

111TH CONGRESS
1ST SESSION

H. R. 2779

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2009

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

10 “(b) AMOUNT OF TAX.—

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

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

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

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

3 “(c) LIMITATIONS ON AMOUNT OF TAX.—

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

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

11 “(B) \$500,000.

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

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

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

24 “(3) RELIANCE.—To the extent any of the in-
25 formation required to be disclosed by a plan admin-

1 administrator under this section is given to the plan ad-
2 ministrator by a service provider, the plan adminis-
3 trator may rely on the completeness and accuracy of
4 such information unless the plan administrator—

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

7 “(B) has notice of facts or information
8 that would prompt a reasonable plan adminis-
9 trator to inquire into the accuracy or complete-
10 ness of the information.

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

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

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

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

23 “(e) NOTICE OF FEES AND EXPENSES TO PARTICI-
24 PANTS.—

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

5 “(2) NOTICE OF INVESTMENT INFORMATION.—

6 “(A) IN GENERAL.—A plan administrator
7 meets the requirements of this paragraph if
8 each employee eligible to participate is, a rea-
9 sonable time before the initial investment of any
10 contribution made on behalf of such employee
11 and at least annually thereafter, given an expla-
12 nation of the plan’s fees and expenses, the key
13 characteristics of the plan’s designated invest-
14 ment alternatives, and an explanation of the
15 manner for making elections among designated
16 investment alternatives.

17 “(B) REQUIREMENTS.—An explanation
18 shall only be treated as satisfying the expla-
19 nation requirement of subparagraph (A) if such
20 explanation provides a description, to the extent
21 applicable, of the following:

22 “(i) The designated investment alter-
23 natives available to a participant under the
24 plan, the method for a participant to make
25 investment elections, and an explanation of

1 any specified limitations on such elections
2 under the documents and instruments gov-
3 erning the plan, including any restrictions
4 on transfer to or from an investment alter-
5 native.

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

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

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

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

1 “(IV) rates of return for the in-
2 vestment alternative over the imme-
3 diately preceding 1-, 5-, and 10-year
4 periods (determined on either a cal-
5 endar or plan year basis),

6 “(V) the name and returns of an
7 appropriate broad-based securities
8 market index over the preceding 1-,
9 5-, and 10-year periods, which is not
10 administered by the service provider
11 or an affiliate thereof unless the index
12 is widely recognized and used, and

13 “(VI) fees and expenses in con-
14 nection with purchases or sales of in-
15 terests in the investment alternative,
16 such as sales loads, sales charges, de-
17 ferred sales charges, redemption fees,
18 surrender charges, exchange fees and
19 other similar fees and expenses.

20 “(iii) The annual total operating ex-
21 penses for each designated investment al-
22 ternative and, if applicable, a statement
23 that the fees and expenses of the invest-
24 ment alternatives pay for services other
25 than investment management.

1 “(iv) Annual fees and expenses for ad-
2 ministration and recordkeeping which are
3 deducted from (or reduce the income of)
4 participants’ or beneficiaries’ accounts and
5 which are not reflected in clause (iii), in-
6 cluding a statement of the method used to
7 allocate fees and expenses described in this
8 clause to participants’ and beneficiaries’
9 accounts.

10 “(v) The existence of fees and ex-
11 penses associated with participant-initiated
12 transactions or services which may be de-
13 ducted from participants’ or beneficiaries’
14 accounts other than fees and expenses de-
15 scribed in clause (ii)(VI) and the method
16 that participants and beneficiaries may uti-
17 lize to obtain additional information re-
18 garding such fees and expenses.

19 “(vi) Fees and expenses which may be
20 deducted from participants’ or bene-
21 ficiaries’ accounts and which are not re-
22 flected in clauses (iii), (iv), or (v).

23 “(vii) A statement of where, and the
24 manner in which, additional alternative-
25 specific and generally available investment

1 information may be obtained (such as an
2 Internet Web site address).

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

12 “(3) NOTICE OF ACCOUNT CHARGES.—

13 “(A) IN GENERAL.—A plan administrator
14 meets the requirements of this paragraph if
15 each participant and beneficiary is, at least
16 once each calendar quarter, given an expla-
17 nation describing the investment alternatives in
18 which the participant’s or beneficiary’s account
19 is invested as of the last day of the preceding
20 quarter and the key characteristics of such in-
21 vestment alternatives.

22 “(B) REQUIREMENTS.—An explanation
23 shall only be treated as satisfying the expla-
24 nation requirement of subparagraph (A) if such
25 explanation provides a description, to the extent

1 applicable, of the following for the preceding
2 quarter:

3 “(i) As of the last day of the quarter,
4 the different asset classes that the partici-
5 pant’s or beneficiary’s account is invested
6 in and the percentage of the account allo-
7 cated to each asset class.

8 “(ii) The total administration and rec-
9 ordkeeping fees and expenses described in
10 paragraph (2)(B)(iv) which were deducted
11 from the participant’s or beneficiary’s ac-
12 count during the quarter.

13 “(iii) The total fees and expenses for
14 participant-initiated transactions or serv-
15 ices described in paragraph (2)(B)(v)
16 which were deducted from the participant’s
17 or beneficiary’s account during the quar-
18 ter.

19 “(iv) The total other fees and ex-
20 penses described in paragraph (2)(B)(vi)
21 which were deducted from the participant’s
22 or beneficiary’s account during the quar-
23 ter.

24 “(v) With respect to each investment
25 alternative in which the participant or ben-

1 beneficiary was invested as of the last day of
2 the quarter, the following:

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

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

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

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

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

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

21 “(viii) A statement regarding how a
22 participant or beneficiary may access the
23 information required to be disclosed under
24 paragraph (2).

1 “(4) SERVICE PROVIDER DISCLOSURE.—The re-
2 quirements of this paragraph are met if the plan ad-
3 ministrator provides to participants and beneficiaries
4 a copy of any statement received pursuant to section
5 4980I within 30 days after receipt of a written re-
6 quest for such statement.

7 “(5) NOTICE OF INVESTMENT MENU
8 CHANGES.—The requirements of this paragraph are
9 met if, in advance of any change in the investment
10 alternatives available under the plan, the plan ad-
11 ministrator provides the notice described in para-
12 graph (2) to affected participants and beneficiaries
13 with respect to the change in investment alter-
14 natives.

15 “(6) FORM OF FEE DISCLOSURE.—Fees and ex-
16 penses may be expressed as a dollar amount or as
17 a percentage of assets (or a combination thereof). If
18 fees and expenses are expressed (in part or in whole)
19 as a percentage of assets, the disclosure shall include
20 a generic example that illustrates how a charge that
21 is expressed as a percentage of assets is assessed in
22 dollars on an account balance.

23 “(7) CERTAIN ESTIMATES PERMITTED.—A plan
24 administrator shall not be treated as failing to sat-
25 isfy the requirements of paragraphs (2), (3), and (4)

1 solely because the plan administrator uses estimates
2 of expenses and fees, or allocates fees and expenses
3 among different fee classifications, in a manner that
4 is reasonable and in good faith. For purposes of
5 paragraph (3), an estimate shall be considered to be
6 reasonable and in good faith if such estimate is
7 based on fees and expenses as of the last day of the
8 plan year immediately preceding the date the notice
9 is provided or any subsequent date preceding the
10 date the notice is provided. Nothing in this para-
11 graph shall be construed to require a plan adminis-
12 trator to use the same estimation methodology for
13 every investment alternative.

14 “(8) COMBINATION WITH OTHER NOTICES.—A
15 plan shall not be treated as failing to satisfy the re-
16 quirements of paragraphs (2), (3), and (4) solely be-
17 cause the information is provided in combination
18 with other plan communications or in more than one
19 plan communication provided contemporaneously.

20 “(9) MODEL STATEMENT.—The Secretary shall
21 prescribe model statements that may be used for
22 purposes of satisfying the requirements of para-
23 graphs (2), (3), and (4).

24 “(10) ANNUAL COMPLIANCE FOR SMALL
25 PLANS.—A plan that has fewer than 100 partici-

1 pants and beneficiaries as of the first day of the
2 plan year may provide the notice described in para-
3 graph (3) on an annual rather than a quarterly
4 basis.

5 “(11) CALENDAR YEAR TREATED AS PLAN
6 YEAR.—The Secretary shall allow a plan adminis-
7 trator to treat the calendar year as the plan year for
8 purposes of paragraph (3).

9 “(12) PLAIN LANGUAGE.—Explanations and
10 notices under this subsection shall be provided in a
11 manner which is easily understandable by the typical
12 plan participant.

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

15 “(A) in appropriate circumstances to pro-
16 vide the notice described in paragraph (2) after
17 the initial contribution made on a participant’s
18 behalf in the case of a plan that provides for
19 automatic enrollment or immediate eligibility,
20 and

21 “(B) in appropriate circumstances to pro-
22 vide the notice described in paragraph (4) after
23 the investment menu change is effective.

24 “(f) DEFINITIONS.—

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

5 “(A) permits a participant or beneficiary
6 to exercise control over assets in his or her ac-
7 count, and

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

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

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

16 “(1) identify and establish separate rules, if
17 necessary, for any investment options that provide a
18 guaranteed rate of return and do not identify spe-
19 cific fees, and

20 “(2) provide guidelines, and a safe harbor, for
21 the selection of an appropriate broad-based securi-
22 ties market index for purposes of paragraph
23 (2)(B)(ii)(V) for a designated investment alter-
24 native.”.

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

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

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

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

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

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

16 “(b) AMOUNT OF TAX.—

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

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

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

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

8 “(c) LIMITATIONS.—

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

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

17 “(B) \$1,000,000.

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

21 “(A) the service provider subject to liability
22 for the tax under subsection (a) exercised rea-
23 sonable diligence to meet the requirements of
24 subsection (d), and

1 “(B) such service provider provides the no-
2 tice described in subsection (d) during the 90-
3 day period beginning on the date such person
4 knew, or exercising reasonable diligence would
5 have known, that such failure existed.

6 “(3) RELIANCE.—To the extent any of the in-
7 formation required to be disclosed by a service pro-
8 vider under this section is given to the service pro-
9 vider by a person that is not an affiliate of the serv-
10 ice provider, the service provider may rely on the
11 completeness and accuracy of such information un-
12 less the service provider—

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

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

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

1 “(5) SMALL SERVICE PROVIDERS.—This section
2 shall apply with respect to any service provider for
3 a plan year only if the total fees and compensation
4 received directly or indirectly by the service provider,
5 its affiliates and any subcontractor of the service
6 provider in connection with the services arrangement
7 is reasonably expected to equal or exceed \$5,000.

8 “(6) LIMITATION ON SCOPE.—Nothing in this
9 section shall be construed to require any service pro-
10 vider to provide any services with respect to any par-
11 ticular plan.

12 “(d) NOTICE OF FEES AND EXPENSES.—

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

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

22 “(A) An estimate of—

23 “(i) the total fees and expenses ex-
24 pected to be paid by the plan under the
25 contract, including itemization of the fol-

1 lowing components in the case of a con-
2 tract that provides for both investment
3 management and administration and rec-
4 ordkeeping,

5 “(ii) the annual fees and expenses at-
6 tributable to investment management, and

7 “(iii) the annual fees and expenses at-
8 tributable to plan administration and rec-
9 ordkeeping.

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

14 “(C) A schedule of fees and expenses asso-
15 ciated with participant-initiated transactions or
16 services which may be deducted from partici-
17 pants’ or beneficiaries’ accounts.

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

1 to be paid to each such third party and the
2 identity of each such third party.

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

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

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

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

24 “(A) Fees and expenses paid by the plan
25 to the service provider under the arrangement

1 during the plan year, including itemization of
2 the components described in subparagraphs (A)
3 and (D) of paragraph (2).

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

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

13 “(5) CERTAIN ESTIMATES PERMITTED.—A
14 service provider shall not be treated as failing to sat-
15 isfy the requirements of this subsection solely be-
16 cause—

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

23 “(B) the service provider uses estimates of
24 expenses, fees and compensation if the service
25 provider discloses the basis for such estimates if

1 such estimates are made in a manner that is
2 reasonable and in good faith, or

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

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

11 “(7) PLAIN LANGUAGE.—Disclosures under this
12 subsection shall be presented in a format which is
13 easily understandable by the typical plan adminis-
14 trator.

15 “(8) REGULATORY AUTHORITY.—The Secretary
16 shall issue regulations to carry out this subsection,
17 including regulations addressing the appropriate
18 classification of fees and expenses under subpara-
19 graph (A) of paragraph (2). Such regulations shall
20 include safe harbor methods for the allocation of ex-
21 penses under subparagraph (A) of paragraph (2)
22 under which service providers will be treated as hav-
23 ing reasonably allocated fees and expenses but such
24 safe harbor methods shall not be the exclusive meth-
25 ods for the allocation of expenses.

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

2 “(1) APPLICABLE DEFINED CONTRIBUTION
3 PLAN.—The term ‘applicable defined contribution
4 plan’ means any defined contribution plan described
5 in clauses (iii) through (vi) of section 402(e)(8)(B).

6 “(2) SERVICE PROVIDER.—The term ‘service
7 provider’ means any person providing services to a
8 plan under a contract. For this purpose, all corpora-
9 tions that provide services to a plan and are mem-
10 bers of a controlled group of corporations within the
11 meaning of section 1563(a) (determined without re-
12 gard to subsections (a)(4) and (e)(3)(C) thereof)
13 shall be treated as a single service provider.”.

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

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

17 **SEC. 4. METHOD OF PROVIDING REQUIRED NOTICES AND**
18 **DISCLOSURES.**

19 (a) DIRECTIVE TO TREASURY.—The Secretary of the
20 Treasury shall issue final regulations no later than 6
21 months after the date of enactment of this Act under
22 which an applicable notice shall be treated as provided in
23 writing or in written form if—

1 (1) the applicable notice is posted on a secure
2 Internet Web site that is accessible to the partici-
3 pant or beneficiary,

4 (2) a notice of the availability of such applicable
5 notice is provided in writing or in a manner that sat-
6 isfies Treasury regulation section 1.401(a)-21 at the
7 same time that the applicable notice is otherwise re-
8 quired, and

9 (3) the notice of availability advises the recipi-
10 ent that he or she may request and receive the appli-
11 cable notice in writing on paper at no charge and,
12 upon request, the applicable notice is provided in
13 writing on paper to the recipient at no charge.

14 (b) APPLICABLE NOTICE.—The term “applicable no-
15 tice” includes any notice, report, statement, or other docu-
16 ment required to be provided to a recipient under the fol-
17 lowing types of retirement plans: a qualified retirement
18 plan under section 401(a) or 403(a) of the Internal Rev-
19 enue Code of 1986; a section 403(b) plan under such
20 Code; a simplified employee pension (SEP) under section
21 408(k) of such Code; a simple retirement plan under sec-
22 tion 408(p) of such Code; and an eligible governmental
23 plan under section 457(b) of such Code.

1 **SEC. 5. EFFECTIVE DATE.**

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

5 (b) FINAL REGULATIONS.—The Secretary of the
6 Treasury shall issue final regulations to carry out the
7 amendments made by this Act not later than December
8 31, 2010.

○