

.....  
(Original Signature of Member)

119TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To amend the Employment Retirement Income Security Act of 1974 to  
establish additional requirements relating to claims and appeals.

\_\_\_\_\_  
**IN THE HOUSE OF REPRESENTATIVES**

Ms. LEE of Pennsylvania introduced the following bill; which was referred to  
the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend the Employment Retirement Income Security Act  
of 1974 to establish additional requirements relating to  
claims and appeals.

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 “Consumer Appeal  
5       Rights Enforcement Act”.

1 **SEC. 2. ENFORCEMENT OF CLAIMS PROCEDURE AND EX-**  
2 **TERNAL REVIEW REQUIREMENTS.**

3 (a) **EQUITABLE RELIEF AND PENALTIES.**—Section  
4 502(a) of the Employee Retirement Income Security Act  
5 of 1974 (29 U.S.C. 1132(a)) is amended—

6 (1) in paragraph (5), by inserting before the  
7 semicolon the following: “or the terms of the plan”;  
8 and

9 (2) in paragraph (6), to read as follows:

10 “(6) by the Secretary to collect any civil penalty  
11 under this title;”.

12 (b) **PENALTY FOR CLAIMS PROCEDURE AND EXTER-**  
13 **NAL REVIEW REQUIREMENT VIOLATIONS.**—Section  
14 502(c) of the Employee Retirement Income Security Act  
15 of 1974 (29 U.S.C. 1132(c)) is amended by adding at the  
16 end the following:

17 “(14)(A) **GLOBAL AND INDIVIDUAL VIOLA-**  
18 **TIONS.**—

19 “(i) **IN GENERAL.**—The Sec-  
20 retary may assess a civil penalty  
21 under subparagraph (B) against any  
22 person or entity (other than a plan)  
23 that materially causes (including  
24 through failure to perform required  
25 actions) a global violation described in

1 clause (ii) or individual violation de-  
2 scribed in clause (iii).

3 “(ii) GLOBAL VIOLATION.—It shall be  
4 deemed a global violation for a plan to fail  
5 to have—

6 “(I) a claims procedure that com-  
7 plies (in writing or in operation)  
8 with—

9 “(aa) the terms of the plan;  
10 or

11 “(bb) section 503 (including  
12 the requirements of section  
13 2560.503–1 of title 29, Code of  
14 Federal Regulations, as in effect  
15 on the date of enactment of the  
16 Consumer Appeal Rights En-  
17 forcement Act); or

18 “(II) an external review process  
19 that complies (in writing or in oper-  
20 ation) with—

21 “(aa) the terms of the plan;  
22 or

23 “(bb) the requirements of  
24 section 2590.715–2719 of title  
25 29, Code of Federal Regulations,

1 as in effect on the date of enact-  
2 ment of the Consumer Appeal  
3 Rights Enforcement Act.

4 “(iii) INDIVIDUAL VIOLATION.—It  
5 shall be deemed an individual violation for  
6 a plan to fail to—

7 “(I) provide a required notifica-  
8 tion or disclosure to a participant or  
9 beneficiary that includes all required  
10 content;

11 “(II) respond to or decide a par-  
12 ticipant’s or beneficiary’s claim, ap-  
13 peal or request for external review in  
14 a timely manner; or

15 “(III) respond to a participant’s  
16 or beneficiary’s communication or re-  
17 quest for information with the re-  
18 quested information to which the par-  
19 ticipant or beneficiary is legally enti-  
20 tled;

21 in a manner that violates the plan’s writ-  
22 ten claims procedure, section 503 (includ-  
23 ing the requirements of section 2560.503-  
24 1 of title 29, Code of Federal Regulations  
25 (as in effect on the date of enactment of

1 the Consumer Appeal Rights Enforcement  
2 Act), or the requirements of section  
3 2590.715–2719 of title 29, Code of Fed-  
4 eral Regulations (as in effect on the date  
5 of enactment of the Consumer Appeal  
6 Rights Enforcement Act).

7 “(iv) SEPARATE VIOLATIONS.— Each  
8 individual violation with respect to each  
9 participant or beneficiary shall be treated  
10 as a separate violation.

11 “(B) PENALTY AMOUNTS.—

12 “(i) GLOBAL VIOLATION.—The amount of  
13 the penalty imposed under this paragraph for a  
14 global violation shall be no greater than the  
15 product of—

16 “(I) for each plan year in which such  
17 a violation occurs, \$1,000, multiplied by

18 “(II) the number of participants and  
19 beneficiaries in the plan at the start of  
20 each such plan year.

21 “(ii) ENHANCED PENALTY FOR CERTAIN  
22 GLOBAL VIOLATIONS.—A penalty for a global  
23 violation may be trebled if such violation is not  
24 corrected within 90 days after the Secretary  
25 gives written notice of the Secretary’s intent to

1            assess such penalty to the plan administrator  
2            and each person or entity that the Secretary in-  
3            tends to hold liable for the penalty.

4            “(iii)     INDIVIDUAL     VIOLATION.—The  
5            amount of the penalty imposed under this para-  
6            graph for an individual violation shall be no  
7            greater than \$1,000 for each day beginning on  
8            the date on which—

9            “(I) a participant or beneficiary (or  
10           such participant or beneficiary’s authorized  
11           representative) gives written notice of the  
12           violation to the administrator and the Sec-  
13           retary of Labor; or

14           “(II) if the Secretary discovers an in-  
15           dividual violation during the course of an  
16           investigation pursuant to section 504, the  
17           Secretary provides written notice to the ad-  
18           ministrator of such violation.

19           and ending on the date on which the violation  
20           is corrected.

21           “(iv)     ENHANCED PENALTY FOR CERTAIN  
22           INDIVIDUAL VIOLATIONS.—The civil penalty de-  
23           scribed in clause (iii) may be trebled with re-  
24           spect to each separate and distinct violation of  
25           subparagraph (A)(iii) that is not corrected with-

1 in the following periods beginning on the date  
2 on which the plan administrator receives notice  
3 described in subclauses (I) or (II) of clause (iii):

4 “(I) 90-day period with respect to a  
5 violation pertaining to a plan that is not a  
6 group health plan.

7 “(II) 30-day period with respect to a  
8 violation pertaining to a group health plan.

9 “(III) 3-day period with respect to a  
10 violation of a claim involving urgent care  
11 as defined in section 2560.503–1(m)(1) of  
12 title 29, Code of Federal Regulations (as  
13 in effect as of the date of enactment of the  
14 Consumer Appeal Rights Enforcement  
15 Act).

16 “(v) PATTERN OR PRACTICE OF INDIVIDUAL VIOLATIONS.—In addition to the pen-  
17 alties under clauses (iii) and (iv), in the case  
18 that the Secretary determines that a person or  
19 entity has engaged in a pattern or practice of  
20 individual violations, the Secretary—

22 “(I) shall provide notice to the plan of  
23 the intent to assess a penalty with respect  
24 to each individual violation that occurred  
25 within the 3-year period ending on the date

1           that such notice was provided, unless each  
2           such individual violation has been cor-  
3           rected;

4           “(II) with respect to each individual  
5           violation, shall assess a penalty not less  
6           than \$100 and not greater than \$1,000 for  
7           each day each such violation during such  
8           period was not corrected following receipt  
9           of the notice by the Secretary; and

10          “(III) may waive some or all of the  
11          penalties if the plan corrects the violations  
12          within 120 days of receipt of the notice re-  
13          quired under subclause (I).

14          “(C) JOINT AND SEVERAL LIABILITY.—Any  
15          person or entity that materially causes (including  
16          through failure to perform required actions) a viola-  
17          tion described in subparagraph (A) shall be jointly  
18          and severally liable for the payment of the appro-  
19          priate penalty described in subparagraph (B).”.

20          (c) ADDITIONAL PENALTY.—Section 502(g) of the  
21          Employee Retirement Income Security Act of 1974 (29  
22          U.S.C. 1132(g)) is amended by adding at the end the fol-  
23          lowing:

24                 “(3)(A) In any action brought under subsection  
25          (a)(5) with respect to a violation of section 503 (in-

1 including a violation of section 2560.503–1 of title 29,  
2 Code of Federal Regulations, as in effect on the date  
3 of enactment of the Consumer Appeal Rights En-  
4 forcement Act) or a violation of section 2590.715–  
5 2719 of title 29, Code of Federal Regulations (as in  
6 effect on the date of enactment of the Consumer Ap-  
7 peal Rights Enforcement Act), a court may impose  
8 against any defendant (other than a plan), as addi-  
9 tional relief, the penalties described under subsection  
10 (c)(14).

11 “(B) A court may not impose such penalties if  
12 the Secretary has previously assessed a penalty  
13 under subsection (c)(14) against such defendant for  
14 the same violation.

15 “(C) The Secretary may not assess any penalty  
16 under subsection (c)(14) against a person or entity  
17 if, in an action brought under subsection (a)(5), a  
18 court has imposed a penalty against such person or  
19 entity for the same violation.”.

20 (d) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply beginning on the date that is 90  
22 days after the date of enactment of this Act.

1   **SEC. 3. DIRECT ENFORCEMENT AUTHORITY.**

2           (a) IN GENERAL.—Section 502(b)(3) of the Em-  
3   ployee Retirement Income Security Act of 1974 (29  
4   U.S.C. 1132(b)(3)) is repealed.

5           (b) EFFECTIVE DATE.—The amendment made by  
6   this section shall apply beginning on the date that is 90  
7   days after the date of enactment of this Act.