Whereas title X funds allow health centers to provide an array of confidential preventive health services, including contraceptive services, pelvic exams, pregnancy testing, screening for cervical and breast cancer, screening for high blood pressure, anemia, and diabetes, screening for STDs, including HIV, basic infertility services, health education, and referrals for other health and social services;

Whereas in 2008, title X centers provided over 2,200,000 Pap tests and over 2,300,000 clinical breast exams; and

Whereas women who have access to family planning services have better health outcomes: Now, therefore, be it

Resolved, That the Senate—

(1) acknowledges the family planning services programs operating under title X of the Public Health Service Act as a critical component of the United States public health care system, providing high-quality family planning services and other preventive health care to low-income or uninsured individuals who may otherwise lack access to health care;

(2) recognizes family planning providers at Title X health centers who work tirelessly to provide quality care to millions of low-income women and men in the United States; and

(3) supports the mission of the family planning services programs operating under title X which provide men and women the opportunity to maintain their reproductive health which contributes to the health, social, and economic well-being of families in the United States.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4394. Mr. WHITEHOUSE (for himself, Mr. BENNET, Mr. BROWN of Massachusetts, Mr. BROWN of Ohio, Mr. CORKER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. KAUFMAN, Ms. LANDRIEU, Mr. LEAHY, Mr. LEMIEUX, Mrs. MCCASKILL, Mr. MENENDEZ, Mr. NELSON of Florida, Mr. PRYOR, Mr. SCHUMER, Mr. SESSIONS, Mr. SPECTER, and Mr. WARNER) submitted an amendment intended to be proposed to amendment SA 4386 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table.

SA 4395. Mr. HARKIN (for himself and Mr. KOHL) submitted an amendment intended to be proposed to amendment SA 4386 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 4213, supra; which was ordered to lie on the table.

SA 4396. Mr. CORNYN (for Mr. KERRY) proposed an amendment to the resolution S. Res. 548, to express the sense of the Senate that Israel has an undeniable right to self-defense, and to condemn the recent destabilizing actions by extremists aboard the ship Mavi Marmara.

SA 4397. Mr. CORNYN (for Mr. KERRY) proposed an amendment to the resolution S. Res. 548, supra.

TEXT OF AMENDMENTS

SA 4394. Mr. WHITEHOUSE (for himself, Mr. BENNET, Mr. BROWN of Massachusetts, Mr. BROWN of Ohio, Mr. CORKER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. KAUFMAN, Ms. LANDRIEU, Mr. LEAHY, Mr. LEMIEUX, Mrs. MCCASKILL, Mr. MENENDEZ, Mr. NELSON of Florida, Mr. PRYOR, Mr. SCHUMER, Mr. SESSIONS, Mr. SPECTER, and Mr. WARNER) submitted an amendment intended to be proposed to amendment SA 4386 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

On page 407, between lines 18 and 19, insert the following:

TITLE X—REGISTRATION OF AGENTS OF FOREIGN MANUFACTURERS AUTHORIZED TO ACCEPT SERVICE OF PROCESS

SEC. 1001. FINDINGS.

Congress makes the following findings:

(1) Each year, many people in the United States are injured by defective products manufactured or produced by foreign entities and imported into the United States.

(2) Both consumers and businesses in the United States have been harmed by injuries to people in the United States caused by defective products manufactured or produced by foreign entities.

(3) People in the United States injured by defective products manufactured or produced by foreign entities often have difficulty recovering damages from the foreign manufacturers and producers responsible for such injuries.

(4) The difficulty described in paragraph (3) is caused by the obstacles in bringing a foreign manufacturer or producer into a United States court and subsequently enforcing a judgment against that manufacturer or producer.

(5) Obstacles to holding a responsible foreign manufacturer or producer liable for an injury to a person in the United States undermine the purpose of the tort laws of the United States.

(6) The difficulty of applying the tort laws of the United States to foreign manufacturers and producers puts United States manufacturers and producers at a competitive disadvantage because United States manufacturers and producers must—

(A) abide by common law and statutory safety standards; and

(B) invest substantial resources to ensure that they do so.

(7) Foreign manufacturers and producers can avoid the expenses necessary to make their products safe if they know that they will not be held liable for violations of United States product safety laws.

(8) Businesses in the United States undertake numerous commercial relationships with foreign manufacturers, exposing the businesses to additional tort liability when foreign manufacturers or producers evade United States courts.

(9) Businesses in the United States engaged in commercial relationships with foreign manufacturers or producers often cannot vindicate their contractual rights if such manufacturers or producers seek to avoid responsibility in United States courts.

(10) One of the major obstacles facing businesses and individuals in the United States who are injured and who seek compensation for economic or personal injuries caused by foreign manufacturers and producers is the challenge of serving process on such manufacturers and producers.

(11) An individual or business injured in the United States by a foreign company must rely on a foreign government to serve process when that company is located in a country that is a signatory to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at The Hague November 15, 1965 (20 UST 361; TIAS 6638).

(12) An injured person in the United States must rely on the cumbersome system of letters rogatory to effect service in a country that did not sign the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. These countries do not have an enforceable obligation to serve process as requested.

(13) The procedures described in paragraphs (11) and (12) add time and expense to litigation in the United States, thereby discouraging or frustrating meritorious lawsuits brought by persons injured in the United States against foreign manufacturers and producers.

(14) Foreign manufacturers and producers often seek to avoid judicial consideration of their actions by asserting that United States courts lack personal jurisdiction over them.

(15) The due process clauses of the fifth amendment to and section 1 of the fourteenth amendment to the Constitution govern United States courts' personal jurisdiction over defendants.

(16) The due process clauses described in paragraph (15) are satisfied when a defendant consents to the jurisdiction of a court.

(17) United States markets present many opportunities for foreign manufacturers.

(18) In choosing to export products to the United States, a foreign manufacturer or producer subjects itself to the laws of the United States. Such a foreign manufacturer or producer thereby acknowledges that it is subject to the personal jurisdiction of the State and Federal courts in at least one State.

SEC. 1002. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) foreign manufacturers and producers whose products are sold in the United States should not be able to avoid liability simply because of difficulties relating to serving process upon them;

(2) to avoid such lack of accountability, foreign manufacturers and producers of foreign products distributed in the United States should be required, by regulation, to register an agent in the United States who is authorized to accept service of process for such manufacturer or producer;

(3) it is unfair to United States consumers and businesses that foreign manufacturers and producers often seek to avoid judicial consideration of their actions by asserting that United States courts lack personal jurisdiction over them;

(4) those who benefit from exporting products to United States markets should expect to be subject to the jurisdiction of at least one court within the United States;

(5) exporting products to the United States should be understood as consent to the accountability that the legal system of the United States ensures for all manufacturers and producers, foreign, and domestic;

(6) exporters recognize the scope of opportunities presented to them by United States markets but also should recognize that products imported into the United States must satisfy Federal and State safety standards established by statute, regulation, and common law;

(7) foreign manufacturers should recognize that they are responsible for the contracts they enter into with United States companies;

(8) foreign manufacturers should act responsibly and recognize that they operate within the constraints of the United States legal system when they export products to the United States;

(9) United States laws and the laws of United States trading partners should not put burdens on foreign manufacturers and producers that do not apply to domestic companies;

(10) it is fair to ensure that foreign manufacturers, whose products are distributed in

commerce in the United States, are subject to the jurisdiction of State and Federal courts in at least one State because all United States manufacturers are subject to the jurisdiction of the State and Federal courts in at least one State; and

(11) it should be understood that, by registering an agent for service of process in the United States, the foreign manufacturer or producer acknowledges consent to the jurisdiction of the State in which the registered agent is located.

SEC. 1003. DEFINITIONS.

In this title:

(1) APPLICABLE AGENCY.—The term ''applicable agency'' means, with respect to covered products—

(A) described in subparagraphs (A) and (B) of paragraph (4), the Food and Drug Administration;

(B) described in paragraph (4)(C), the Consumer Product Safety Commission;

(C) described in subparagraphs (D) and (E) of paragraph (4), the Environmental Protection Agency; and

(D) described in subparagraph (F) of paragraph (4)—

(i) the Food and Drug Administration, if the item is intended to be a component part of a product described in subparagraphs (A) and (B) of paragraph (4);

(ii) the Consumer Product Safety Commission, if the item is intended to be a component part of a product described in paragraph (4)(C); and

(iii) the Environmental Protection Agency, if the item is intended to be a component part of a product described in subparagraphs (D) and (E) of paragraph (4).

(2) COMMERCE.—The term ''commerce'' means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside of the State; or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(3) COMMISSIONER OF U.S. CUSTOMS AND BORDER PROTECTION.—The term ''Commissioner of U.S. Customs and Border Protection'' means the Commissioner responsible for U.S. Customs and Border Protection of the Department of Homeland Security.

(4) COVERED PRODUCT.—The term ''covered product'' means any of the following:

(A) Drugs, devices, and cosmetics, as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(B) A biological product, as such term is defined in section 351(i) of the Public Health Service Act (42 U.S.C. 262(i)).

(C) A consumer product, as such term is used in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052).

(D) A chemical substance or new chemical substance, as such terms are defined in section 3 of the Toxic Substances Control Act (15 U.S.C. 2602).

(E) A pesticide, as such term is defined in section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136).

(F) An item intended to be a component part of a product described in subparagraph (A), (B), (C), (D), or (E) but is not yet a component part of such product.

(5) DISTRIBUTE IN COMMERCE.—The term ''distribute in commerce'' means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

SEC. 1004. REGISTRATION OF AGENTS OF FOREIGN MANUFACTURERS AUTHORIZED TO ACCEPT SERVICE OF PROCESS IN THE UNITED STATES.

(a) REGISTRATION.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act and except as otherwise provided in this subsection, the head of each applicable agency shall require foreign manufacturers and producers of covered products distributed in commerce to establish a registered agent in the United States who is authorized to accept service of process on behalf of such manufacturer or producer—

(A) for the purpose of any civil or regulatory proceeding in State or Federal court relating—

(i) to a covered product; and

(ii) to—

(I) commerce in the United States;

(II) an injury or damage suffered in the United States; or

(III) conduct within the United States; and

(B) if such service is made in accord with the State or Federal rules for service of process in the State of the civil or regulatory proceeding.

(2) LOCATION.—The head of each applicable agency shall require that an agent of a foreign manufacturer or producer registered under this subsection with respect to a covered product be located in a State with a substantial connection to the importation, distribution, or sale of the covered product.

(3) MINIMUM SIZE.—This subsection shall only apply to foreign manufacturers and producers that manufacture or produce covered products in excess of a minimum value or quantity the head of the applicable agency shall prescribe by rule for purposes of this section. Such rules may include different minimum values or quantities for different subcategories of covered products prescribed by the head of the applicable agency for purposes of this section.

(b) REGISTRY OF AGENTS OF FOREIGN MANUFACTURERS.—

(1) IN GENERAL.—The Secretary of Commerce shall, in cooperation with each head of an applicable agency, establish and keep up to date a registry of agents registered under subsection (a).

(2) AVAILABILITY.—The Secretary of Commerce shall make the registry established under paragraph (1) available—

(A) to the public through the Internet website of the Department of Commerce; and

(B) to the Commissioner of U.S. Customs and Border Protection.

(c) CONSENT TO JURISDICTION.—A foreign manufacturer or producer of covered products that registers an agent under this section thereby consents to the personal jurisdiction of the State or Federal courts of the State in which the registered agent is located for the purpose of any civil or regulatory proceeding relating—

(1) to a covered product; and

(2) to—

(A) commerce in the United States;

(B) an injury or damage suffered in the United States; or

(C) conduct within the United States.

(d) DECLARATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, any person importing a covered product manufactured outside the United States shall provide a declaration to U.S. Customs and Border Protection that—

(A) the person has made appropriate inquiry, including seeking appropriate documentation from the exporter of the covered product and consulting the registry of agents of foreign manufacturers described in subsection (b); and

(B) to the best of the person's knowledge, with respect to each importation of a covered product, the foreign manufacturer or producer of the product has established a registered agent in the United States as required under subsection (a).

(2) PENALTIES.—Any person who fails to provide a declaration required under paragraph (1), or files a false declaration, shall be subject to any applicable civil or criminal penalty, including seizure and forfeiture, that may be imposed under the customs laws of the United States or title 18, United States Code, with respect to the importation of a covered product.

(e) REGULATIONS.—Not later than the date described in subsection (a)(1), the Secretary of Commerce, the Commissioner of U.S. Customs and Border Protection, and each head of an applicable agency shall prescribe regulations to carry out this section, including the establishment of minimum values and quantities under subsection (a)(3).

SEC. 1005. STUDY ON REGISTRATION OF AGENTS OF FOREIGN FOOD PRODUCERS AUTHORIZED TO ACCEPT SERVICE OF PROCESS IN THE UNITED STATES.

Not later than 1 year after the date of the enactment of this Act, the Secretary of Agriculture and the Commissioner of Food and Drugs shall jointly—

(1) complete a study on the feasibility and advisability of requiring foreign producers of food distributed in commerce to establish a registered agent in the United States who is authorized to accept service of process on behalf of such producers for the purpose of all civil and regulatory actions in State and Federal courts; and

(2) submit to Congress a report on the findings of the Secretary with respect to such study.

SEC. 1006. STUDY ON REGISTRATION OF AGENTS OF FOREIGN MANUFACTURERS AND PRODUCERS OF COMPONENT PARTS WITHIN COVERED PRODUCTS.

Not later than 1 year after the date of the enactment of this Act, the head of each applicable agency shall—

(1) complete a study on determining feasible and advisable methods of requiring manufacturers or producers of a component parts within covered products manufactured or produced outside the United States and distributed in commerce to establish registered agents in the United States who are authorized to accept service of process on behalf of such manufacturers or producers for the purpose of all civil and regulatory actions in State and Federal courts; and

(2) submit to Congress a report on the findings of the head of the applicable agency with respect to the study.

SEC. 1007. RELATIONSHIP WITH OTHER LAWS.

Nothing in this title shall affect the authority of any State to establish or continue in effect a provision of State law relating to service of process or personal jurisdiction, except to the extent that such provision of law is inconsistent with the provisions of this title, and then only to the extent of such inconsistency.

SA 4395. Mr. HARKIN (for himself and Mr. KOHL) submitted an amendment intended to be proposed to amendment SA 4386 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 4213, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title III, insert the following:

Subtitle C—Fee Disclosure

SEC. 321. SHORT TITLE OF SUBTITLE.

This subtitle may be cited as the ''Defined Contribution Fee Disclosure Act of 2010''.

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

(a) REQUIREMENTS RELATING TO SERVICE PROVIDERS AND PLAN ADMINISTRATORS OF INDIVIDUAL ACCOUNT PLANS.—

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

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

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

"SEC. 111. REQUIREMENT TO PROVIDE NOTICE OF PLAN FEE INFORMATION TO PLAN ADMINISTRATORS.

''(a) INITIAL STATEMENT OF SERVICES PROVIDED AND REVENUES RECEIVED.—

''(1) IN GENERAL.—In any case in which a service provider enters into a contract or arrangement to provide services to an individual account plan, the service provider shall, before entering into such contract or arrangement, provide to the plan administrator a single written statement which includes, with respect to the first plan year covered under such contract or arrangement, the following information:

''(A) A detailed description of the services which will be provided to the plan by the service provider, the amount of total expected annual revenue with respect to such services, the manner in which such revenue will be collected, and the extent to which such revenue varies between specific investment options.

''(B)(i) In the case of a service provider who is providing recordkeeping services with respect to any investment option, such information as is necessary for the plan administrator to satisfy the requirements of subparagraphs (B)(ii)(IV) and (C) of section 105(a)(2) and paragraphs (1) and (3) of section 112(a) with respect to such option, including specifying the method used by the service provider in disclosing or estimating expenses under subparagraphs (C)(iv) and (E) of section 105(a)(2).

''(ii) To the extent provided in regulations issued by the Secretary, clause (i) shall not apply in the case of a service provider described in such clause if the service provider receives a written notification from the plan administrator that the information described in such clause in connection with the investment option is provided by another service provider pursuant to a contract or arrangement to provide services to the plan.

''(C) A statement indicating—

''(i) the identity of any investment options offered under the plan with respect to which the service provider provides substantial investment, trustee, custodial, or administrative services, and

''(ii) in the case of any investment option, whether the service provider expects to receive any component of total expected annual revenue described in paragraph (2)(A)(ii)(II) with respect to such option and the amount of any such component.

''(D) The portion of total expected annual revenue which is properly allocable to each of the following:

''(i) Administration and recordkeeping.

''(ii) Investment management.

''(iii) Other services or amounts not described in clause (i) or (ii).

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

''(A) IN GENERAL.—The term 'total expected annual revenue' means, with respect to any plan year—

''(i) any amount expected to be received during such plan year from the plan (including amounts paid from participant accounts), any participant or beneficiary, or any plan sponsor in connection with the contract or arrangement referred to in paragraph (1), and

''(ii) any amount not taken into account under clause (i) which is expected to be received during such plan year by the service provider in connection with—

''(I) plan administration, recordkeeping, consulting, management, or investment or other service activities undertaken by the service provider with respect to the plan, or

''(II) plan administration, recordkeeping, consulting, management, or investment or other service activities undertaken by any other person with respect to the plan.

''(B) EXPRESSED AS DOLLAR AMOUNT OR PERCENTAGE OF ASSETS.—Total expected annual revenue and any amount indicated under paragraph (1)(C)(ii) may be expressed as a dollar amount or as a percentage of assets (or a combination thereof), as appropriate. To the extent that total expected annual revenue is expressed as a percentage of assets, such percentage shall be properly allocated among clauses (i), (ii), and (iii) of paragraph (1)(D).

''(C) PROVISION OF FEE SCHEDULE FOR CERTAIN PARTICIPANT INITIATED TRANSACTIONS.—In the case of amounts expected to be received from participants or beneficiaries under the plan (or from an account of a participant or beneficiary) as a fee or charge in connection with a transaction initiated by the participant (other than loads, commissions, brokerage fees, and other investment related transactions)—

''(i) such amounts shall not be taken into account in determining total expected annual revenue, and

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

''(3) ESTIMATIONS.—In determining under this section any amount which is to be disclosed by the service provider, the service provider may provide a reasonable estimate of such amount but only if the service provider indicates that such amount disclosed is an estimate. Any such estimate shall be based on reasonable assumptions specified in writing to the plan administrator.

''(4) DISCLOSURE OF DIFFERENT PRICING OF INVESTMENT OPTIONS.—In the case of investment options with more than one share class or price level, the Secretary shall prescribe regulations for the disclosure of the different share classes or price levels available as part of the statement in paragraph (1). Such regulations shall provide guidance with respect to the disclosure of the basis for qualifying for such share classes or price levels, which may include amounts invested, number of participants, or other factors.

''(5) DISCLOSURE OF INVESTMENT TRANSACTION COSTS.—To the extent provided in regulations issued by the Secretary, a service provider shall separately disclose the transaction costs (including sales commissions) for each investment option for the preceding year or the plan's allocable share of such costs for the preceding year. The Secretary shall, before making a determination to issue any final rule under this subsection, conduct, and report to the Congress on the results of, a study regarding the feasibility and benefits of requiring the disclosure of transaction costs to plan sponsors.

''(b) ANNUAL STATEMENTS.—With respect to each plan year after the plan year covered by the statement described in subsection (a), the service provider shall provide the plan administrator a single written statement which includes the information described in subsection (a) with respect to such subsequent plan year.

''(c) MATERIAL CHANGE STATEMENTS.—In the case of any event or other change during a plan year which causes the information included in any statement described in subsection (a) or (b) with respect to such plan year to become materially incorrect, the service provider shall provide the plan administrator a written statement providing the corrected information not later than 30 days after the service provider knows, or exercising reasonable diligence would have known, of such event or other change.

''(d) TIME AND MANNER OF PROVIDING STATEMENT AND OTHER MATERIALS.—The statement referred to in subsections (a)(1) and (b) shall be made at such time and in such manner as the Secretary may provide. Other materials required to be provided under this section shall be provided in such manner as the Secretary may provide. All information included in such statements and other materials shall be presented in a manner which is easily understood by the typical plan administrator.

''(e) EXCEPTION FOR SMALL SERVICE PROVIDERS.—The requirements of this section shall not apply with respect to any contract or arrangement for services provided with respect to an individual account plan for any plan year if—

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

''(2) the service provider provides a written statement to the plan administrator that the total annual revenue expected by the service provider to be received with respect to the plan is less than $5,000.

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

''(f) DEFINITION OF SERVICE PROVIDER.—For purposes of this section—

''(1) IN GENERAL.—The term 'service provider' includes any person providing administration, recordkeeping, consulting, investment management services, or investment advice to an individual account plan under a contract or arrangement.

''(2) CONTROLLED GROUPS TREATED AS ONE SERVICE PROVIDER.—All persons which would be treated as a single employer under subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 if section 1563(a)(1) of such Code were applied—

''(A) except as provided by subparagraph (B), by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears therein, or

''(B) for purposes of subsection (a)(1)(C)(i), by substituting 'at least 20 percent' for 'at least 80 percent' each place it appears therein,

shall be treated as one person for purposes of this section.

"SEC. 112. REQUIREMENT TO PROVIDE NOTICE TO PARTICIPANTS OF PLAN FEE INFORMATION.

''(a) DISCLOSURES TO PARTICIPANTS AND BENEFICIARIES.—

''(1) ADVANCE NOTICE OF AVAILABLE INVESTMENT OPTIONS.—

''(A) IN GENERAL.—The plan administrator of an applicable individual account plan shall provide to the participant or beneficiary notice of the investment options available under the plan before—

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

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

''(B) INFORMATION INCLUDED IN NOTICE.—The notice required under subparagraph (A) shall—

''(i) set forth, with respect to each available investment option—

''(I) the name of the option,

''(II) a general description of the option's investment objectives and principal investment strategies, principal risk and return characteristics, and the name of the option's investment manager,

''(III) whether the investment option is designed to be a comprehensive, stand-alone investment for retirement that provides varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures,

''(IV) the extent to which the investment option is actively managed or passively managed in relation to an index and the difference between active management and passive management,

''(V) where, and the manner in which, additional plan-specific, option-specific, and generally available investment information may be obtained, and

''(VI) a statement explaining that investment options should not be evaluated solely on the basis of the charges for each option but should also be based on consideration of other key factors, including the risk level of the option, the investment objectives of the option, historical returns of the option, and the participant's personal investment objectives,

''(ii) include a statement of the right under paragraph (2) of participants and beneficiaries to request, and a description of how a participant or beneficiary may request, a copy of the statements received by the plan administrator under section 111 with respect to the plan, and

''(iii) include the plan fee comparison chart described in subparagraph (C).

''(C) PLAN FEE COMPARISON CHART.—

''(i) IN GENERAL.—

''(I) IN GENERAL.—The notice provided under this paragraph shall include a plan fee comparison chart consisting of a comparison of the service and investment charges that will or could be assessed against the account of the participant or beneficiary with respect to the plan year.

''(II) EXPRESSED AS DOLLAR AMOUNT OR FORMULA.—For purposes of this subparagraph, such charges shall be provided in the form of a dollar amount or as a formula (such as a percentage of assets), as appropriate.

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

''(I) ASSET-BASED CHARGES SPECIFIC TO INVESTMENT.—Charges that vary depending on the investment options selected by the participant or beneficiary, including the annual operating expenses of the investment option and investment-specific asset-based charges (such as loads, commissions, brokerage fees, exchange fees, redemption fees, and surrender charges). Except as provided by the Secretary in regulations under this section, the information relating to such charges shall include a statement noting any charges for 1 or more investment options which pay for services other than investment management.

''(II) RECURRING ASSET-BASED CHARGES NOT SPECIFIC TO INVESTMENT.—Charges that are assessed as a percentage of the total assets in the account of the participant or beneficiary, regardless of the investment option selected.

''(III) ADMINISTRATIVE AND TRANSACTION-BASED CHARGES.—Administration and transaction-based charges, including fees charged to participants to cover plan administration, compliance, and recordkeeping costs, plan loan origination fees, possible redemption fees, and possible surrender charges, that are not assessed as a percentage of the total assets in the account and are either automatically deducted each year or result from certain transactions engaged in by the participant or beneficiary.

''(IV) OTHER CHARGES.—Any other charges which may be deducted from participants' or beneficiaries' accounts and which are not described in subclauses (I), (II), and (III).

''(iii) FEES AND HISTORICAL RETURNS.—The plan fee comparison chart shall include—

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

''(II) the historical returns of an appropriate benchmark, index, or other point of comparison for each such period.

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

''(E) ESTIMATIONS.—For purposes of providing the notice required under this paragraph, the plan administrator may provide a reasonable and representative estimate for any charges or percentages disclosed under subparagraph (B) or (C) and shall indicate whether the amount of any such charges or percentages disclosed is an estimate.

''(2) DISCLOSURE OF SERVICE PROVIDER STATEMENTS.—The plan administrator shall provide to any participant or beneficiary a copy of any statement received pursuant to section 111 within 30 days after receipt of a request for such a statement.

''(3) NOTICE OF MATERIAL CHANGES.—In the case of any event or other change which causes the information included in any notice described in paragraph (1) to become materially incorrect, the plan administrator shall provide participants and beneficiaries a written statement providing the corrected information not later than 30 days after the plan administrator knows, or exercising reasonable diligence would have known, of such event or other change.

''(4) TIME AND MANNER OF PROVIDING NOTICES AND DISCLOSURES.—

''(A) IN GENERAL.—The notices described in paragraph (1) shall be provided at such times and in such manner as the Secretary may provide. Other notices and materials required to be provided under this subsection shall be provided in such manner as the Secretary may provide.

''(B) MANNER OF PRESENTATION.—

''(i) IN GENERAL.—All information included in such notices or explanations shall be presented in a manner which is easily understood by the typical participant.

''(ii) GENERIC EXAMPLE OF OPERATING EXPENSES OF INVESTMENT OPTIONS.—The information described in paragraph (1)(C)(ii)(I) shall include a generic example describing the charges that would apply during an annual period with respect to a $10,000 investment in the investment option.

''(b) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—For purposes of this section, the term 'applicable individual account plan' means the portion of any individual account plan which permits a participant or beneficiary to exercise control over assets in his or her account.

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

''(1) provide a later deadline for providing the notice of investment menu changes described in subsection (a)(3) in appropriate circumstances, and

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

(2) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the item relating to section 111 and inserting the following new items:

''Sec. 111. Requirement to provide notice of plan fee information to plan administrators.

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

''Sec. 113. Repeal and effective date.''.

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

(1) in subsection (a)(2)—

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

(B) in subparagraph (B)(ii)—

(i) in subclause (II), by striking ''diversified, and'' and inserting ''diversified,'';

(ii) in subclause (III) by striking the period and inserting '', and''; and

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

''(IV) with respect to the portion of a participant's account for which the participant has the right to direct the investment of assets, the information described in subparagraph (C).''; and

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

''(C) QUARTERLY BENEFIT STATEMENTS.—The plan administrator shall provide to each participant and beneficiary, at least once each calendar quarter, an explanation describing the investment options in which the participant's or beneficiary's account is invested as of the last day of the preceding quarter. Such explanation shall provide, to the extent applicable, the following for the preceding quarter:

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

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

''(iii) A statement of the total contributions made to the participant's or beneficiary's account during the quarter and a separate statement of—

''(I) the amount of such contributions, and the total amount of any restorative payments, which were made by the employer during the quarter, and

''(II) the amount of such contributions which were made by the employee.

''(iv) A statement of the total fees and expenses which were directly deducted from the participant's or beneficiary's account during the quarter and an itemization of such fees and expenses.

''(v) A statement of the net returns for the year to date, expressed as a percentage, and a statement as to whether the net returns include amounts described in clause (iv).

''(vi) With respect to each investment option in which the participant or beneficiary was invested as of the last day of the quarter, the following:

''(I) A statement of the percentage of the participant's or beneficiary's account that is invested in such option as of the last day of such quarter.

''(II) A statement of the starting and ending balance of the participant's or beneficiary's account that is invested in such option for such quarter.

''(III) A statement of the annual operating expenses of the investment option.

''(IV) A statement of whether the disclosure described in clause (iv) includes the annual operating expenses of the investment options of the participant or beneficiary.

''(vii) The statement described in section 112(a)(1)(B)(i)(VI).

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

''(D) MODEL EXPLANATIONS.—The Secretary shall prescribe one or more model explanations that may be used for purposes of satisfying the requirements of subparagraph (C).

''(E) DETERMINATION OF EXPENSES.—For purposes of subparagraph (C)(vi)(III)—

''(i) Expenses may be expressed as a dollar amount or as a percentage of assets (or a combination thereof).

''(ii) The plan administrator may provide disclosure of the expenses for the quarter or may provide a reasonable and representative estimate of such expenses and shall indicate any such estimate as being an estimate. Any such estimate shall be based on reasonable assumptions stated together with such estimate.

''(iii) To the extent that estimated expenses are expressed as a percentage of assets, the disclosure shall also include one of the following, stated in dollar amounts:

''(I) an estimate of the expenses for the quarter based on the amount invested in the option; or

''(II) an example describing the expenses that would apply during the quarter with respect to a hypothetical $10,000 investment in the option.

''(F) ANNUAL COMPLIANCE FOR SMALL PLANS.—A plan that has fewer than 100 participants and beneficiaries as of the first day of the plan year may provide the explanation described in subparagraph (C) on an annual rather than a quarterly basis.''.

(c) ASSISTANCE FROM THE DEPARTMENT OF LABOR.—Section 105 of such Act (29 U.S.C. 1025) is amended by adding at the end the following new subsections:

''(d) ASSISTANCE TO SMALL EMPLOYERS.—The Secretary shall make available to employers with 100 or fewer employees—

''(1) educational and compliance materials designed to assist such employers in selecting and monitoring service providers for individual account plans which permit a participant or beneficiary to exercise control over the assets in the account of the participant or beneficiary, investment options under such plans, and charges relating to such options, and

''(2) services designed to assist such employers in finding and understanding affordable investment options for such plans and in comparing the investment performance of, and charges for, such options on an ongoing basis against appropriate benchmarks or other appropriate measures.

''(e) ASSISTANCE TO PLAN SPONSORS AND PLAN PARTICIPANTS AND BENEFICIARIES.—The Secretary shall provide plan administrators and plan sponsors of individual account plans and participants and beneficiaries under such plans assistance with any questions or problems regarding compliance with the requirements of subparagraphs (B)(ii)(IV) and (C) of subsection (a)(2) and section 112.''.

(d) ENFORCEMENT.—

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

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

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

''(11)(A) In the case of any failure by a service provider (as defined in section 111(f)(1)) to provide a statement in violation of section 111, the service provider may be assessed by the Secretary a civil penalty of up to $1,000 for each day in the noncompliance period.

''(B) For purposes of subparagraph (A), the noncompliance period with respect to the failure to provide any statement is the period beginning on the date that such statement was required to be provided and ending on the date that such statement is provided or the failure is otherwise corrected.

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

''(I) 10 percent of the assets of the plan, determined as of the first day of such plan year, or

''(II) $1,000,000.

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

''(I) the service provider subject to liability for the penalty under subparagraph (A) exercised reasonable diligence to meet the requirement with respect to which the failure relates, and

''(II) such service provider provides the information required under section 111 during the 30-day period beginning on the date such person knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty under subparagraph (A) to the extent that the payment of such penalty would be excessive or otherwise inequitable relative to the failure involved.

''(D) The penalty imposed under this paragraph with respect to any failure shall be reduced by the amount of any tax imposed on such person with respect to such failure under section 4980J of the Internal Revenue Code of 1986.

''(12)(A) Any plan administrator with respect to a plan who fails or refuses to provide a notice, explanation, or statement to participants and beneficiaries in accordance with subparagraphs (B)(ii)(IV) and (C) of section 105(a)(2) and section 112 may be assessed by the Secretary a civil penalty of up to $110 for each day in the noncompliance period.

''(B) For purposes of subparagraph (A), the noncompliance period with respect to the failure to provide any notice, explanation, or statement referred to in subparagraph (B)(ii)(IV) or (C) of section 105(a)(2) or section 112 with respect to any participant or beneficiary is the period beginning on the date that such notice, explanation, or statement was required to be provided and ending on the date that such notice, explanation, or statement is provided or the failure is otherwise corrected.

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

''(I) 10 percent of the assets of the plan, determined as of the first day of such plan year, or

''(II) $500,000.

''(ii) No penalty shall be imposed under subparagraph (A) on any failure to meet the requirements of subparagraphs (B)(ii)(IV) and (C) of section 105(a)(2) and section 112 if—

''(I) any person subject to liability for the penalty under subparagraph (A) exercised reasonable diligence to meet such requirements, and

''(II) such person provides the notice, explanation, or statement to which the failure relates during the 30-day period beginning on the date such person knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary shall waive part or all of the penalty under subparagraph (A) to the extent that the payment of such penalty would be excessive or otherwise inequitable relative to the failure involved.

''(iv) The penalty imposed under this paragraph with respect to any failure shall be reduced by the amount of any tax imposed on such person with respect to such failure under section 4980K of the Internal Revenue Code of 1986.''.

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

''(n) ENFORCEMENT COORDINATION OF CERTAIN DISCLOSURE REQUIREMENTS RELATING TO INDIVIDUAL ACCOUNT PLANS AND REVIEW BY THE DEPARTMENT OF LABOR.—

''(1) NOTIFICATION AND ACTION RELATING TO SERVICE PROVIDERS.—The Secretary shall notify the applicable regulatory authority in any case in which the Secretary determines that a service provider is engaged in a pattern or practice that precludes compliance by plan administrators with subparagraphs (B)(ii)(IV) and (C) of section 105(a)(2) and section 112. The Secretary shall, in consultation with the applicable authority, take such timely enforcement action under this title as is necessary to assure that such pattern or practice ceases and desists and assess any appropriate penalties.

''(2) ANNUAL AUDIT OF REPRESENTATIVE SAMPLING OF INDIVIDUAL ACCOUNT PLANS.—The Secretary shall annually audit a representative sampling of individual account plans covered by this title to determine compliance with the requirements of subparagraphs (B)(ii)(IV) and (C) of section 105(a)(2), section 111, and section 112. The Secretary shall annually report the results of such audit and any related recommendations of the Secretary to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.''.

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

(1) STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor shall review the reporting and disclosure requirements of part 1 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 and related provisions of the Pension Protection Act of 2006.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury, shall make such recommendations as the Secretary of Labor considers appropriate to the appropriate committees of the Congress to consolidate, simplify, standardize, and improve the applicable reporting and disclosure requirements so as to simplify reporting for employee pension benefit plans and ensure that needed understandable information is provided to participants and beneficiaries of such plans.

SEC. 323. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

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

''SEC. 4980J. FAILURE TO PROVIDE NOTICE OF PLAN FEE INFORMATION TO PLAN ADMINISTRATORS.

''(a) IMPOSITION OF TAX.—

''(1) IN GENERAL.—There is hereby imposed a tax on each failure of a service provider to meet the requirements of paragraph (2) with

respect to any applicable defined contribution plan.

''(2) FAILURES DESCRIBED.—The failures described in this paragraph are—

''(A) any failure to provide an initial statement described in subsection (d),

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

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

''(b) AMOUNT OF TAX.—

''(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure shall be $1,000 for each day in the noncompliance period.

''(2) NONCOMPLIANCE PERIOD.—For purposes of paragraph (1), the noncompliance period with respect to the failure to provide any statement is the period beginning on the date that such statement was required to be provided and ending on the date that such statement is provided or the failure is otherwise corrected.

''(c) LIMITATIONS.—

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

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

''(B) $1,000,000.

''(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

''(A) the service provider subject to liability for the tax under subsection (a) exercised reasonable diligence to meet the requirement with respect to which the failure relates, and

''(B) such service provider provides the information required under subsection (a) during the 30-day period beginning on the date such person knew, or exercising reasonable diligence would have known, that such failure existed.

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

''(d) INITIAL STATEMENT OF SERVICES PROVIDED AND REVENUES RECEIVED.—

''(1) IN GENERAL.—Before entering into any contract or arrangement to provide services to an applicable defined contribution plan, the service provider shall provide to the plan administrator a single written statement which includes, with respect to the first plan year covered under such contract or arrangement, the following:

''(A) A detailed description of the services which will be provided to the plan by the service provider, the amount of total expected annual revenue with respect to such services, the manner in which such revenue will be collected, and the extent to which such revenue varies between specific investment options.

''(B)(i) In the case of a service provider who is providing recordkeeping services with respect to any investment option, such information as is necessary for the plan administrator to satisfy the requirements of paragraphs (1), (2) and (4) of section 4980K(e) with respect to such option, including specifying the method used by the service provider in disclosing or estimating expenses under subparagraphs (A)(iv) and (C) of such paragraph (2).

''(ii) To the extent provided in regulations issued by the Secretary of Labor, clause (i) shall not apply in the case of a service provider described in such clause if the service provider receives a written notification from the plan administrator that the information described in such clause in connection with the investment option is provided by another service provider pursuant to a contract or arrangement to provide services to the plan.

''(C) A statement indicating—

''(i) the identity of any investment options offered under the plan with respect to which the service provider provides substantial investment, trustee, custodial, or administrative services, and

''(ii) in the case of any investment option, whether the service provider expects to receive any component of total expected annual revenue described in paragraph (2)(A)(ii)(II) with respect to such option and the amount of any such component.

''(D) The portion of total expected annual revenue which is properly allocable to each of the following:

''(i) Administration and recordkeeping.

''(ii) Investment management.

''(iii) Other services or amounts not described in clause (i) or (ii).

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

''(A) IN GENERAL.—The term 'total expected annual revenue' means, with respect to any plan year—

''(i) any amount expected to be received during such plan year from the plan (including amounts paid from participant accounts), any participant or beneficiary, or any plan sponsor in connection with the contract or arrangement referred to in paragraph (1), and

''(ii) any amount not taken into account under clause (i) which is expected to be received during such plan year by the service provider in connection with—

''(I) plan administration, recordkeeping, consulting, management, or investment or other service activities undertaken by the service provider with respect to the plan, or

''(II) plan administration, recordkeeping, consulting, management, or investment or other service activities undertaken by any other person with respect to the plan.

''(B) EXPRESSED AS DOLLAR AMOUNT OR PERCENTAGE OF ASSETS.—Total expected annual revenue and any amount indicated under paragraph (1)(C)(ii) may be expressed as a dollar amount or as a percentage of assets (or a combination thereof), as appropriate. To the extent that total expected annual revenue is expressed as a percentage of assets, such percentage shall be properly allocated among clauses (i), (ii), and (iii) of paragraph (1)(D).

''(C) PROVISION OF FEE SCHEDULE FOR CERTAIN PARTICIPANT INITIATED TRANSACTIONS.—In the case of amounts expected to be received from participants or beneficiaries under the plan (or from the account of a participant or beneficiary) as a fee or charge in connection with a transaction initiated by the participant (other than loads, commissions, brokerage fees, and other investment related transactions)—

''(i) such amounts shall not be taken into account in determining total expected annual revenue, and

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

''(3) ESTIMATIONS.—In determining under this section any amount which is to be disclosed by the service provider, the service provider may provide a reasonable estimate of such amount but only if the service provider indicates that such amount disclosed is an estimate. Any such estimate shall be based on reasonable assumptions specified in writing to the plan administrator.

''(4) DISCLOSURE OF DIFFERENT PRICING OF INVESTMENT OPTIONS.—In the case of investment options with more than one share class or price level, the Secretary of Labor shall prescribe regulations for the disclosure of the different share classes or price levels available as part of the statement in paragraph (1). Such regulations shall provide guidance with respect to the disclosure of the basis for qualifying for such share classes or price levels, which may include amounts invested, number of participants, or other factors.

''(5) DISCLOSURE OF INVESTMENT TRANSACTION COSTS.—To the extent provided in regulations issued by the Secretary of Labor, a service provider shall separately disclose the transaction costs (including sales commissions) for each investment option for the preceding year or the plan's allocable share of such costs for the preceding year. The Secretary of Labor shall, before making a determination to issue any final rule under this subsection, conduct, and report to the Congress on the results of, a study regarding the feasibility and benefits of requiring the disclosure of transaction costs to plan sponsors.

''(e) ANNUAL STATEMENTS.—With respect to each plan year after the plan year covered by the statement described in subsection (d), the service provider shall provide the plan administrator a single written statement which includes the information described in subsection (d) with respect to such subsequent plan year.

''(f) MATERIAL CHANGE STATEMENTS.—In the case of any event or other change during a plan year which causes the information included in any statement described in subsection (d) or (e) with respect to such plan year to become materially incorrect, the service provider shall provide the plan administrator a written statement providing the corrected information not later than 30 days after the service provider knows, or exercising reasonable diligence would have known, of such event or other change.

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

''(h) EXCEPTION FOR SMALL SERVICE PROVIDERS.—The requirements of this section shall not apply with respect to any contract or arrangement for services provided with respect to an individual account plan for any plan year if—

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

''(2) the service provider provides a written statement to the plan administrator that the total annual revenue expected by the service provider to be received with respect to the plan is less than $5,000.

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

''(i) DEFINITIONS.—For purposes of this section—

''(1) SERVICE PROVIDER.—

''(A) IN GENERAL.—The term 'service provider' includes any person providing administration, recordkeeping, consulting, investment management services, or investment

advice to an applicable defined contribution plan under a contract or arrangement.

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

''(i) except as provided by subparagraph (B), by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears therein, or

''(ii) for purposes of subsection (d)(1)(C)(i), by substituting 'at least 20 percent' for 'at least 80 percent' each place it appears therein,

shall be treated as one person for purposes of this section.

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

''(3) PLAN ADMINISTRATOR.—The term 'plan administrator' has the meaning given such term by section 414(g).

''SEC. 4980K. FAILURE TO PROVIDE NOTICE TO PARTICIPANTS OF PLAN FEE INFORMATION.

''(a) IMPOSITION OF TAX.—

''(1) IN GENERAL.—There is hereby imposed a tax on each failure of a plan administrator of an applicable defined contribution plan to meet the requirements of paragraph (2) with respect to any participant or beneficiary.

''(2) FAILURES DESCRIBED.—The failures described in this paragraph are—

''(A) any failure to provide an advance notice of available investment options described in subsection (e)(1),

''(B) any failure to provide an account explanation described in subsection (e)(2),

''(C) any failure to provide a service provider statement referred to in subsection (e)(3), and

''(D) any failure to provide a notice of material change described in subsection (e)(4).

''(b) AMOUNT OF TAX.—

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

''(2) NONCOMPLIANCE PERIOD.—For purposes of paragraph (1), the noncompliance period with respect to the failure to provide any notice, explanation, or statement referred to in subsection (a)(2) with respect to any participant or beneficiary is the period beginning on the date that such notice, explanation, or statement was required to be provided and ending on the date that such notice, explanation, or statement is provided or the failure is otherwise corrected.

''(c) LIMITATIONS ON AMOUNT OF TAX.—

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

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

''(B) $500,000.

''(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

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

''(B) such person provides the notice, explanation, or statement to which the failure relates during the 30-day period beginning on the date such person knew, or exercising reasonable diligence would have known, that such failure existed.

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

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

''(e) DISCLOSURES TO PARTICIPANTS AND BENEFICIARIES.—

''(1) ADVANCE NOTICE OF AVAILABLE INVESTMENT OPTIONS.—

''(A) IN GENERAL.—The plan administrator of an applicable defined contribution plan shall provide to the participant or beneficiary notice of the investment options available under the plan before—

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

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

''(B) INFORMATION INCLUDED IN NOTICE.—The notice required under subparagraph (A) shall—

''(i) set forth, with respect to each available investment option—

''(I) the name of the option,

''(II) a general description of the option's investment objectives and principal investment strategies, principal risk and return characteristics, and the name of the option's investment manager,

''(III) whether the investment option is designed to be a comprehensive, stand-alone investment for retirement that provides varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures,

''(IV) the extent to which the investment option is actively managed or passively managed in relation to an index and the difference between active management and passive management,

''(V) where, and the manner in which, additional plan-specific, option-specific, and generally available investment information may be obtained, and

''(VI) a statement explaining that investment options should not be evaluated solely on the basis of the charges for each option but should also be based on consideration of other key factors, including the risk level of the option, the investment objectives of the option, historical returns of the option, and the participant's personal investment objectives,

''(ii) include a statement of the right under paragraph (3) of participants and beneficiaries to request, and a description of how participant or beneficiary may request, a copy of the statements received by the plan administrator under section 4980J with respect to the plan, and

''(iii) include the plan fee comparison chart described in subparagraph (C).

''(C) PLAN FEE COMPARISON CHART.—

''(i) IN GENERAL.—

''(I) IN GENERAL.—The notice provided under this paragraph shall include a plan fee comparison chart consisting of a comparison of the service and investment charges that will or could be assessed against the account of the participant or beneficiary with respect to the plan year.

''(II) EXPRESSED AS DOLLAR AMOUNT OR FORMULA.—For purposes of this subparagraph, such charges shall be provided in the form of a dollar amount or as a formula (such as a percentage of assets), as appropriate.

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

''(I) ASSET-BASED CHARGES SPECIFIC TO INVESTMENT.—Charges that vary depending on the investment options selected by the participant or beneficiary, including the annual operating expenses of the investment option and investment-specific asset-based charges (such as loads, commissions, brokerage fees, exchange fees, redemption fees, and surrender charges). Except as provided by the Secretary of Labor in regulations under this section, the information relating to such charges shall include a statement noting any charges for 1 or more investment options which pay for services other than investment management.

''(II) RECURRING ASSET-BASED CHARGES NOT SPECIFIC TO INVESTMENT.—Charges that are assessed as a percentage of the total assets in the account of the participant or beneficiary, regardless of the investment option selected.

''(III) ADMINISTRATIVE AND TRANSACTION-BASED CHARGES.—Administration and transaction-based charges, including fees charged to participants to cover plan administration, compliance, and recordkeeping costs, plan loan origination fees, possible redemption fees, and possible surrender charges, that are not assessed as a percentage of the total assets in the account and are either automatically deducted each year or result from certain transactions engaged in by the participant or beneficiary.

''(IV) OTHER CHARGES.—Any other charges which may be deducted from participants' or beneficiaries' accounts and which are not described in subclauses (I), (II), and (III).

''(iii) FEES AND HISTORICAL RETURNS.—The plan fee comparison chart shall include—

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

''(II) the historical returns of an appropriate benchmark, index, or other point of comparison for each such period.

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

''(E) ESTIMATIONS.—For purposes of providing the notice required under this paragraph, the plan administrator may provide a reasonable and representative estimate for any charges or percentages disclosed under subparagraph (B) or (C) and shall indicate whether the amount of any such charges or percentages disclosed is an estimate.

''(2) QUARTERLY BENEFIT STATEMENT.—

''(A) REQUIREMENTS.—The plan administrator shall provide to each participant and beneficiary, at least once each calendar quarter, an explanation describing the investment options in which the participant's or beneficiary's account is invested as of the last day of the preceding quarter. Such explanation shall provide, to the extent applicable, the following for the preceding quarter:

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

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

''(iii) A statement of the total contributions made to the participant's or beneficiary's account during the quarter and a separate statement of—

''(I) the amount of such contributions, and the total amount of any restorative payments, which were made by the employer during the quarter, and

''(II) the amount of such contributions which were made by the employee.

''(iv) A statement of the total fees and expenses which were directly deducted from the participant's or beneficiary's account during the quarter and an itemization of such fees and expenses.

''(v) A statement of the net returns for the year to date, expressed as a percentage, and a statement as to whether the net returns include amounts described in clause (iv).

''(vi) With respect to each investment option in which the participant or beneficiary was invested as of the last day of the quarter, the following:

''(I) A statement of the percentage of the participant's or beneficiary's account that is invested in such option as of the last day of such quarter.

''(II) A statement of the starting and ending balance of the participant's or beneficiary's account that is invested in such option for such quarter.

''(III) A statement of the annual operating expenses of the investment option.

''(IV) A statement of whether the disclosure described in clause (iv) includes the annual operating expenses of the investment options of the participant or beneficiary.

''(vii) The statement described in paragraph (1)(B)(i)(VI).

''(viii) A statement regarding how a participant or beneficiary may access the information required to be disclosed under paragraph (1).

''(B) MODEL EXPLANATIONS.—The Secretary of Labor shall prescribe one or more model explanations that may be used for purposes of satisfying the requirements of this paragraph.

''(C) DETERMINATION OF EXPENSES.—For purposes of subparagraph (A)(vi)(III)—

''(i) Expenses may be expressed as a dollar amount or as a percentage of assets (or a combination thereof).

''(ii) The plan administrator may provide disclosure of the expenses for the quarter or may provide a reasonable and representative estimate of such expenses and shall indicate any such estimate as being an estimate. Any such estimate shall be based on reasonable assumptions stated together with such estimate.

''(iii) To the extent that estimated expenses are expressed as a percentage of assets, the disclosure shall also include one of the following, stated in dollar amounts:

''(I) an estimate of the expenses for the quarter based on the amount invested in the option; or

''(II) an example describing the expenses that would apply during the quarter with respect to a hypothetical $10,000 investment in the option.

''(3) DISCLOSURE OF SERVICE PROVIDER STATEMENTS.—The plan administrator shall provide to any participant or beneficiary a copy of any statement received pursuant to section 4980J within 30 days after receipt of a request for such a statement.

''(4) NOTICE OF MATERIAL CHANGES.—In the case of any event or other change which causes the information included in any notice described in paragraph (1) to become materially incorrect, the plan administrator shall provide participants and beneficiaries a written statement providing the corrected information not later than 30 days after the plan administrator knows, or exercising reasonable diligence would have known, of such event or other change.

''(5) TIME AND MANNER OF PROVIDING NOTICES AND DISCLOSURES.—

''(A) IN GENERAL.—The notices described in paragraph (1) shall be provided at such times and in such manner as the Secretary of Labor may provide. Other notices and materials required to be provided under this subsection shall be provided in such manner as such Secretary may provide.

''(B) MANNER OF PRESENTATION.—

''(i) IN GENERAL.—All information included in such notices or explanations shall be presented in a manner which is easily understood by the typical participant.

''(ii) GENERIC EXAMPLE OF OPERATING EXPENSES OF INVESTMENT OPTIONS.—The information described in paragraphs (1)(C)(ii)(I) shall include a generic example describing the charges that would apply during an annual period with respect to a $10,000 investment in the investment option.

''(C) ANNUAL COMPLIANCE FOR SMALL PLANS.—A plan that has fewer than 100 participants and beneficiaries as of the first day of the plan year may provide the explanation described in paragraph (2) on an annual rather than a quarterly basis.

''(f) DEFINITIONS.—

''(1) APPLICABLE DEFINED CONTRIBUTION PLAN.—The term 'applicable defined contribution plan' means the portion of any defined contribution plan which—

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

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

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

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

''(1) provide a later deadline for providing the notice of investment menu changes described in subsection (e)(4) in appropriate circumstances, and

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

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

''Sec. 4980J. Failure to provide notice of plan fee information to plan administrators.

''Sec. 4980K. Failure to provide notice to participants of plan fee information.''.

SEC. 324. REGULATORY AUTHORITY AND COORDINATION.

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

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

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

(A) investments with a guaranteed rate of return;

(B) investments with an insurance component; and

(C) employer sponsored retirement plans funded through an individual retirement account.

(3) address notices with respect to investments provided through participant directed brokerage trading;

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

(5) provide rules to allow service providers to consolidate information to satisfy the requirements of such sections with respect to all such service providers.

(b) CERTAIN ELECTRONIC DISCLOSURES PERMITTED.—Any disclosure required under section 112 of the Employee Retirement Income Security Act of 1974 or section 4980K of the Internal Revenue Code of 1986 may be provided through an electronic medium under such rules as shall be prescribed under such section by the Secretary of Labor not later than 1 year after the date of the enactment of this Act. Such rules shall be similar to those applicable under the Internal Revenue Code of 1986 with respect to notices to participants in pension plans. Such Secretary shall regularly modify such rules as appropriate to take into account new developments, including new forms of electronic media, and to fairly take into consideration the interests of plan sponsors, service providers, and participants. The rules prescribed by such Secretary pursuant to this subsection shall provide for a method for the typical participant or beneficiary to obtain without undue burden any such disclosure in writing on paper in lieu of receipt through an electronic medium.

SEC. 325. EFFECTIVE DATE OF SUBTITLE.

(a) IN GENERAL.—The amendments made by this subtitle shall apply to plan years beginning after December 31, 2011.

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

(c) SPECIAL RULE FOR COMPLIANCE WITH SUBTITLE.—Until 12 months after final regulations are issued by the Secretary of Labor pursuant to the amendments made by this subtitle, a service provider or plan administrator shall be treated as having complied with such amendments if such service provider or plan administrator complies with a reasonable good faith interpretation of such amendments.

SA 4396. Mr. CORNYN (for Mr. KERRY) proposed an amendment to the resolution S. Res. 548, to express the sense of the Senate that Israel has an undeniable right to self-defense, and to condemn the recent destabilizing actions by extremists aboard the ship *Mavi Marmara;* as follows:

On page 7, strike lines 22–24.

SA 4397. Mr. CORNYN (for Mr. KERRY) proposed an amendment to the resolution S. Res. 548, to express the sense of the Senate that Israel has an undeniable right to self-defense, and to condemn the recent destabilizing actions by extremists aboard the ship *Mavi Marmara;* as follows:

Strike the 14th clause in the preamble.

NOTICE OF HEARING

SUBCOMMITTEE ON WATER AND POWER

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public