

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), any such new certification
3 shall be treated as the original certification for
4 purposes of section 305(b)(3)(D) of such Act
5 and section 432(b)(3)(D) of such Code.

6 (B) NOTICE ALREADY PROVIDED.—In any
7 case in which notice has been provided under
8 such sections with respect to the original certifi-
9 cation, not later than 30 days after the new
10 certification is made, the plan sponsor shall
11 provide notice of any change in status under
12 rules similar to the rules such sections.

13 (4) EFFECT OF CHANGE IN STATUS.—If a plan
14 ceases to be in critical status pursuant to the new
15 certification, then the plan shall, not later than 30
16 days after the due date described in paragraph (2),
17 cease any restriction of benefit payments, and im-
18 position of contribution surcharges, under section 305
19 of such Act and section 432 of such Code by reason
20 of the original certification.

21 **Subtitle B—Fee Disclosure**

22 **SEC. 321. SHORT TITLE OF SUBTITLE.**

23 This subtitle may be cited as the “Defined Contribu-
24 tion Fee Disclosure Act of 2010”.

1 **SEC. 322. AMENDMENTS TO THE EMPLOYEE RETIREMENT**
2 **INCOME SECURITY ACT OF 1974.**

3 (a) REQUIREMENTS RELATING TO SERVICE PRO-
4 VIDERS AND PLAN ADMINISTRATORS OF INDIVIDUAL AC-
5 COUNT PLANS.—

6 (1) IN GENERAL.—Part 1 of subtitle B of title
7 I of the Employee Retirement Income Security Act
8 of 1974 is amended—

9 (A) by redesignating section 111 (29
10 U.S.C. 1031) as section 113; and

11 (B) by inserting after section 110 (29
12 U.S.C. 1030) the following new sections:

13 **“SEC. 111. REQUIREMENT TO PROVIDE NOTICE OF PLAN**
14 **FEE INFORMATION TO PLAN ADMINISTRA-**
15 **TORS.**

16 “(a) INITIAL STATEMENT OF SERVICES PROVIDED
17 AND REVENUES RECEIVED.—

18 “(1) IN GENERAL.—In any case in which a
19 service provider enters into a contract or arrange-
20 ment to provide services to an individual account
21 plan, the service provider shall, before entering into
22 such contract or arrangement, provide to the plan
23 administrator a single written statement which in-
24 cludes, with respect to the first plan year covered
25 under such contract or arrangement, the following
26 information:

1 “(A) A detailed description of the services
2 which will be provided to the plan by the service
3 provider, the amount of total expected annual
4 revenue with respect to such services, the man-
5 ner in which such revenue will be collected, and
6 the extent to which such revenue varies between
7 specific investment options.

8 “(B)(i) In the case of a service provider
9 who is providing recordkeeping services with re-
10 spect to any investment option, such informa-
11 tion as is necessary for the plan administrator
12 to satisfy the requirements of subparagraphs
13 (B)(ii)(IV) and (C) of section 105(a)(2) and
14 paragraphs (1) and (3) of section 112(a) with
15 respect to such option, including specifying the
16 method used by the service provider in dis-
17 closing or estimating expenses under subpara-
18 graphs (C)(iv) and (E) of section 105(a)(2).

19 “(ii) To the extent provided in regulations
20 issued by the Secretary, clause (i) shall not
21 apply in the case of a service provider described
22 in such clause if the service provider receives a
23 written notification from the plan administrator
24 that the information described in such clause in
25 connection with the investment option is pro-

1 vided by another service provider pursuant to a
2 contract or arrangement to provide services to
3 the plan.

4 “(C) A statement indicating—

5 “(i) the identity of any investment op-
6 tions offered under the plan with respect
7 to which the service provider provides sub-
8 stantial investment, trustee, custodial, or
9 administrative services, and

10 “(ii) in the case of any investment op-
11 tion, whether the service provider expects
12 to receive any component of total expected
13 annual revenue described in paragraph
14 (2)(A)(ii)(II) with respect to such option
15 and the amount of any such component.

16 “(D) The portion of total expected annual
17 revenue which is properly allocable to each of
18 the following:

19 “(i) Administration and record-
20 keeping.

21 “(ii) Investment management.

22 “(iii) Other services or amounts not
23 described in clause (i) or (ii).

24 “(2) DEFINITION OF TOTAL EXPECTED ANNUAL
25 REVENUE.—For purposes of this section—

1 “(A) IN GENERAL.—The term ‘total ex-
2 pected annual revenue’ means, with respect to
3 any plan year—

4 “(i) any amount expected to be re-
5 ceived during such plan year from the plan
6 (including amounts paid from participant
7 accounts), any participant or beneficiary,
8 or any plan sponsor in connection with the
9 contract or arrangement referred to in
10 paragraph (1), and

11 “(ii) any amount not taken into ac-
12 count under clause (i) which is expected to
13 be received during such plan year by the
14 service provider in connection with—

15 “(I) plan administration, record-
16 keeping, consulting, management, or
17 investment or other service activities
18 undertaken by the service provider
19 with respect to the plan, or

20 “(II) plan administration, record-
21 keeping, consulting, management, or
22 investment or other service activities
23 undertaken by any other person with
24 respect to the plan.

1 “(B) EXPRESSED AS DOLLAR AMOUNT OR
2 PERCENTAGE OF ASSETS.—Total expected an-
3 nual revenue and any amount indicated under
4 paragraph (1)(C)(ii) may be expressed as a dol-
5 lar amount or as a percentage of assets (or a
6 combination thereof), as appropriate. To the ex-
7 tent that total expected annual revenue is ex-
8 pressed as a percentage of assets, such percent-
9 age shall be properly allocated among clauses
10 (i), (ii), and (iii) of paragraph (1)(D).

11 “(C) PROVISION OF FEE SCHEDULE FOR
12 CERTAIN PARTICIPANT INITIATED TRANS-
13 ACTIONS.—In the case of amounts expected to
14 be received from participants or beneficiaries
15 under the plan (or from an account of a partici-
16 pant or beneficiary) as a fee or charge in con-
17 nection with a transaction initiated by the par-
18 ticipant (other than loads, commissions, broker-
19 age fees, and other investment related trans-
20 actions)—

21 “(i) such amounts shall not be taken
22 into account in determining total expected
23 annual revenue, and

24 “(ii) the service provider shall provide
25 to the plan administrator, as part of the

1 statement referred to in paragraph (1), a
2 fee schedule which describes each such fee
3 or charge, the amount thereof, and the
4 manner in which such amount is collected.

5 “(D) ESTIMATIONS.—In determining
6 under this subsection any amount which is ex-
7 pected to be received by the service provider,
8 the service provider shall provide a reasonable
9 estimate of such amount and shall indicate in
10 the statement referred to in paragraph (1)
11 whether such amount disclosed is an estimate.
12 Any such estimate shall be based on reasonable
13 assumptions specified in such statement.

14 “(3) ALLOCATION RULES.—The Secretary shall
15 provide rules for defining total expected annual rev-
16 enue and for the appropriate and consistent alloca-
17 tion of total expected annual revenue among clauses
18 (i), (ii), and (iii) of paragraph (1)(D), except that
19 the entire amount of such revenue shall be allocated
20 among such clauses and no amount may be taken
21 into account under more than one clause.

22 “(4) DISCLOSURE OF DIFFERENT PRICING OF
23 INVESTMENT OPTIONS.—In the case of investment
24 options with more than one share class or price level,
25 the Secretary shall prescribe regulations for the dis-

1 closure of the different share classes or price levels
2 available as part of the statement in paragraph (1).
3 Such regulations shall provide guidance with respect
4 to the disclosure of the basis for qualifying for such
5 share classes or price levels, which may include
6 amounts invested, number of participants, or other
7 factors.

8 “(5) DISCLOSURE OF INVESTMENT TRANS-
9 ACTION COSTS.—To the extent provided in regula-
10 tions issued by the Secretary, a service provider shall
11 separately disclose the transaction costs (including
12 sales commissions) for each investment option for
13 the preceding year.

14 “(b) ANNUAL STATEMENTS.—With respect to each
15 plan year after the plan year covered by the statement
16 described in subsection (a), the service provider shall pro-
17 vide the plan administrator a single written statement
18 which includes the information described in subsection (a)
19 with respect to such subsequent plan year.

20 “(c) MATERIAL CHANGE STATEMENTS.—In the case
21 of any event or other change during a plan year which
22 causes the information included in any statement de-
23 scribed in subsection (a) or (b) with respect to such plan
24 year to become materially incorrect, the service provider
25 shall provide the plan administrator a written statement

1 providing the corrected information not later than 30 days
2 after the service provider knows, or exercising reasonable
3 diligence would have known, of such event or other change.

4 “(d) TIME AND MANNER OF PROVIDING STATEMENT
5 AND OTHER MATERIALS.—The statement referred to in
6 subsections (a)(1) and (b) shall be made at such time and
7 in such manner as the Secretary may provide. Other mate-
8 rials required to be provided under this section shall be
9 provided in such manner as the Secretary may provide.
10 All information included in such statements and other ma-
11 terials shall be presented in a manner which is easily un-
12 derstood by the typical plan administrator.

13 “(e) EXCEPTION FOR SMALL SERVICE PROVIDERS.—
14 The requirements of this section shall not apply with re-
15 spect to any contract or arrangement for services provided
16 with respect to an individual account plan for any plan
17 year if—

18 “(1) the total annual revenue expected by the
19 service provider to be received with respect to the
20 plan for such plan year is less than \$5,000, and

21 “(2) the service provider provides a written
22 statement to the plan administrator that the total
23 annual revenue expected by the service provider to
24 be received with respect to the plan is less than
25 \$5,000.

1 Service providers who expect to receive de minimis annual
2 revenue from the plan need not provide the written state-
3 ment described in paragraph (2). The Secretary may by
4 regulation or other guidance adjust the dollar amount
5 specified in this subsection.

6 “(f) DEFINITION OF SERVICE PROVIDER.—For pur-
7 poses of this section—

8 “(1) IN GENERAL.—The term ‘service provider’
9 includes any person providing administration, rec-
10 ordkeeping, consulting, investment management
11 services, or investment advice to an individual ac-
12 count plan under a contract or arrangement.

13 “(2) CONTROLLED GROUPS TREATED AS ONE
14 SERVICE PROVIDER.—All persons which would be
15 treated as a single employer under subsection (b) or
16 (c) of section 414 of the Internal Revenue Code of
17 1986 if section 1563(a)(1) of such Code were ap-
18 plied—

19 “(A) except as provided by subparagraph
20 (B), by substituting ‘more than 50 percent’ for
21 ‘at least 80 percent’ each place it appears
22 therein, or

23 “(B) for purposes of subsection
24 (a)(1)(C)(i), by substituting ‘at least 20 per-

1 cent' for 'at least 80 percent' each place it ap-
2 pears therein,
3 shall be treated as one person for purposes of this
4 section

5 **“SEC. 112. REQUIREMENT TO PROVIDE NOTICE TO PARTICI-
6 PANTS OF PLAN FEE INFORMATION.**

7 “(a) DISCLOSURES TO PARTICIPANTS AND BENE-
8 FICIARIES.—

9 “(1) ADVANCE NOTICE OF AVAILABLE INVEST-
10 MENT OPTIONS.—

11 “(A) IN GENERAL.—The plan adminis-
12 trator of an applicable individual account plan
13 shall provide to the participant or beneficiary
14 notice of the investment options available under
15 the plan before—

16 “(i) the earliest date provided for
17 under the plan for the participant's initial
18 investment of any contribution made on
19 behalf of such participant, and

20 “(ii) the effective date of any change
21 in the list of investment options available
22 under the plan, unless such advance notice
23 is impracticable, and in such case, as soon
24 as is practicable.

1 “(B) INFORMATION INCLUDED IN NO-
2 TICE.—The notice required under subparagraph
3 (A) shall—

4 “(i) set forth, with respect to each
5 available investment option—

6 “(I) the name of the option,

7 “(II) a general description of the
8 option’s investment objectives and
9 principal investment strategies, prin-
10 cipal risk and return characteristics,
11 and the name of the option’s invest-
12 ment manager,

13 “(III) whether the investment op-
14 tion is designed to be a comprehen-
15 sive, stand-alone investment for retire-
16 ment that provides varying degrees of
17 long-term appreciation and capital
18 preservation through a mix of equity
19 and fixed income exposures,

20 “(IV) the extent to which the in-
21 vestment option is actively managed
22 or passively managed in relation to an
23 index and the difference between ac-
24 tive management and passive manage-
25 ment,

1 “(V) where, and the manner in
2 which, additional plan-specific, option-
3 specific, and generally available in-
4 vestment information may be ob-
5 tained, and

6 “(VI) a statement explaining that
7 investment options should not be eval-
8 uated solely on the basis of the
9 charges for each option but should
10 also be based on consideration of
11 other key factors, including the risk
12 level of the option, the investment ob-
13 jectives of the option, historical re-
14 turns of the option, and the partici-
15 pant’s personal investment objectives,

16 “(ii) include a statement of the right
17 under paragraph (2) of participants and
18 beneficiaries to request, and a description
19 of how a participant or beneficiary may re-
20 quest, a copy of the statements received by
21 the plan administrator under section 111
22 with respect to the plan, and

23 “(iii) include the plan fee comparison
24 chart described in subparagraph (C).

25 “(C) PLAN FEE COMPARISON CHART.—

1 “(i) IN GENERAL.—

2 “(I) IN GENERAL.—The notice
3 provided under this paragraph shall
4 include a plan fee comparison chart
5 consisting of a comparison of the serv-
6 ice and investment charges that will
7 or could be assessed against the ac-
8 count of the participant or beneficiary
9 with respect to the plan year.

10 “(II) EXPRESSED AS DOLLAR
11 AMOUNT OR FORMULA.—For purposes
12 of this subparagraph, such charges
13 shall be provided in the form of a dol-
14 lar amount or as a formula (such as
15 a percentage of assets), as appro-
16 priate.

17 “(ii) CATEGORIZATION OF
18 CHARGES.—The plan fee comparison chart
19 shall provide information in relation to the
20 following categories of charges that will or
21 could be assessed against the account of
22 the participant or beneficiary:

23 “(I) ASSET-BASED CHARGES SPE-
24 CIFIC TO INVESTMENT.—Charges that
25 vary depending on the investment op-

1 tions selected by the participant or
2 beneficiary, including the annual oper-
3 ating expenses of the investment op-
4 tion and investment-specific asset-
5 based charges (such as loads, commis-
6 sions, brokerage fees, exchange fees,
7 redemption fees, and surrender
8 charges). Except as provided by the
9 Secretary in regulations under this
10 section, the information relating to
11 such charges shall include a statement
12 noting any charges for 1 or more in-
13 vestment options which pay for serv-
14 ices other than investment manage-
15 ment.

16 “(II) RECURRING ASSET-BASED
17 CHARGES NOT SPECIFIC TO INVEST-
18 MENT.—Charges that are assessed as
19 a percentage of the total assets in the
20 account of the participant or bene-
21 ficiary, regardless of the investment
22 option selected.

23 “(III) ADMINISTRATIVE AND
24 TRANSACTION-BASED CHARGES.—Ad-
25 ministration and transaction-based

1 charges, including fees charged to
2 participants to cover plan administra-
3 tion, compliance, and recordkeeping
4 costs, plan loan origination fees, pos-
5 sible redemption fees, and possible
6 surrender charges, that are not as-
7 sessed as a percentage of the total as-
8 sets in the account and are either
9 automatically deducted each year or
10 result from certain transactions en-
11 gaged in by the participant or bene-
12 ficiary.

13 “(IV) OTHER CHARGES.—Any
14 other charges which may be deducted
15 from participants’ or beneficiaries’ ac-
16 counts and which are not described in
17 subclauses (I), (II), and (III).

18 “(iii) FEES AND HISTORICAL RE-
19 TURNS.—The plan fee comparison chart
20 shall include—

21 “(I) the historical returns, net of
22 fees and expenses, for the previous
23 year, 5 years, and 10 years (or for the
24 period since inception, if shorter) with
25 respect to such investment option, and

1 “(II) the historical returns of an
2 appropriate benchmark, index, or
3 other point of comparison for each
4 such period.

5 “(D) MODEL NOTICES.—The Secretary
6 shall prescribe one or more model notices that
7 may be used for purposes of satisfying the re-
8 quirements of this paragraph, including model
9 plan fee comparison charts.

10 “(E) ESTIMATIONS.—For purposes of pro-
11 viding the notice required under this paragraph,
12 the plan administrator may provide a reason-
13 able and representative estimate for any
14 charges or percentages disclosed under subpara-
15 graph (B) or (C) and shall indicate whether the
16 amount of any such charges or percentages dis-
17 closed is an estimate.

18 “(2) DISCLOSURE OF SERVICE PROVIDER
19 STATEMENTS.—The plan administrator shall provide
20 to any participant or beneficiary a copy of any state-
21 ment received pursuant to section 111 within 30
22 days after receipt of a request for such a statement.

23 “(3) NOTICE OF MATERIAL CHANGES.—In the
24 case of any event or other change which causes the
25 information included in any notice described in para-

1 graph (1) to become materially incorrect, the plan
2 administrator shall provide participants and bene-
3 ficiaries a written statement providing the corrected
4 information not later than 30 days after the plan
5 administrator knows, or exercising reasonable dili-
6 gence would have known, of such event or other
7 change.

8 “(4) TIME AND MANNER OF PROVIDING NO-
9 TICES AND DISCLOSURES.—

10 “(A) IN GENERAL.—The notices described
11 in paragraph (1) shall be provided at such
12 times and in such manner as the Secretary may
13 provide. Other notices and materials required to
14 be provided under this subsection shall be pro-
15 vided in such manner as the Secretary may pro-
16 vide.

17 “(B) MANNER OF PRESENTATION.—

18 “(i) IN GENERAL.—All information in-
19 cluded in such notices or explanations shall
20 be presented in a manner which is easily
21 understood by the typical participant.

22 “(ii) GENERIC EXAMPLE OF OPER-
23 ATING EXPENSES OF INVESTMENT OP-
24 TIONS.—The information described in
25 paragraph (1)(C)(ii)(I) shall include a ge-

1 neric example describing the charges that
2 would apply during an annual period with
3 respect to a \$10,000 investment in the in-
4 vestment option.

5 “(b) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—
6 For purposes of this section, the term ‘applicable indi-
7 vidual account plan’ means the portion of any individual
8 account plan which permits a participant or beneficiary
9 to exercise control over assets in his or her account.

10 “(c) REGULATIONS.—The Secretary shall prescribe
11 such regulations or other guidance as may be necessary
12 or appropriate to carry out the purposes of this section,
13 including regulations or other guidance which—

14 “(1) provide a later deadline for providing the
15 notice of investment menu changes described in sub-
16 section (a)(3) in appropriate circumstances, and

17 “(2) provide guidelines, and a safe harbor, for
18 the selection of an appropriate benchmark, index, or
19 other point of comparison for an investment option
20 under subsection (a)(1)(C)(iii)(II).”.

21 (2) CLERICAL AMENDMENT.—The table of con-
22 tents in section 1 of such Act is amended by striking
23 the item relating to section 111 and inserting the
24 following new items:

“Sec. 111. Requirement to provide notice of plan fee information to plan ad-
ministrators.

“Sec. 112. Requirement to provide notice to participants of plan fee information.

“Sec. 113. Repeal and effective date.”.

1 (b) QUARTERLY BENEFIT STATEMENTS.—Section
2 105 of such Act (29 U.S.C. 1025) is amended—

3 (1) in subsection (a)(2)—

4 (A) by redesignating subparagraph (C) as
5 subparagraph (G);

6 (B) in subparagraph (B)(ii)—

7 (i) in subclause (II), by striking “di-
8 versified, and” and inserting “diversified,”;

9 (ii) in subclause (III) by striking the
10 period and inserting “, and”; and

11 (iii) by adding after subclause (III)
12 the following new subclause:

13 “(IV) with respect to the portion
14 of a participant’s account for which
15 the participant has the right to direct
16 the investment of assets, the informa-
17 tion described in subparagraph (C).”;
18 and

19 (C) by inserting after subparagraph (B)
20 the following new subparagraphs:

21 “(C) QUARTERLY BENEFIT STATE-
22 MENTS.—The plan administrator shall provide
23 to each participant and beneficiary, at least
24 once each calendar quarter, an explanation de-

1 scribing the investment options in which the
2 participant's or beneficiary's account is invested
3 as of the last day of the preceding quarter.
4 Such explanation shall provide, to the extent
5 applicable, the following for the preceding quar-
6 ter:

7 “(i) As of the last day of the quarter,
8 a statement of the different asset classes
9 that the participant's or beneficiary's ac-
10 count is invested in and the percentage of
11 the account allocated to each asset class.

12 “(ii) A statement of the starting and
13 ending balance of the participant's or
14 beneficiary's account for such quarter.

15 “(iii) A statement of the total con-
16 tributions made to the participant's or
17 beneficiary's account during the quarter
18 and a separate statement of—

19 “(I) the amount of such contribu-
20 tions, and the total amount of any re-
21 storative payments, which were made
22 by the employer during the quarter,
23 and

1 “(II) the amount of such con-
2 tributions which were made by the
3 employee.

4 “(iv) A statement of the total fees and
5 expenses which were directly deducted
6 from the participant’s or beneficiary’s ac-
7 count during the quarter and an
8 itemization of such fees and expenses.

9 “(v) A statement of the net returns
10 for the plan year to date, expressed as a
11 percentage, and a statement as to whether
12 the net returns include amounts described
13 in clause (iv).

14 “(vi) With respect to each investment
15 option in which the participant or bene-
16 ficiary was invested as of the last day of
17 the quarter, the following:

18 “(I) A statement of the percent-
19 age of the participant’s or bene-
20 ficiary’s account that is invested in
21 such option as of the last day of such
22 quarter.

23 “(II) A statement of the starting
24 and ending balance of the partici-
25 pant’s or beneficiary’s account that is

1 invested in such option for such quar-
2 ter.

3 “(III) A statement of the annual
4 operating expenses of the investment
5 option.

6 “(IV) A statement of whether the
7 disclosure described in clause (iv) in-
8 cludes the annual operating expenses
9 of the investment options of the par-
10 ticipant or beneficiary.

11 “(vii) The statement described in sec-
12 tion 112(a)(1)(B)(i)(VI).

13 “(viii) A statement regarding how a
14 participant or beneficiary may access the
15 information required to be disclosed under
16 section 112(a)(1).

17 “(D) MODEL EXPLANATIONS.—The Sec-
18 retary shall prescribe one or more model expla-
19 nations that may be used for purposes of satis-
20 fying the requirements of subparagraph (C).

21 “(E) DETERMINATION OF EXPENSES.—
22 For purposes of subparagraph (C)(v)(III)—

23 “(i) Expenses may be expressed as a
24 dollar amount or as a percentage of assets
25 (or a combination thereof).

1 “(ii) The plan administrator may pro-
2 vide disclosure of the expenses for the
3 quarter or may provide a reasonable and
4 representative estimate of such expenses
5 and shall indicate any such estimate as
6 being an estimate. Any such estimate shall
7 be based on reasonable assumptions stated
8 together with such estimate.

9 “(iii) To the extent that estimated ex-
10 penses are expressed as a percentage of as-
11 sets, the disclosure shall also include one of
12 the following, stated in dollar amounts:

13 “(I) an estimate of the expenses
14 for the quarter based on the amount
15 invested in the option; or

16 “(II) an example describing the
17 expenses that would apply during the
18 quarter with respect to a hypothetical
19 \$10,000 investment in the option.

20 “(F) ANNUAL COMPLIANCE FOR SMALL
21 PLANS.—A plan that has fewer than 100 par-
22 ticipants and beneficiaries as of the first day of
23 the plan year may provide the explanation de-
24 scribed in subparagraph (C) on an annual rath-
25 er than a quarterly basis.”.

1 (c) ASSISTANCE FROM THE DEPARTMENT OF
2 LABOR.—Section 105 of such Act (29 U.S.C. 1025) is
3 amended by adding at the end the following new sub-
4 sections:

5 “(d) ASSISTANCE TO SMALL EMPLOYERS.—The Sec-
6 retary shall make available to employers with 100 or fewer
7 employees—

8 “(1) educational and compliance materials de-
9 signed to assist such employers in selecting and
10 monitoring service providers for individual account
11 plans which permit a participant or beneficiary to
12 exercise control over the assets in the account of the
13 participant or beneficiary, investment options under
14 such plans, and charges relating to such options,
15 and

16 “(2) services designed to assist such employers
17 in finding and understanding affordable investment
18 options for such plans and in comparing the invest-
19 ment performance of, and charges for, such options
20 on an ongoing basis against appropriate benchmarks
21 or other appropriate measures.

22 “(e) ASSISTANCE TO PLAN SPONSORS AND PLAN
23 PARTICIPANTS AND BENEFICIARIES.—The Secretary shall
24 provide plan administrators and plan sponsors of indi-
25 vidual account plans and participants and beneficiaries

1 under such plans assistance with any questions or prob-
2 lems regarding compliance with the requirements of sub-
3 paragraphs (B)(ii)(IV) and (C) of subsection (a)(2) and
4 section 112.”.

5 (d) ENFORCEMENT.—

6 (1) PENALTIES.—Section 502 of such Act (29
7 U.S.C. 1132) is amended—

8 (A) in subsection (a)(6), by striking
9 “under paragraph (2)” and all that follows
10 through “subsection (c)” and inserting “under
11 paragraph (2), (4), (5), (6), (7), (8), (9), (10),
12 (11), or (12) of subsection (c)”;

13 (B) in subsection (c), by redesignating the
14 second paragraph (10) as paragraph (13), and
15 by inserting after the first paragraph (10) the
16 following new paragraphs:

17 “(11)(A) In the case of any failure by a service pro-
18 vider (as defined in section 111(f)(1)) to provide a state-
19 ment in violation of section 111, the service provider may
20 be assessed by the Secretary a civil penalty of up to
21 \$1,000 for each day in the noncompliance period.

22 “(B) For purposes of subparagraph (A), the non-
23 compliance period with respect to the failure to provide
24 any statement is the period beginning on the date that
25 such statement was required to be provided and ending

1 on the date that such statement is provided or the failure
2 is otherwise corrected.

3 “(C)(i) The total amount of a penalty assessed under
4 this paragraph on any service provider with respect to any
5 individual account plan for any plan year shall not exceed
6 an amount equal to the lesser of—

7 “(I) 10 percent of the assets of the plan, deter-
8 mined as of the first day of such plan year, or

9 “(II) \$1,000,000.

10 “(ii) No penalty shall be imposed by subparagraph
11 (A) on any failure if—

12 “(I) the service provider subject to liability for
13 the penalty under subparagraph (A) exercised rea-
14 sonable diligence to meet the requirement with re-
15 spect to which the failure relates, and

16 “(II) such service provider provides the infor-
17 mation required under section 111 during the 30-
18 day period beginning on the date such person knew,
19 or exercising reasonable diligence would have known,
20 that such failure existed.

21 “(iii) In the case of a failure which is due to reason-
22 able cause and not to willful neglect, the Secretary may
23 waive part or all of the penalty under subparagraph (A)
24 to the extent that the payment of such penalty would be

1 excessive or otherwise inequitable relative to the failure in-
2 volved.

3 “(D) The penalty imposed under this paragraph with
4 respect to any failure shall be reduced by the amount of
5 any tax imposed on such person with respect to such fail-
6 ure under section 4980J of the Internal Revenue Code of
7 1986.

8 “(12)(A) Any plan administrator with respect to a
9 plan who fails or refuses to provide a notice, explanation,
10 or statement to participants and beneficiaries in accord-
11 ance with subparagraphs (B)(ii)(IV) and (C) of section
12 105(a)(2) and section 112 may be assessed by the Sec-
13 retary a civil penalty of up to \$110 for each day in the
14 noncompliance period.

15 “(B) For purposes of subparagraph (A), the non-
16 compliance period with respect to the failure to provide
17 any notice, explanation, or statement referred to in sub-
18 paragraph (B)(ii)(IV) or (C) of section 105(a)(2) or sec-
19 tion 112 with respect to any participant or beneficiary is
20 the period beginning on the date that such notice, expla-
21 nation, or statement was required to be provided and end-
22 ing on the date that such notice, explanation, or statement
23 is provided or the failure is otherwise corrected.

1 “(C)(i) The total amount of penalty assessed under
2 this paragraph with respect to any plan for any plan year
3 shall not exceed an amount equal to the lesser of—

4 “(I) 10 percent of the assets of the plan, deter-
5 mined as of the first day of such plan year, or

6 “(II) \$500,000.

7 “(ii) No penalty shall be imposed under subpara-
8 graph (A) on any failure to meet the requirements of sub-
9 paragraphs (B)(ii)(IV) and (C) of section 105(a)(2) and
10 section 112 if—

11 “(I) any person subject to liability for the pen-
12 alty under subparagraph (A) exercised reasonable
13 diligence to meet such requirements, and

14 “(II) such person provides the notice, expla-
15 nation, or statement to which the failure relates dur-
16 ing the 30-day period beginning on the date such
17 person knew, or exercising reasonable diligence
18 would have known, that such failure existed.

19 “(iii) In the case of a failure which is due to reason-
20 able cause and not to willful neglect, the Secretary shall
21 waive part or all of the penalty under subparagraph (A)
22 to the extent that the payment of such penalty would be
23 excessive or otherwise inequitable relative to the failure in-
24 volved.

1 “(iv) The penalty imposed under this paragraph with
2 respect to any failure shall be reduced by the amount of
3 any tax imposed on such person with respect to such fail-
4 ure under section 4980K of the Internal Revenue Code
5 of 1986.”.

6 (2) ENFORCEMENT COORDINATION AND RE-
7 VIEW BY THE DEPARTMENT OF LABOR.—Section
8 502 of such Act (29 U.S.C. 1132) is amended by
9 adding at the end the following new subsection:

10 “(n) ENFORCEMENT COORDINATION OF CERTAIN
11 DISCLOSURE REQUIREMENTS RELATING TO INDIVIDUAL
12 ACCOUNT PLANS AND REVIEW BY THE DEPARTMENT OF
13 LABOR.—

14 “(1) NOTIFICATION AND ACTION RELATING TO
15 SERVICE PROVIDERS.—The Secretary shall notify
16 the applicable regulatory authority in any case in
17 which the Secretary determines that a service pro-
18 vider is engaged in a pattern or practice that pre-
19 cludes compliance by plan administrators with sub-
20 paragraphs (B)(ii)(IV) and (C) of section 105(a)(2)
21 and section 112. The Secretary shall, in consultation
22 with the applicable authority, take such timely en-
23 forcement action under this title as is necessary to
24 assure that such pattern or practice ceases and de-
25 sists and assess any appropriate penalties.

1 “(2) ANNUAL AUDIT OF REPRESENTATIVE SAM-
2 PLING OF INDIVIDUAL ACCOUNT PLANS.—The Sec-
3 retary shall annually audit a representative sampling
4 of individual account plans covered by this title to
5 determine compliance with the requirements of sub-
6 paragraphs (B)(ii)(IV) and (C) of section 105(a)(2),
7 section 111, and section 112. The Secretary shall
8 annually report the results of such audit and any re-
9 lated recommendations of the Secretary to the Com-
10 mittee on Education and Labor of the House of
11 Representatives and the Committee on Health, Edu-
12 cation, Labor, and Pensions of the Senate.”.

13 (e) REVIEW AND REPORT TO THE CONGRESS BY
14 SECRETARY OF LABOR RELATING TO REPORTING AND
15 DISCLOSURE REQUIREMENTS.—

16 (1) STUDY.—As soon as practicable after the
17 date of the enactment of this Act, the Secretary of
18 Labor shall review the reporting and disclosure re-
19 quirements of part 1 of subtitle B of title I of the
20 Employee Retirement Income Security Act of 1974
21 and related provisions of the Pension Protection Act
22 of 2006.

23 (2) REPORT.—Not later than 18 months after
24 the date of the enactment of this Act, the Secretary
25 of Labor, in consultation with the Secretary of the

1 Treasury, shall make such recommendations as the
2 Secretary of Labor considers appropriate to the ap-
3 propriate committees of the Congress to consolidate,
4 simplify, standardize, and improve the applicable re-
5 porting and disclosure requirements so as to simplify
6 reporting for employee pension benefit plans and en-
7 sure that needed understandable information is pro-
8 vided to participants and beneficiaries of such plans.

9 **SEC. 323. AMENDMENTS TO THE INTERNAL REVENUE CODE**
10 **OF 1986.**

11 (a) IN GENERAL.—Chapter 43 of the Internal Rev-
12 enue Code of 1986 (relating to qualified pension, etc.
13 plans) is amended by adding at the end the following new
14 sections:

15 **“SEC. 4980J. FAILURE TO PROVIDE NOTICE OF PLAN FEE**
16 **INFORMATION TO PLAN ADMINISTRATORS.**

17 “(a) IMPOSITION OF TAX.—

18 “(1) IN GENERAL.—There is hereby imposed a
19 tax on each failure of a service provider to meet the
20 requirements of paragraph (2) with respect to any
21 applicable defined contribution plan.

22 “(2) FAILURES DESCRIBED.—The failures de-
23 scribed in this paragraph are—

24 “(A) any failure to provide an initial state-
25 ment described in subsection (d),

1 “(B) any failure to provide an annual
2 statement described in subsection (e), and

3 “(C) any failure to provide a material
4 change statement described in subsection (f).

5 “(b) AMOUNT OF TAX.—

6 “(1) IN GENERAL.—The amount of the tax im-
7 posed by subsection (a) on any failure shall be
8 \$1,000 for each day in the noncompliance period.

9 “(2) NONCOMPLIANCE PERIOD.—For purposes
10 of paragraph (1), the noncompliance period with re-
11 spect to the failure to provide any statement is the
12 period beginning on the date that such statement
13 was required to be provided and ending on the date
14 that such statement is provided or the failure is oth-
15 erwise corrected.

16 “(c) LIMITATIONS.—

17 “(1) AGGREGATE LIMITATION.—The total
18 amount of tax imposed by this section on any service
19 provider with respect to any applicable defined con-
20 tribution plan for any plan year shall not exceed an
21 amount equal to the lesser of—

22 “(A) 10 percent of the assets of the plan,
23 determined as of the first day of such plan
24 year, or

25 “(B) \$1,000,000.

1 “(2) TAX NOT TO APPLY TO FAILURES COR-
2 RECTED WITHIN 30 DAYS.—No tax shall be imposed
3 by subsection (a) on any failure if—

4 “(A) the service provider subject to liability
5 for the tax under subsection (a) exercised rea-
6 sonable diligence to meet the requirement with
7 respect to which the failure relates, and

8 “(B) such service provider provides the in-
9 formation required under subsection (a) during
10 the 30-day period beginning on the date such
11 person knew, or exercising reasonable diligence
12 would have known, that such failure existed.

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

19 “(d) INITIAL STATEMENT OF SERVICES PROVIDED
20 AND REVENUES RECEIVED.—

21 “(1) IN GENERAL.—Before entering into any
22 contract or arrangement to provide services to an
23 applicable defined contribution plan, the service pro-
24 vider shall provide to the plan administrator a single
25 written statement which includes, with respect to the

1 first plan year covered under such contract or ar-
2 rangement, the following:

3 “(A) A detailed description of the services
4 which will be provided to the plan by the service
5 provider, the amount of total expected annual
6 revenue with respect to such services, the man-
7 ner in which such revenue will be collected, and
8 the extent to which such revenue varies between
9 specific investment options.

10 “(B)(i) In the case of a service provider
11 who is providing recordkeeping services with re-
12 spect to any investment option, such informa-
13 tion as is necessary for the plan administrator
14 to satisfy the requirements of paragraphs (1),
15 (2) and (4) of section 4980K(e) with respect to
16 such option, including specifying the method
17 used by the service provider in disclosing or es-
18 timating expenses under subparagraphs (A)(iv)
19 and (C) of such paragraph (2).

20 “(ii) To the extent provided in regulations
21 issued by the Secretary of Labor, clause (i)
22 shall not apply in the case of a service provider
23 described in such clause if the service provider
24 receives a written notification from the plan ad-
25 ministrator that the information described in

1 such clause in connection with the investment
2 option is provided by another service provider
3 pursuant to a contract or arrangement to pro-
4 vide services to the plan.

5 “(C) A statement indicating—

6 “(i) the identity of any investment op-
7 tions offered under the plan with respect
8 to which the service provider provides sub-
9 stantial investment, trustee, custodial, or
10 administrative services, and

11 “(ii) in the case of any investment op-
12 tion, whether the service provider expects
13 to receive any component of total expected
14 annual revenue described in paragraph
15 (2)(A)(ii)(II) with respect to such option
16 and the amount of any such component.

17 “(D) The portion of total expected annual
18 revenue which is properly allocable to each of
19 the following:

20 “(i) Administration and record-
21 keeping.

22 “(ii) Investment management.

23 “(iii) Other services or amounts not
24 described in clause (i) or (ii).

1 “(2) DEFINITION OF TOTAL EXPECTED ANNUAL
2 REVENUE.—For purposes of this section—

3 “(A) IN GENERAL.—The term ‘total ex-
4 pected annual revenue’ means, with respect to
5 any plan year—

6 “(i) any amount expected to be re-
7 ceived during such plan year from the plan
8 (including amounts paid from participant
9 accounts), any participant or beneficiary,
10 or any plan sponsor in connection with the
11 contract or arrangement referred to in
12 paragraph (1), and

13 “(ii) any amount not taken into ac-
14 count under clause (i) which is expected to
15 be received during such plan year by the
16 service provider in connection with—

17 “(I) plan administration, record-
18 keeping, consulting, management, or
19 investment or other service activities
20 undertaken by the service provider
21 with respect to the plan, or

22 “(II) plan administration, record-
23 keeping, consulting, management, or
24 investment or other service activities

1 undertaken by any other person with
2 respect to the plan.

3 “(B) EXPRESSED AS DOLLAR AMOUNT OR
4 PERCENTAGE OF ASSETS.—Total expected an-
5 nual revenue and any amount indicated under
6 paragraph (1)(C)(ii) may be expressed as a dol-
7 lar amount or as a percentage of assets (or a
8 combination thereof), as appropriate. To the ex-
9 tent that total expected annual revenue is ex-
10 pressed as a percentage of assets, such percent-
11 age shall be properly allocated among clauses
12 (i), (ii), and (iii) of paragraph (1)(D).

13 “(C) PROVISION OF FEE SCHEDULE FOR
14 CERTAIN PARTICIPANT INITIATED TRANS-
15 ACTIONS.—In the case of amounts expected to
16 be received from participants or beneficiaries
17 under the plan (or from the account of a partic-
18 ipant or beneficiary) as a fee or charge in con-
19 nection with a transaction initiated by the par-
20 ticipant (other than loads, commissions, broker-
21 age fees, and other investment related trans-
22 actions)—

23 “(i) such amounts shall not be taken
24 into account in determining total expected
25 annual revenue, and

1 “(ii) the service provider shall provide
2 to the plan administrator, as part of the
3 statement referred to in paragraph (1), a
4 fee schedule which describes each such fee
5 or charge, the amount thereof, and the
6 manner in which such amount is collected.

7 “(D) ESTIMATIONS.—In determining
8 under this subsection any amount which is ex-
9 pected to be received by the service provider,
10 the service provider shall provide a reasonable
11 estimate of such amount and shall indicate in
12 the statement referred to in paragraph (1)
13 whether such amount disclosed is an estimate.
14 Any such estimate shall be based on reasonable
15 assumptions specified in such statement.

16 “(3) ALLOCATION RULES.—The Secretary of
17 Labor shall provide rules for defining total expected
18 annual revenue and for the appropriate and con-
19 sistent allocation of total expected annual revenue
20 among clauses (i), (ii), and (iii) of paragraph (1)(D),
21 except that the entire amount of such revenue shall
22 be allocated among such clauses and no amount may
23 be taken into account under more than one clause.

24 “(4) DISCLOSURE OF DIFFERENT PRICING OF
25 INVESTMENT OPTIONS.—In the case of investment

1 options with more than one share class or price level,
2 the Secretary of Labor shall prescribe regulations
3 for the disclosure of the different share classes or
4 price levels available as part of the statement in
5 paragraph (1). Such regulations shall provide guid-
6 ance with respect to the disclosure of the basis for
7 qualifying for such share classes or price levels,
8 which may include amounts invested, number of par-
9 ticipants, or other factors.

10 “(5) DISCLOSURE OF INVESTMENT TRANS-
11 ACTION COSTS.—To the extent provided in regula-
12 tions issued by the Secretary of Labor, a service pro-
13 vider shall separately disclose the transaction costs
14 (including sales commissions) for each investment
15 option for the preceding year.

16 “(e) ANNUAL STATEMENTS.—With respect to each
17 plan year after the plan year covered by the statement
18 described in subsection (d), the service provider shall pro-
19 vide the plan administrator a single written statement
20 which includes the information described in subsection (d)
21 with respect to such subsequent plan year.

22 “(f) MATERIAL CHANGE STATEMENTS.—In the case
23 of any event or other change during a plan year which
24 causes the information included in any statement de-
25 scribed in subsection (d) or (e) with respect to such plan

1 year to become materially incorrect, the service provider
2 shall provide the plan administrator a written statement
3 providing the corrected information not later than 30 days
4 after the service provider knows, or exercising reasonable
5 diligence would have known, of such event or other change.

6 “(g) TIME AND MANNER OF PROVIDING STATEMENT
7 AND OTHER MATERIALS.—The statement referred to in
8 subsections (d)(1) and (e) shall be made at such time and
9 in such manner as the Secretary of Labor may provide.
10 Other materials required to be provided under this section
11 shall be provided in such manner as such Secretary may
12 provide. All information included in such statements and
13 other materials shall be presented in a manner which is
14 easily understood by the typical plan administrator.

15 “(h) EXCEPTION FOR SMALL SERVICE PRO-
16 VIDERS.—The requirements of this section shall not apply
17 with respect to any contract or arrangement for services
18 provided with respect to an individual account plan for any
19 plan year if—

20 “(1) the total annual revenue expected by the
21 service provider to be received with respect to the
22 plan for such plan year is less than \$5,000, and

23 “(2) the service provider provides a written
24 statement to the plan administrator that the total
25 annual revenue expected by the service provider to

1 be received with respect to the plan is less than
2 \$5,000.

3 Service providers who expect to receive de minimis annual
4 revenue from the plan need not provide the written state-
5 ment described in paragraph (2). The Secretary of Labor
6 may by regulation or other guidance adjust the dollar
7 amount specified in this subsection.

8 “(i) DEFINITIONS.—For purposes of this section—

9 “(1) SERVICE PROVIDER.—

10 “(A) IN GENERAL.—The term ‘service pro-
11 vider’ includes any person providing administra-
12 tion, recordkeeping, consulting, investment
13 management services, or investment advice to
14 an applicable defined contribution plan under a
15 contract or arrangement.

16 “(B) CONTROLLED GROUPS TREATED AS
17 ONE SERVICE PROVIDER.—All persons which
18 would be treated as a single employer under
19 subsection (b) or (c) of section 414 if section
20 1563(a)(1) were applied—

21 “(i) except as provided by subpara-
22 graph (B), by substituting ‘more than 50
23 percent’ for ‘at least 80 percent’ each place
24 it appears therein, or

1 “(ii) for purposes of subsection
2 (d)(1)(C)(i), by substituting ‘at least 20
3 percent’ for ‘at least 80 percent’ each place
4 it appears therein,
5 shall be treated as one person for purposes of
6 this section.

7 “(2) APPLICABLE DEFINED CONTRIBUTION
8 PLAN.—The term ‘applicable defined contribution
9 plan’ means any defined contribution plan described
10 in clauses (iii) through (vi) of section 402(c)(8)(B).

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

14 **“SEC. 4980K. FAILURE TO PROVIDE NOTICE TO PARTICI-**
15 **PANTS OF PLAN FEE INFORMATION.**

16 “(a) IMPOSITION OF TAX.—

17 “(1) IN GENERAL.—There is hereby imposed a
18 tax on each failure of a plan administrator of an ap-
19 plicable defined contribution plan to meet the re-
20 quirements of paragraph (2) with respect to any
21 participant or beneficiary.

22 “(2) FAILURES DESCRIBED.—The failures de-
23 scribed in this paragraph are—

1 “(A) any failure to provide an advance no-
2 tice of available investment options described in
3 subsection (e)(1),

4 “(B) any failure to provide an account ex-
5 planation described in subsection (e)(2)

6 “(C) any failure to provide a service pro-
7 vider statement referred to in subsection (e)(3),
8 and

9 “(D) any failure to provide a notice of ma-
10 terial change described in subsection (e)(4).

11 “(b) AMOUNT OF TAX.—

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

16 “(2) NONCOMPLIANCE PERIOD.—For purposes
17 of paragraph (1), the noncompliance period with re-
18 spect to the failure to provide any notice, expla-
19 nation, or statement referred to in subsection (a)(2)
20 with respect to any participant or beneficiary is the
21 period beginning on the date that such notice, expla-
22 nation, or statement was required to be provided
23 and ending on the date that such notice, expla-
24 nation, or statement is provided or the failure is oth-
25 erwise corrected.

1 “(c) LIMITATIONS ON AMOUNT OF TAX.—

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

6 “(A) 10 percent of the assets of the plan,
7 determined as of the first day of such plan
8 year, or

9 “(B) \$500,000.

10 “(2) TAX NOT TO APPLY TO FAILURES COR-
11 RECTED WITHIN 30 DAYS.—No tax shall be imposed
12 by subsection (a) on any failure if—

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

17 “(B) such person provides the notice, ex-
18 planation, or statement to which the failure re-
19 lates during the 30-day period beginning on the
20 date such person knew, or exercising reasonable
21 diligence would have known, that such failure
22 existed.

23 “(3) WAIVER BY SECRETARY.—In the case of a
24 failure which is due to reasonable cause and not to
25 willful neglect, the Secretary shall waive part or all

1 of the tax imposed by subsection (a) to the extent
2 that the payment of such tax would be excessive or
3 otherwise inequitable relative to the failure involved.

4 “(d) LIABILITY FOR TAX.—The plan administrator
5 shall be liable for the tax imposed by subsection (a).

6 “(e) DISCLOSURES TO PARTICIPANTS AND BENE-
7 FICIARIES.—

8 “(1) ADVANCE NOTICE OF AVAILABLE INVEST-
9 MENT OPTIONS.—

10 “(A) IN GENERAL.—The plan adminis-
11 trator of an applicable defined contribution plan
12 shall provide to the participant or beneficiary
13 notice of the investment options available under
14 the plan before—

15 “(i) the earliest date provided for
16 under the plan for the participant’s initial
17 investment of any contribution made on
18 behalf of such participant, and

19 “(ii) the effective date of any change
20 in the list of investment options available
21 under the plan, unless such advance notice
22 is impracticable, and in such case, as soon
23 as is practicable.

1 “(B) INFORMATION INCLUDED IN NO-
2 TICE.—The notice required under subparagraph
3 (A) shall—

4 “(i) set forth, with respect to each
5 available investment option—

6 “(I) the name of the option,

7 “(II) a general description of the
8 option’s investment objectives and
9 principal investment strategies, prin-
10 cipal risk and return characteristics,
11 and the name of the option’s invest-
12 ment manager,

13 “(III) whether the investment op-
14 tion is designed to be a comprehen-
15 sive, stand-alone investment for retire-
16 ment that provides varying degrees of
17 long-term appreciation and capital
18 preservation through a mix of equity
19 and fixed income exposures,

20 “(IV) the extent to which the in-
21 vestment option is actively managed
22 or passively managed in relation to an
23 index and the difference between ac-
24 tive management and passive manage-
25 ment,

1 “(V) where, and the manner in
2 which, additional plan-specific, option-
3 specific, and generally available in-
4 vestment information may be ob-
5 tained, and

6 “(VI) a statement explaining that
7 investment options should not be eval-
8 uated solely on the basis of the
9 charges for each option but should
10 also be based on consideration of
11 other key factors, including the risk
12 level of the option, the investment ob-
13 jectives of the option, historical re-
14 turns of the option, and the partici-
15 pant’s personal investment objectives,

16 “(ii) include a statement of the right
17 under paragraph (3) of participants and
18 beneficiaries to request, and a description
19 of how participant or beneficiary may re-
20 quest, a copy of the statements received by
21 the plan administrator under section
22 4980J with respect to the plan, and

23 “(iii) include the plan fee comparison
24 chart described in subparagraph (C).

25 “(C) PLAN FEE COMPARISON CHART.—

1 “(i) IN GENERAL.—

2 “(I) IN GENERAL.—The notice
3 provided under this paragraph shall
4 include a plan fee comparison chart
5 consisting of a comparison of the serv-
6 ice and investment charges that will
7 or could be assessed against the ac-
8 count of the participant or beneficiary
9 with respect to the plan year.

10 “(II) EXPRESSED AS DOLLAR
11 AMOUNT OR FORMULA.—For purposes
12 of this subparagraph, such charges
13 shall be provided in the form of a dol-
14 lar amount or as a formula (such as
15 a percentage of assets), as appro-
16 priate.

17 “(ii) CATEGORIZATION OF
18 CHARGES.—The plan fee comparison chart
19 shall provide information in relation to the
20 following categories of charges that will or
21 could be assessed against the account of
22 the participant or beneficiary:

23 “(I) ASSET-BASED CHARGES SPE-
24 CIFIC TO INVESTMENT.—Charges that
25 vary depending on the investment op-

1 tions selected by the participant or
2 beneficiary, including the annual oper-
3 ating expenses of the investment op-
4 tion and investment-specific asset-
5 based charges (such as loads, commis-
6 sions, brokerage fees, exchange fees,
7 redemption fees, and surrender
8 charges). Except as provided by the
9 Secretary of Labor in regulations
10 under this section, the information re-
11 lating to such charges shall include a
12 statement noting any charges for 1 or
13 more investment options which pay
14 for services other than investment
15 management.

16 “(II) RECURRING ASSET-BASED
17 CHARGES NOT SPECIFIC TO INVEST-
18 MENT.—Charges that are assessed as
19 a percentage of the total assets in the
20 account of the participant or bene-
21 ficiary, regardless of the investment
22 option selected.

23 “(III) ADMINISTRATIVE AND
24 TRANSACTION-BASED CHARGES.—Ad-
25 ministration and transaction-based

1 charges, including fees charged to
2 participants to cover plan administra-
3 tion, compliance, and recordkeeping
4 costs, plan loan origination fees, pos-
5 sible redemption fees, and possible
6 surrender charges, that are not as-
7 sessed as a percentage of the total as-
8 sets in the account and are either
9 automatically deducted each year or
10 result from certain transactions en-
11 gaged in by the participant or bene-
12 ficiary.

13 “(IV) OTHER CHARGES.—Any
14 other charges which may be deducted
15 from participants’ or beneficiaries’ ac-
16 counts and which are not described in
17 subclauses (I), (II), and (III).

18 “(iii) FEES AND HISTORICAL RE-
19 TURNS.—The plan fee comparison chart
20 shall include—

21 “(I) the historical returns, net of
22 fees and expenses, for the previous
23 year, 5 years, and 10 years (or for the
24 period since inception, if shorter) with
25 respect to such investment option, and

1 “(II) the historical returns of an
2 appropriate benchmark, index, or
3 other point of comparison for each
4 such period.

5 “(D) MODEL NOTICES.—The Secretary of
6 Labor shall prescribe one or more model notices
7 that may be used for purposes of satisfying the
8 requirements of this paragraph, including model
9 plan fee comparison charts.

10 “(E) ESTIMATIONS.—For purposes of pro-
11 viding the notice required under this paragraph,
12 the plan administrator may provide a reason-
13 able and representative estimate for any
14 charges or percentages disclosed under subpara-
15 graph (B) or (C) and shall indicate whether the
16 amount of any such charges or percentages dis-
17 closed is an estimate.

18 “(2) QUARTERLY BENEFIT STATEMENT.—

19 “(A) REQUIREMENTS.—The plan adminis-
20 trator shall provide to each participant and ben-
21 eficiary, at least once each calendar quarter, an
22 explanation describing the investment options in
23 which the participant’s or beneficiary’s account
24 is invested as of the last day of the preceding
25 quarter. Such explanation shall provide, to the

1 extent applicable, the following for the pre-
2 ceding quarter:

3 “(i) As of the last day of the quarter,
4 a statement of the different asset classes
5 that the participant’s or beneficiary’s ac-
6 count is invested in and the percentage of
7 the account allocated to each asset class.

8 “(ii) A statement of the starting and
9 ending balance of the participant’s or
10 beneficiary’s account for such quarter.

11 “(iii) A statement of the total con-
12 tributions made to the participant’s or
13 beneficiary’s account during the quarter
14 and a separate statement of—

15 “(I) the amount of such contribu-
16 tions, and the total amount of any re-
17 storative payments, which were made
18 by the employer during the quarter,
19 and

20 “(II) the amount of such con-
21 tributions which were made by the
22 employee.

23 “(iv) A statement of the total fees and
24 expenses which were directly deducted
25 from the participant’s or beneficiary’s ac-

1 count during the quarter and an
2 itemization of such fees and expenses.

3 “(v) A statement of the net returns
4 for the plan year to date, expressed as a
5 percentage, and a statement as to whether
6 the net returns include amounts described
7 in clause (iv).

8 “(vi) With respect to each investment
9 option in which the participant or bene-
10 ficiary was invested as of the last day of
11 the quarter, the following:

12 “(I) A statement of the percent-
13 age of the participant’s or bene-
14 ficiary’s account that is invested in
15 such option as of the last day of such
16 quarter.

17 “(II) A statement of the starting
18 and ending balance of the partici-
19 pant’s or beneficiary’s account that is
20 invested in such option for such quar-
21 ter.

22 “(III) A statement of the annual
23 operating expenses of the investment
24 option.

1 “(IV) A statement of whether the
2 disclosure described in clause (iv) in-
3 cludes the annual operating expenses
4 of the investment options of the par-
5 ticipant or beneficiary.

6 “(vii) The statement described in
7 paragraph (1)(B)(i)(VI).

8 “(viii) A statement regarding how a
9 participant or beneficiary may access the
10 information required to be disclosed under
11 paragraph (1).

12 “(B) MODEL EXPLANATIONS.—The Sec-
13 retary of Labor shall prescribe one or more
14 model explanations that may be used for pur-
15 poses of satisfying the requirements of this
16 paragraph.

17 “(C) DETERMINATION OF EXPENSES.—
18 For purposes of subparagraph (A)(v)(III)—

19 “(i) Expenses may be expressed as a
20 dollar amount or as a percentage of assets
21 (or a combination thereof).

22 “(ii) The plan administrator may pro-
23 vide disclosure of the expenses for the
24 quarter or may provide a reasonable and
25 representative estimate of such expenses

1 and shall indicate any such estimate as
2 being an estimate. Any such estimate shall
3 be based on reasonable assumptions stated
4 together with such estimate.

5 “(iii) To the extent that estimated ex-
6 penses are expressed as a percentage of as-
7 sets, the disclosure shall also include one of
8 the following, stated in dollar amounts:

9 “(I) an estimate of the expenses
10 for the quarter based on the amount
11 invested in the option; or

12 “(II) an example describing the
13 expenses that would apply during the
14 quarter with respect to a hypothetical
15 \$10,000 investment in the option.

16 “(3) DISCLOSURE OF SERVICE PROVIDER
17 STATEMENTS.—The plan administrator shall provide
18 to any participant or beneficiary a copy of any state-
19 ment received pursuant to section 4980J within 30
20 days after receipt of a request for such a statement.

21 “(4) NOTICE OF MATERIAL CHANGES.—In the
22 case of any event or other change which causes the
23 information included in any notice described in para-
24 graph (1) to become materially incorrect, the plan
25 administrator shall provide participants and bene-

1 ficiaries a written statement providing the corrected
2 information not later than 30 days after the plan
3 administrator knows, or exercising reasonable dili-
4 gence would have known, of such event or other
5 change.

6 “(5) TIME AND MANNER OF PROVIDING NO-
7 TICES AND DISCLOSURES.—

8 “(A) IN GENERAL.—The notices described
9 in paragraph (1) shall be provided at such
10 times and in such manner as the Secretary of
11 Labor may provide. Other notices and materials
12 required to be provided under this subsection
13 shall be provided in such manner as such Sec-
14 retary may provide.

15 “(B) MANNER OF PRESENTATION.—

16 “(i) IN GENERAL.—All information in-
17 cluded in such notices or explanations shall
18 be presented in a manner which is easily
19 understood by the typical participant.

20 “(ii) GENERIC EXAMPLE OF OPER-
21 ATING EXPENSES OF INVESTMENT OP-
22 TIONS.—The information described in
23 paragraphs (1)(C)(ii)(I) shall include a ge-
24 neric example describing the charges that
25 would apply during an annual period with

1 respect to a \$10,000 investment in the in-
2 vestment option.

3 “(C) ANNUAL COMPLIANCE FOR SMALL
4 PLANS.—A plan that has fewer than 100 par-
5 ticipants and beneficiaries as of the first day of
6 the plan year may provide the explanation de-
7 scribed in paragraph (2) on an annual rather
8 than a quarterly basis.

9 “(f) DEFINITIONS.—

10 “(1) APPLICABLE DEFINED CONTRIBUTION
11 PLAN.—The term ‘applicable defined contribution
12 plan’ means the portion of any defined contribution
13 plan which—

14 “(A) permits a participant or beneficiary
15 to exercise control over assets in his or her ac-
16 count, and

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

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

22 “(g) REGULATIONS.—The Secretary of Labor shall
23 prescribe such regulations or other guidance as may be
24 necessary or appropriate to carry out the purposes of this
25 section, including regulations or other guidance which—

1 “(1) provide a later deadline for providing the
2 notice of investment menu changes described in sub-
3 section (e)(4) in appropriate circumstances, and

4 “(2) provide guidelines, and a safe harbor, for
5 the selection of an appropriate benchmark, index, or
6 other point of comparison for an investment option
7 under subsection (e)(1)(C)(iii)(II).”.

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

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

“Sec. 4980K. Failure to provide notice to participants of plan fee informa-
tion.”.

11 **SEC. 324. REGULATORY AUTHORITY AND COORDINATION.**

12 (a) REGULATORY AUTHORITY.—The Secretary of
13 Labor shall prescribe regulations or other guidance to the
14 extent the Secretary determines necessary or appropriate
15 to carry out the purposes of sections 105, 111, and 112
16 of the Employee Retirement Income Security Act of 1974
17 and sections 4980J and 4980K of the Internal Revenue
18 Code of 1986, including regulations or other guidance
19 which—

20 (1) provide safe harbor and simplified methods
21 for making the allocations described in subsection
22 (a)(1)(D) of such section 111 and subsection
23 (d)(1)(D) of such section 4980J, and

1 (2) provide special rules for the application of
2 such sections to—

3 (A) investments with a guaranteed rate of
4 return,

5 (B) investments with an insurance compo-
6 nent, and

7 (C) employer sponsored retirement plans
8 funded through an individual retirement ac-
9 count.

10 (3) address notices with respect to investments
11 provided through participant directed brokerage
12 trading,

13 (4) address the disclosure of information that is
14 not proprietary to the service provider, and

15 (5) provide rules to allow service providers to
16 consolidate information to satisfy the requirements
17 of such sections with respect to all such service pro-
18 viders.

19 (b) CERTAIN ELECTRONIC DISCLOSURES PER-
20 MITTED.—Any disclosure required under section 112 of
21 the Employee Retirement Income Security Act of 1974 or
22 section 4980K of the Internal Revenue Code of 1986 may
23 be provided through an electronic medium under such
24 rules as shall be prescribed under such section by the Sec-
25 retary of Labor not later than 1 year after the date of

1 the enactment of this Act. Such rules shall be similar to
2 those applicable under the Internal Revenue Code of 1986
3 with respect to notices to participants in pension plans.
4 Such Secretary shall regularly modify such rules as appro-
5 priate to take into account new developments, including
6 new forms of electronic media, and to fairly take into con-
7 sideration the interests of plan sponsors, service providers,
8 and participants. The rules prescribed by such Secretary
9 pursuant to this subsection shall provide for a method for
10 the typical participant or beneficiary to obtain without
11 undue burden any such disclosure in writing on paper in
12 lieu of receipt through an electronic medium.

13 **SEC. 325. EFFECTIVE DATE OF SUBTITLE.**

14 (a) IN GENERAL.—The amendments made by this
15 subtitle shall apply to plan years beginning after Decem-
16 ber 31, 2011.

17 (b) APPLICATION OF SERVICE PROVIDER DISCLO-
18 SURES TO EXISTING CONTRACTS AND ARRANGEMENTS.—
19 For purposes of section 111 of the Employee Retirement
20 Income Security Act of 1974 and section 4980J of the
21 Internal Revenue Code of 1986, any contract or arrange-
22 ment to provide services to a plan which is in effect on
23 January 1, 2012, shall be treated as a new contract or
24 arrangement entered into on such date.