMENT MENU REGULATION					
	ERISA generally does not impose substantive requirements on the investment options that are offered under a plan, but	Requires that, in order to rely on ERISA section 404(c), a plan offer at least one investment option that is:	None	None	Because most plans rely on ERISA section 404(c), the index proposal in the Miller bill is essentially a mandate.

Issue	Current Law	Miller Bill	Neal Bill	Harkin/Kohl Bill	Comments
	rather leaves that to the plan fiduciary's prudent judgment. For a plan that is intended to comply with the safe harbor from fiduciary responsibility for participants' investment direction, section 404(c) of ERISA provides that the menu must provide a participant or beneficiary an opportunity to choose from a broad range of investment options. In general, this means a choice from among at least three investment alternatives, each of which is diversified and has materially different risk and return characteristics.	• a passively managed investment with a portfolio of securities designed to be representative of the U.S. investable equity market or the U.S. investment grade bond market (including Treasury, agency, non-agency, and corporate issues) or a combination thereof; and • described in the terms of the plan as offered without any endorsement of the government or the plan sponsor.			The Miller bill reflects a judgment that passive index-based investing is preferable to actively managed investing. Presumably the index fund would have to be part of the plan's core menu and not merely an option available through a brokerage window. Dropped from the version of the Miller bill approved by Committee was the requirement that the index fund offer "a combination of historical returns, risk, and charges . . . that is likely to meet retirement income needs at adequate levels of contribution." The Neal and Harkin/Kohl bills contain no mandated investment offerings but rather require disclosure regarding whether the various plan investment options are actively or passively managed. Such disclosure is also required under the Miller bill.
Miscellaneous					
Electronic Delivery	DOL has established an extremely stringent standard that makes electronic delivery of plan information very difficult. Under DOL's regulations, electronic delivery of information is generally	With respect to participant-level disclosure, directs DOL to prescribe rules regarding electronic disclosure within 1 year of the date of enactment. Such rules shall initially be similar to the IRS electronic	Contains a free-standing provision directing Treasury to issue regulations within 6 months allowing all Internal Revenue Code retirement plan notices (not just the new fee disclosures required under the	Would permit disclosure in electronic form to the extent such form is reasonably accessible, which is similar to the IRS standard.	DOL's standard has proven to be a material barrier to 404(c) compliance because, in the vast majority of situations, it requires consent and proof that electronic delivery is effective to establish actual receipt. The IRS standard

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	permitted only if use of the employer's electronic system is an integral part of the employee's duties or the participant has affirmatively consented to electronic delivery in a manner that reasonably demonstrates the participant's ability to access information in the electronic form. In recent years, DOL has permitted a more flexible approach with respect to certain notices (not including those under ERISA section 404(c)), and in these cases has generally followed the IRS standard discussed below. The IRS has a different standard with respect to notices and disclosures required under the Internal Revenue Code with respect to employee benefit plans. The IRS standard depends on whether the participant has the effective ability to access the electronic information, *e.g.*, e-mail.	disclosure rules, but shall be regularly modified to take into account new developments, including new forms of electronic media.	bill) to be provided to participants under a "post and push" method. Specifically, a plan disclosure could be posted on a secure website and participants then given notice as to the availability of the disclosure. This notice of availability could be provided electronically to participants with reasonable access to a computer consistent with the existing IRS regulations. The notice of availability would have to advise participants that they could request a paper copy of the disclosure at no charge.		is preferable although not ideal. The Neal bill's directive to Treasury would provide even greater flexibility for electronic delivery mechanisms than current IRS regulations. The Miller bill's directive for regular modification of electronic disclosure rules should also prove helpful.
MODEL STATEMENTS	Not applicable	For each of the new participant-level disclosure requirements, mandates development of a model statement by DOL.	Same as Miller bill but the model statements would be prepared by Treasury.	For each of the new participant-level <u>and</u> service provider disclosure requirements, mandates development of a model statement by DOL.	
STUDIES AND SURVEYS	Not applicable	*Simplification Study*. Directs DOL to make recommendations within 18 months of enactment regarding simplification of	None	*Simplification Study*. Same as Miller bill. *Investment and Fee Survey*. Directs DOL to publish annually	The investment and fee survey required under the Harkin/Kohl bill would be a major new undertaking and would seem to

ISSUE	CURRENT LAW	MILLER BILL	NEAL BILL	HARKIN/KOHL BILL	COMMENTS
		ERISA's reporting and disclosure requirements. *Benchmarking Study*. Directs DOL to study the efficacy of including benchmarks, indices, and other points of comparison in the plan fee comparison charts provided to participants and beneficiaries. (The bill does already require such points of comparison.) Specifically, DOL is directed to review whether such comparisons help participants understand plan charges and make more informed investment decisions and whether they bias participants against particular investment options. DOL shall deliver the study together with any recommendations not later than 180 days after enactment.		on its website survey data on plan investment options and median fee levels for index, lifecycle, balanced and such other investment options as the Secretary deems relevant.	have the potential to significantly affect sponsor and participant behavior with respect to selection of plan investment options.
COMPLIANCE ASSISTANCE	Not applicable	Directs DOL to assist plan sponsors and participants with questions regarding compliance with the bill's requirements. Directs DOL to make educational and compliance materials available to small employers to assist in selecting and monitoring service providers and investment options.	None	Very similar to Miller bill.	

Issue	Current Law	Miller Bill	Neal Bill	Harkin/Kohl Bill	Comments
Effective Date					
In General	Not applicable	*Service Provider Disclosure*. Would be effective for contracts or arrangements entered into after one year after date of enactment. *Participant-Level Disclosure other Than Quarterly Statements*. Would be effective for plan years beginning after one year after date of enactment. *Quarterly Benefit Statement Disclosure*. Would be effective for statements for calendar quarters beginning after one year after date of enactment. *Investment Menu Regulation*. Would be effective for plan years beginning after one year after date of enactment. *Regulations and Good Faith Compliance*. DOL is directed to issue final regulations within 270 days after date of enactment. Prior to the issuance of final regulations, good faith compliance with the statute shall be treated as compliance with the new requirements.	Would be effective for plan years beginning more than one year after the date of enactment. Directs Treasury to issue final regulations not later than December 31, 2010.	Would be effective for plan years beginning after December 31, 2011. Directs DOL to issue final regulations by December 31, 2010.	If the regulations under the Miller bill are actually issued by the statutory deadline, the good faith compliance rule would never go into effect. Also, if the regulations are issued at the deadline, plans could have as little as three months to comply with these regulations. If the regulations provide more time for compliance with the regulatory requirements, then plans will have to modify their systems twice—once to comply with the statute (without a good faith standard unless the regulations provide one) and once to comply with the regulations. The same risk of having to comply first with the statutory provisions and then with the regulatory guidance is also very much present under the Neal bill. This risk is least present under the Harkin/Kohl bill, which directs regulations to be issued by 12/31/2010 and is effective for plan years beginning after 12/31/2011.

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