

.....  
(Original Signature of Member)

111TH CONGRESS  
2D SESSION

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

To amend title XXXII of the Public Health Service Act to require review and approval by law prior to collection of premiums under the CLASS program, to replace the opt-out procedure for employer enrollment of employees with an opt-in procedure, to require termination of the program in the event of actuarial unsoundness, and for other purposes.

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

Mr. BOUSTANY introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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

To amend title XXXII of the Public Health Service Act to require review and approval by law prior to collection of premiums under the CLASS program, to replace the opt-out procedure for employer enrollment of employees with an opt-in procedure, to require termination of the program in the event of actuarial unsoundness, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fiscal Responsibility  
3 and Retirement Security Act”.

4 **SEC. 2. REVIEW AND APPROVAL BY LAW OF DESIGNATION**  
5 **OF CLASS INDEPENDENCE BENEFIT PLAN.**

6 Title XXXII of the Public Health Service Act, as  
7 added by section 8002(a) of the Patient Protection and  
8 Affordable Care Act (Public Law 111–148), is amended—

9 (1) in section 3203(a)—

10 (A) in paragraph (3), in the second sen-  
11 tence, by inserting “and shall submit to Con-  
12 gress a report containing such designation, de-  
13 tails, and reasons” after “public comment”; and

14 (B) by adding at the end the following new  
15 paragraph:

16 “(4) APPROVAL BY LAW OF DESIGNATION.—No  
17 premiums may be deducted from an individual’s  
18 wages or otherwise collected under section 3204(e)  
19 unless there is enacted into law, in accordance with  
20 section 3211(a), a joint resolution approving the  
21 designation of the CLASS Independence Benefit  
22 Plan by the Secretary under paragraph (3).”; and

23 (2) by adding at the end the following new sec-  
24 tions:

1 **“SEC. 3211. PROCEDURAL REQUIREMENTS FOR APPROVAL**  
2 **BY LAW OF DESIGNATION OF CLASS INDE-**  
3 **PENDENCE BENEFIT PLAN.**

4 “(a) IN GENERAL.—For purposes of paragraph (4)  
5 of section 3203(a), the following shall apply:

6 “(1) RECEIPT OF REPORT OF COMMITTEE OF  
7 ACTUARIES.—It shall not be in order in the Senate  
8 or in the House of Representatives to consider a  
9 joint resolution described in such paragraph unless  
10 the Senate or the House of Representatives, respec-  
11 tively, has received, not fewer than 60 days prior to  
12 such consideration—

13 “(A) the report of the Secretary described  
14 in section 3203(a)(3); and

15 “(B) the report of the Committee of Actu-  
16 aries described in section 3212(e).

17 “(2) JOINT RESOLUTION DEFINED.—The term  
18 ‘joint resolution’ means only a joint resolution, the  
19 matter after the resolving clause of which is as fol-  
20 lows: ‘That Congress approves of the CLASS Inde-  
21 pendence Benefit Plan designated by the Secretary  
22 of Health and Human Services under section  
23 3203(a)(3) of the Public Health Service Act.’. Such  
24 term does not include a resolution that specifies  
25 more than one action.

1       “(b) EXERCISE OF THE RULEMAKING POWER OF  
2 EACH HOUSE.—Subsection (a) is enacted by Congress—

3               “(1) as an exercise of the rulemaking power of  
4 the Senate and the House of Representatives, re-  
5 spectively, and is deemed to be part of the rules of  
6 each House, respectively, but applicable only with re-  
7 spect to the procedure to be followed in that House  
8 in the case of a joint resolution under such sub-  
9 section, and it supersedes other rules only to the ex-  
10 tent that it is inconsistent with such rules; and

11              “(2) with full recognition of the constitutional  
12 right of either House to change the rules (so far as  
13 they relate to the procedure of that House) at any  
14 time, in the same manner, and to the same extent  
15 as in the case of any other rule of that House.

16 **“SEC. 3212. CLASS COMMITTEE OF ACTUARIES.**

17       “(a) ESTABLISHMENT.—Not later than October 1,  
18 2012, the Secretary shall establish within the Department  
19 of Health and Human Services a committee to be known  
20 as the CLASS Committee of Actuaries (in this section re-  
21 ferred to as the ‘Committee’) to review and provide rec-  
22 ommendations regarding the long-term actuarial sound-  
23 ness of the CLASS Independence Benefit Plan.

24       “(b) MEMBERSHIP.—The Committee shall be com-  
25 posed of not fewer than 4 members, including—

1           “(1) the Chief Actuary of the Centers for Medi-  
2           care & Medicaid Services;

3           “(2) the Chief Actuary of the Social Security  
4           Administration; and

5           “(3) any other actuary, as appointed by the  
6           Secretary, including at least one actuary selected by  
7           the American Academy of Actuaries and at least one  
8           actuary selected by the Society of Actuaries.

9           “(c) NO COMPENSATION.—The members of the Com-  
10          mittee shall not receive any compensation for their service  
11          on the Committee.

12          “(d) SUPPORT SERVICES.—The Secretary shall pro-  
13          vide the Committee with the administrative, professional,  
14          and technical support required by the Committee to carry  
15          out its duties under this section.

16          “(e) REPORT TO CONGRESS.—Not later than 60 days  
17          after the date on which the Secretary establishes the Com-  
18          mittee, the Committee shall submit to Congress a report  
19          on the review conducted under and recommendations de-  
20          scribed in subsection (a). Such report shall include—

21                 “(1) an estimate of the average premium per  
22                 enrollee per year that will be required to ensure that  
23                 the CLASS Independence Fund will be actuarially  
24                 sound over the 75-year period beginning with the fis-  
25                 cal year in which such report is submitted; and

1           “(2) an estimate of the average amount of ben-  
2           efits that will be paid per enrollee per year over such  
3           period.

4           “(f) TERMINATION.—The Committee shall terminate  
5           15 days after the date on which the Committee submits  
6           the report to Congress under subsection (e).”.

7           **SEC. 3. OPT-OUT ENROLLMENT PROCEDURE REPLACED**  
8                           **WITH OPT-IN; OTHER ENROLLMENT RE-**  
9                           **QUIREMENTS.**

10          Section 3204 of the Public Health Service Act, as  
11          added by section 8002(a) of the Patient Protection and  
12          Affordable Care Act (Public Law 111–148), is amended—

13                 (1) in subsection (a)—

14                         (A) in the heading, by striking “AUTO-  
15                         MATIC ENROLLMENT” and inserting “ENROLL-  
16                         MENT BY EMPLOYER”;

17                         (B) by striking paragraph (1) and insert-  
18                         ing the following:

19                         “(1) IN GENERAL.—The Secretary, in coordina-  
20                         tion with the Secretary of the Treasury, shall estab-  
21                         lish procedures under which an employer may elect  
22                         to enroll in the CLASS program each employee  
23                         who—

24                                 “(A) is an individual described in sub-  
25                                 section (c); and

1           “(B) makes an affirmative election to be  
2           enrolled in the CLASS program by the em-  
3           ployer.”;

4           (C) by redesignating paragraphs (2) and  
5           (3) as paragraphs (3) and (4), respectively;

6           (D) by inserting after paragraph (1) the  
7           following new paragraph:

8           “(2) EMPLOYER NOT REQUIRED TO ENROLL  
9           EMPLOYEES.—No employer may be required to en-  
10          roll an employee in the CLASS program under para-  
11          graph (1) or any other provision of law.”;

12          (E) in subparagraph (C) of paragraph (3),  
13          as redesignated, by striking “automatic”;

14          (F) in subparagraph (A) of paragraph (4),  
15          as redesignated, by striking “automatically”;

16          (2) by striking subsection (b) and inserting the  
17          following:

18          “(b) REQUIRED NOTICE PRIOR TO ENROLLMENT.—

19                 “(1) IN GENERAL.—An employer may not en-  
20                 roll an employee in the CLASS program under sub-  
21                 section (a)(1) unless, prior to enrolling the employee,  
22                 the employer—

23                         “(A) has provided to the employee the  
24                         exact statements described in paragraph (3) in  
25                         a single written notice that displays such state-

1           ments in the order in which they are set forth  
2           in such paragraph; and

3                   “(B) certifies to the Secretary that the in-  
4           dividual has received such notice.

5                   “(2) ENROLLMENT OTHER THAN BY EM-  
6           PLOYER.—In the case of an individual seeking to en-  
7           roll in the CLASS program other than through en-  
8           rollment by the individual’s employer under sub-  
9           section (a)(1), the Secretary shall not permit the in-  
10          dividual to enroll unless, prior to the individual’s en-  
11          rollment, the Secretary has provided to the indi-  
12          vidual the exact statements described in paragraph  
13          (3) in a single written notice that displays such  
14          statements in the order in which they are set forth  
15          in such paragraph and the individual has acknowl-  
16          edged in writing the receipt of such notice.

17                   “(3) STATEMENTS DESCRIBED.—The state-  
18          ments described in this paragraph are the following:

19                   “(A) The Chief Actuary of the Centers for  
20          Medicare & Medicaid Services has made the fol-  
21          lowing assessment regarding the CLASS pro-  
22          gram: ‘In general, voluntary, unsubsidized, and  
23          non-underwritten insurance programs such as  
24          CLASS face a significant risk of failure as a re-  
25          sult of adverse selection by participants. Indi-

1           viduals with health problems or who anticipate  
2           a greater risk of functional limitation would be  
3           more likely to participate than those in better-  
4           than-average health. . . . [T]here is a very seri-  
5           ous risk that the problem of adverse selection  
6           will make the CLASS program unsustainable.’.

7           “(B) The Chief Actuary estimates that the  
8           CLASS program will likely begin to run deficits  
9           in 2025 and continue to run deficits thereafter.

10          “(C) The Chief Actuary further estimates  
11          that an initial average premium level of about  
12          \$240 per month would be required to ade-  
13          quately fund CLASS program costs.

14          “(D) The Federal Government will collect  
15          more than \$70 billion in CLASS program pre-  
16          miums from 2012 through 2019, according to  
17          the Congressional Budget Office. Although  
18          these premiums are credited as IOUs or United  
19          States Government securities in a ‘CLASS  
20          Independence Fund,’ the money, itself, is used  
21          to pay for other Government expenses, includ-  
22          ing other programs under the health care law  
23          enacted in March 2010 that are unrelated to  
24          the CLASS program. There is no separate pool  
25          of money set aside to pay CLASS program ben-

1           efits, and workers and retirees could be re-  
2           quired to repay these IOUs in the form of high-  
3           er taxes.

4           “(E) Under section 3213 of the Public  
5           Health Service Act, the CLASS program will  
6           terminate immediately if an annual report of  
7           the Board of Trustees of the Class Independ-  
8           ence Fund indicates that the CLASS program  
9           will not be actuarially sound over the 75-year  
10          period beginning with the fiscal year in which  
11          the report is submitted.”; and

12          (3) in subsection (g)(1), by striking “elected to  
13          waive” and inserting “was eligible for”.

14 **SEC. 4. 30-DAY REFUND; ABILITY OF INDIVIDUALS TO**  
15 **DISENROLL AT ANY TIME.**

16          Section 3204 of the Public Health Service Act, as  
17          amended by section 3, is further amended—

18          (1) in subsection (g)—

19                  (A) in the heading, by striking “AND  
20                  DISENROLLMENT”;

21                  (B) by striking paragraph (2);

22                  (C) by striking “under which” and all that  
23                  follows through “(1) an individual” and insert-  
24                  ing “under which an individual”; and

1 (D) by striking “; and” and inserting a pe-  
2 riod; and

3 (2) by adding at the end the following new sub-  
4 section:

5 “(h) DISENROLLMENT.—

6 “(1) 30-DAY REFUND.—

7 “(A) IN GENERAL.—In the case of an indi-  
8 vidual who disenrolls from the CLASS program  
9 pursuant to the procedures established under  
10 paragraph (2)(A) not later than 30 days after  
11 the date of such individual’s enrollment, the  
12 Secretary shall provide for the refund to such  
13 individual of all premiums paid, with respect to  
14 such individual, under subsection (e).

15 “(B) PROCEDURES FOR REFUND IF PRE-  
16 MIUMS DEDUCTED BY EMPLOYER.—The proce-  
17 dures established under subsection (e)(1) shall  
18 require an employer who deducts CLASS pro-  
19 gram premiums from the wages of an employee  
20 to retain such amounts deducted as are nec-  
21 essary for such time as is necessary to allow the  
22 employer to make the refund provided for under  
23 subparagraph (A) if the employee disenrolls  
24 from the program as provided in such subpara-  
25 graph.

1           “(2) DISENROLLMENT AT ANY TIME; PROCE-  
2           DURES.—

3           “(A) IN GENERAL.—The Secretary shall  
4           establish procedures under which an individual  
5           may disenroll from the CLASS program at any  
6           time. Except as provided in paragraph (1), an  
7           individual disenrolling from the program shall  
8           not be refunded any premiums paid.

9           “(B) SUBMISSION OF DISENROLLMENT RE-  
10          QUEST.—

11          “(i) INDIVIDUALS ENROLLED BY EM-  
12          PLOYER.—In the case of an individual who  
13          was enrolled in the CLASS program by the  
14          individual’s employer under subsection  
15          (a)(1), the procedures established under  
16          subparagraph (A) shall provide for the in-  
17          dividual to disenroll from the program  
18          by—

19                 “(I) submitting a written request  
20                 to the employer; or

21                 “(II) if the employer is no longer  
22                 in business or is otherwise incapable  
23                 of processing such a request, submit-  
24                 ting a written request to the Sec-  
25                 retary.

1           “(ii) OTHER INDIVIDUALS.—In the  
2           case of an individual who was enrolled in  
3           the CLASS program other than through  
4           enrollment by the individual’s employer  
5           under subsection (a)(1), the procedures es-  
6           tablished under subparagraph (A) shall  
7           provide for the individual to disenroll from  
8           the program by submitting a written re-  
9           quest to the Secretary.

10           “(C) EFFECTIVE DATE OF  
11           DISENROLLMENT.—The procedures established  
12           under subparagraph (A) shall provide that an  
13           individual shall be considered to be disenrolled  
14           from the CLASS program as of the date of the  
15           submission by the individual or someone acting  
16           on behalf of the individual of a written request  
17           referred to in clause (i) or (ii) of subparagraph  
18           (B). For purposes of this subparagraph, the  
19           date of the submission of a written request  
20           shall be considered to be—

21           “(i) in the case of a request submitted  
22           to an employer, the date on which the em-  
23           ployee or someone acting on behalf of the  
24           employee gives the request to the employer  
25           or the employer’s agent, or to the United

1 States Postal Service or a private carrier  
2 for transmission to the employer or the  
3 employer’s agent; or

4 “(ii) in the case of a request sub-  
5 mitted to the Secretary, the date on which  
6 the individual or someone acting on behalf  
7 of the individual gives the request to the  
8 Secretary or the Secretary’s agent, or to  
9 the United States Postal Service or a pri-  
10 vate carrier for transmission to the Sec-  
11 retary or the Secretary’s agent.”.

12 **SEC. 5. NO COLLECTION OF PREMIUMS PENDING PROMUL-**  
13 **GATION OF FINAL REGULATIONS.**

14 Section 3208(c) of the Public Health Service Act, as  
15 added by section 8002(a) of the Patient Protection and  
16 Affordable Care Act (Public Law 111–148), is amended—

17 (1) by striking “The Secretary” and inserting  
18 the following (with appropriate indentation):

19 “(1) IN GENERAL.—The Secretary”; and

20 (2) by adding at the end the following new  
21 paragraph:

22 “(2) NO COLLECTION OF PREMIUMS PENDING  
23 PROMULGATION OF FINAL REGULATIONS.—No pre-  
24 miums may be deducted from an individual’s wages

1 or otherwise collected under section 3204(e) before  
2 the Secretary has promulgated, in final form—

3 “(A) the regulations described in section  
4 3202(6)(C);

5 “(B) the rule described in section  
6 3203(a)(3); and

7 “(C) the regulations described in para-  
8 graph (1).”.

9 **SEC. 6. TERMINATION OF PROGRAM IF CLASS INDEPEND-**  
10 **ENCE FUND ACTUARIALLY UNSOUND.**

11 Title XXXII of the Public Health Service Act, as  
12 amended by section 2, is further amended by adding at  
13 the end the following new section:

14 **“SEC. 3213. TERMINATION OF PROGRAM IF CLASS INDE-**  
15 **PENDENCE FUND ACTUARIALLY UNSOUND.**

16 “(a) IN GENERAL.—If the Board of Trustees of the  
17 CLASS Independence Fund submits to Congress the re-  
18 port described in subsection (b)—

19 “(1) no individual shall be enrolled under sec-  
20 tion 3204(a) in the CLASS program after the date  
21 of the submission of the report;

22 “(2) no premiums shall be deducted from an in-  
23 dividual’s wages or otherwise collected under section  
24 3204(e) after such date;

1           “(3) no benefits shall be provided under section  
2           3205(e) after such date;

3           “(4) the Secretary shall refund any amount re-  
4           maining in the CLASS Independence Fund (estab-  
5           lished under section 3206(a)) on such date, accord-  
6           ing to the process described in subsection (c), and  
7           send notification to the Secretary of the Treasury  
8           when the refund is complete;

9           “(5) in the case of notification under paragraph  
10          (4), the CLASS Independence Fund and the Board  
11          of Trustees of the CLASS Independence Fund (es-  
12          tablished under section 3206(c)(1)) shall be abol-  
13          ished as of the date of such notification;

14          “(6) the CLASS Independence Advisory Council  
15          (established under section 3207(a)) is abolished as  
16          of the date of the submission of the report;

17          “(7) the Secretary shall take such other steps  
18          as the Secretary considers necessary to terminate  
19          the CLASS program;

20          “(8) in lieu of the annual report required by  
21          section 3208(d), the Secretary shall submit to Con-  
22          gress a quarterly report on the status of the termi-  
23          nation of the CLASS program in accordance with  
24          this section, until such time as the Secretary indi-

1 cates in such a report that the program has been  
2 completely terminated; and

3 “(9) in lieu of the annual report required by  
4 section 3209, the Inspector General of the Depart-  
5 ment of Health and Human Services shall submit to  
6 Congress a quarterly report on the Secretary’s  
7 progress in terminating the CLASS program in ac-  
8 cordance with this section, including the existence of  
9 any waste, fraud, or abuse in connection with the  
10 termination activities, until such time as the Inspec-  
11 tor General indicates in such a report that the pro-  
12 gram has been completely terminated.

13 “(b) REPORT OF UNSOUNDNESS.—The report de-  
14 scribed in this subsection is a report under subparagraph  
15 (A)(ii) of section 3206(c)(2) that contains a statement de-  
16 scribed in subparagraph (B)(i)(III) of such section that  
17 indicates that the CLASS Independence Fund is projected  
18 to be actuarially unsound over the 75-year period begin-  
19 ning with the fiscal year in which such report is submitted.

20 “(c) REFUND OF AMOUNT IN CLASS INDEPEND-  
21 ENCE FUND.—The refund process described in this sub-  
22 section is the following:

23 “(1) IN GENERAL.—Not later than 180 days  
24 after the date of the submission of the report de-  
25 scribed in subsection (b), subject to paragraph (2),

1 the Secretary shall pay to each individual enrolled in  
2 the CLASS program on the date of the submission  
3 of such report an amount from the CLASS Inde-  
4 pendence Fund equal to the difference of—

5 “(A) the total amount such respective indi-  
6 vidual paid in premiums as of such date under  
7 the CLASS program; and

8 “(B) the lesser of—

9 “(i) the total amount of benefits de-  
10 scribed in section 3205(b) received as of  
11 such date by such individual under the  
12 program; or

13 “(ii) the amount described in subpara-  
14 graph (A).

15 “(2) INSUFFICIENT OR EXCESS FUNDS.—

16 “(A) INSUFFICIENT FUNDS.—If the  
17 amount remaining in the CLASS Independence  
18 Fund on the date of the submission of the re-  
19 port described in subsection (b) is insufficient  
20 to make the refund described in paragraph (1),  
21 the Secretary shall pay to each individual en-  
22 rolled in the CLASS program on such date an  
23 amount that bears the same ratio to the  
24 amount remaining in the CLASS Independence  
25 Fund on such date as the amount determined

1 under such paragraph for such respective indi-  
2 vidual bears to the sum obtained by adding  
3 each amount obtained by applying such para-  
4 graph to each such individual.

5 “(B) EXCESS FUNDS.—If an amount re-  
6 mains in the CLASS Independence Fund after  
7 the Secretary makes the refund described in  
8 paragraph (1), such amount shall be trans-  
9 ferred to the general fund of the Treasury.

10 “(d) FUNDS IN LIFE INDEPENDENCE ACCOUNTS RE-  
11 TAINED BY ENROLLEES.—Notwithstanding the termi-  
12 nation of the CLASS program under subsection (a), an  
13 individual who has funds remaining in a Life Independ-  
14 ence Account established by the Secretary for such indi-  
15 vidual under subparagraph (A) of section 3205(c)(1) may  
16 continue to use such funds for the purposes described in  
17 subparagraph (B) of such section.”.

18 **SEC. 7. CONFORMING AMENDMENTS.**

19 Title XXXII of the Public Health Service Act, as  
20 amended by sections 2 and 6, is further amended—

21 (1) in section 3204(e)—

22 (A) in paragraph (1)—

23 (i) by striking “An amount” and in-  
24 serting “Subject to sections 3203(a)(4),

1 3208(c)(2), and 3213(a)(2), an amount”;

2 and

3 (ii) by inserting before the period the  
4 following: “, including procedures for re-  
5 taining any amounts necessary for a re-  
6 fund under subsection (h)(1)”;

7 (B) in paragraph (2), by striking “The  
8 Secretary” and inserting “Subject to sections  
9 3203(a)(4), 3208(c)(2), and 3213(a)(2), the  
10 Secretary”;

11 (2) in section 3208(d), in the first sentence, by  
12 striking “Beginning January 1” and inserting “Sub-  
13 ject to section 3213(a)(8), beginning January 1”;  
14 and

15 (3) in section 3209, in the first sentence, by  
16 striking “The Inspector General” and inserting  
17 “Subject to section 3213(a)(9), the Inspector Gen-  
18 eral”.