

FISCAL RESPONSIBILITY AND RETIREMENT SECURITY
ACT OF 2011

JANUARY 23, 2012.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1173]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1173) to repeal the CLASS program, having considered the same, report favorably thereon and recommend that the bill do pass.

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I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 1173, reported by the Committee on Ways and Means, repeals the statutory provisions relating to the CLASS pro-

gram,¹ as enacted under the “Community Living Assistance Services and Supports Act,” also called the “CLASS Act.”²

Specifically, as part of repealing the statutory provisions relating to the CLASS program, the bill repeals the Federal income tax provision under which the CLASS program is treated for purposes of the Internal Revenue Code of 1986 in the same manner as a qualified long-term insurance care contract for qualified long-term care services.

B. BACKGROUND AND NEED FOR LEGISLATION

The CLASS Act directs the U.S. Department of Health and Human Services (“HHS”) to establish the CLASS program, a new Federal long-term care insurance entitlement established under the 2010 health care law. The CLASS program must meet certain general criteria set forth in the CLASS Act, including that the program be solvent throughout a 75-year period. Both prior to and after the enactment of the CLASS program, significant concerns have been raised by Members of both parties—as well as by the Administration’s own actuaries—concerning the fiscal unsustainability of the CLASS program. On October 14, 2011, HHS Secretary Kathleen Sebelius announced that HHS was suspending implementation of the CLASS program because of HHS’s recognition that there is “no viable path forward” for developing a program meeting the applicable criteria. The bill repeals the statutory provisions relating to the CLASS program, including the provision dealing with the Federal tax treatment of the CLASS program.

C. LEGISLATIVE HISTORY

Background

H.R. 1173 was introduced on March 17, 2011, and was referred to the Committee on Energy and Commerce and to the Committee on Ways and Means.

The Committee on Energy and Commerce marked up the bill on November 29 and 30, 2011, and ordered the bill, as amended, favorably reported.³

Committee action

With the Committee on Ways and Means’ referral on the bill scheduled to expire on February 1, 2012, the Committee marked up the bill on January 18, 2012, and ordered the bill favorably reported without an amendment.

Committee hearings

The Committee has held numerous hearings on various aspects of the 2010 health care law during the 112th Congress. Four of those hearings—including one held on January 26, 2011; one held on February 10, 2011; and two held on February 16, 2011—featured testimony or extensive Member discussion raising significant concerns about the CLASS program.

¹Secs. 3201–3210 of the Public Health Service Act, 42 U.S.C. 30011 et seq.

²Title VIII of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111–148 (March 23, 2010).

³See H.R. Rep. No. 112–342, Part 1, for the bill as reported by the Committee on Energy and Commerce.

II. EXPLANATION OF THE REVENUE PROVISION OF THE BILL

A. REPEAL OF CLASS PROGRAM (SEC. 2(a) OF THE BILL)

Present Law

CLASS program

The CLASS Act amended the Public Health Service Act (the “PHSA”) to provide for the establishment of the CLASS program by HHS.⁴ The CLASS program would be a national voluntary long-term care insurance program allowing individuals to purchase long-term care insurance to provide benefits in the case of functional limitations, e.g., the inability to perform activities of daily living (such as bathing and dressing) or the need for supervision because of a cognitive impairment. The CLASS Act provides general criteria for premiums, vesting, benefits and other elements of the CLASS program, including that the program be actuarially sound and solvent throughout a 75-year period.

HHS has suspended work on establishment of the CLASS program because of the inability to develop a program meeting the applicable criteria.⁵

Tax treatment of qualified long-term care insurance

Favorable tax treatment applies with respect to premiums paid for and benefits under a qualified long-term care insurance contract providing coverage of qualified long-term care services.⁶ Qualified long-term care services are necessary diagnostic, preventive, therapeutic, curing, treating, mitigating and rehabilitative services, and maintenance or personal care services that are required by a chronically ill individual and that are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

Premiums paid for a qualified long-term care insurance contract generally are deductible as medical expenses, subject to a dollar limit on the deductible amount of the premium per year based on the insured person’s age (e.g., between ages 40 and 50) at the end of the taxable year.⁷ Subject to the same dollar limit, premiums paid for qualified long-term care insurance by a self-employed individual generally are deductible.⁸

A qualified long-term care insurance contract is treated as an accident and health insurance contract, and amounts received under the contract are excludable from income as amounts received for personal injuries or sickness, subject to per-day dollar limits in certain cases.⁹ Amounts received under a qualified long-term care insurance contract (regardless of whether the contract reimburses expenses or pays benefits on a per diem or other periodic basis) are

⁴Secs. 3201–3210 of the PHSA, 42 U.S.C. 30011 et seq.

⁵Letter from HHS Secretary Kathleen Sebelius to Congress, October 14, 2011, available at www.hhs.gov/secretary/letter10142011.html.

⁶Sec. 7702B. Except as otherwise stated, all section references herein are to the Internal Revenue Code of 1986, as amended (the “Code”).

⁷Secs. 7702B(a)(4) and 213(d)(10). Under section 213, medical expenses are generally allowed as a deduction only to the extent they exceed 7.5 percent of adjusted gross income (10 percent of adjusted gross income as of 2013).

⁸Sec. 162(l).

⁹Secs. 7702B(a)(1), (a)(2), and (d) and 104(a)(3).

treated as reimbursement for expenses actually incurred for medical care.¹⁰

A plan of an employer providing coverage under a long-term care insurance contract generally is treated as an accident and health plan, and employer-provided coverage and benefits under the contract generally are excludable from income.¹¹

Under the CLASS Act, the CLASS program is treated for purposes of the Code in the same manner as a qualified long-term insurance care contract for qualified long-term care services.¹²

Reasons for Change

The Committee believes that the CLASS program as enacted is not fiscally sustainable and should be repealed. As part of this repeal, the Committee believes that the provision treating the CLASS Program for tax purposes in the same manner as a qualified long-term care insurance contract should be repealed.

Explanation of Provision

The provision repeals the statutory provisions relating to the CLASS program. Thus, the provision treating the CLASS program for Code purposes in the same manner as a qualified long-term care insurance contract for qualified long-term care services is repealed.

Effective Date

The provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 1173, the “Fiscal Responsibility and Retirement Security Act of 2011.”

The bill, H.R. 1173, was ordered favorably reported without amendment by a roll call vote of 23 yeas to 13 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp	X	.....	.....	Mr. Levin .....	.....	X	.....
Mr. Herger	X	.....	.....	Mr. Rangel .....	.....	X	.....
Mr. Johnson	X	.....	.....	Mr. Stark .....	.....	X	.....
Mr. Brady	X	.....	.....	Mr. McDermott .....	.....	X	.....
Mr. Ryan	X	.....	.....	Mr. Lewis .....	.....	X	.....
Mr. Nunes	X	.....	.....	Mr. Neal .....	.....	X	.....
Mr. Tiberi	X	.....	.....	Mr. Becerra .....	.....	X	.....
Mr. Davis	X	.....	.....	Mr. Doggett .....	.....	X	.....
Mr. Reichert	X	.....	.....	Mr. Thompson .....	.....	X	.....
Mr. Boustany	X	.....	.....	Mr. Larson .....	.....	X	.....
Mr. Roskam	X	.....	.....	Mr. Blumenauer .....	.....	X	.....
Mr. Gerlach	X	.....	.....	Mr. Kind	X	.....	.....
Mr. Price	X	.....	.....	Mr. Pascrell .....	.....	X	.....
Mr. Buchanan	X	.....	.....	Ms. Berkley .....	.....	.....	.....

¹⁰Sec. 7702B(a)(2).

¹¹Secs. 7702B(a)(3), 105 and 106. However, the exclusion does not apply to qualified long-term care insurance provided through a flexible spending arrangement within the meaning of section 106(c). Further, under section 125(f), long-term care insurance is not permitted to be offered under a cafeteria plan.

¹²Sec. 3210 of the PHSA, 42 U.S.C. 30011-9.

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith	X	.....	.....	Mr. Crowley .....	.....	X	.....
Mr. Schock	X	.....	.....	.....	.....	.....	.....
Ms. Jenkins	X	.....	.....	.....	.....	.....	.....
Mr. Paulsen	X	.....	.....	.....	.....	.....	.....
Mr. Marchant	X	.....	.....	.....	.....	.....	.....
Mr. Berg	X	.....	.....	.....	.....	.....	.....
Ms. Black	X	.....	.....	.....	.....	.....	.....
Mr. Reed	X	.....	.....	.....	.....	.....	.....

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provision of the bill, H.R. 1173, as reported.

The revenue provision of the bill, as reported, is estimated to have no effects on budget receipts for fiscal years 2012–2022.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee states further that the bill involves no new or increased tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 19, 2012.

Hon. DAVE CAMP,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julia Mitchell.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1173—Fiscal Responsibility and Retirement Security Act of 2011

Summary: H.R. 1173 would repeal title VIII of the Patient Protection and Affordable Care Act (PPACA). That title of PPACA established the Community Living Assistance Services and Supports (CLASS) Program—a national, voluntary long-term care insurance program for purchasing community living assistance services and supports. Title VIII also authorized and appropriated funding

through 2015 for the National Clearinghouse for Long-Term Care Information (clearinghouse). H.R. 1173 would rescind any unobligated balances appropriated to the National Clearinghouse for Long-Term Care Information.

CBO estimates that enacting H.R. 1173 would reduce direct spending by \$9 million over the 2012–2017 and 2012–2022 periods. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending. Enacting H.R. 1173 would have no impact on federal revenues.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1173 is shown in the following table. The effects of this legislation fall within budget function 550 (health).

	By fiscal year, in millions of dollars—												2012– 2017	2012– 2022
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022			
CHANGES IN DIRECT SPENDING														
Estimated Budget														
Authority	0	-3	-3	-3	0	0	0	0	0	0	0	0	-9	-9
Estimated Outlays ..	0	-3	-3	-3	0	0	0	0	0	0	0	0	-9	-9

Basis of estimate: In its March 2011 baseline projections, CBO anticipated that the CLASS program would begin collecting premiums in fiscal year 2012 and that net receipts of the program over the 2012–2021 period would amount to \$81 billion, not including estimated Medicaid savings of \$2 billion. On October 14, 2011, the Secretary of the Department of Health and Human Services announced that she did not “see a viable path forward for CLASS implementation at this time.”¹ CBO considers that announcement to be definitive new information and as a result, in its next baseline projections (which will be issued later this month), CBO will assume that CLASS will not be implemented unless there are changes in law or other actions by the Administration that would supersede the Secretary’s announcement. Further, legislation to repeal the provisions of law establishing the CLASS program are now estimated as having no budgetary effect relative to current law.

However, the Secretary’s announcement does not affect use of the funds authorized and appropriated for the clearinghouse. Therefore, the rescission of unobligated funds for the clearinghouse for 2013 through 2015 would have a budgetary effect of reducing direct spending by \$9 million over the 2012–2022 period.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table. Enacting H.R. 1173 would have no impact on federal revenues.

¹ Letter from Kathleen Sebelius, Secretary of the Department of Health and Human Services, to John A. Boehner, Speaker, House of Representatives, October 14, 2011.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1173, AS ORDERED REPORTED BY THE
HOUSE COMMITTEE ON WAYS AND MEANS ON JANUARY 18, 2012

	By fiscal year, in millions of dollars—													2012– 2017	2012– 2022
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022				
NET DECREASE (–) IN THE DEFICIT															
Statutory Pay- As-You-Go Impact	0	–3	–3	–3	0	0	0	0	0	0	0	0	–9	–9	

Intergovernmental and private-sector impact: H.R. 1173 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On December 2, 2011, CBO transmitted a cost estimate for H.R. 1173, as ordered reported by the House Committee on Energy and Commerce on November 30, 2011. The two versions of H.R. 1173 are similar. Both versions of the bill would have no budgetary effect over the 2012–2022 period for provisions repealing the CLASS program and both would reduce direct spending by \$9 million over the 2012–2022 period as a result of rescinding appropriated funding for the National Clearinghouse for Long-Term Care Information. However, H.R. 1173 as ordered reported by the House Committee on Energy and Commerce would replace those funds with funding subject to future appropriation actions thus increasing spending subject to future appropriation by \$9 million over the 2012–2022 period.

Estimate prepared by: Federal Costs: Julia Mitchell; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Michael Levine.

Estimate approved by: Holly Harvey, Deputy Assistant Director for Budget Analysis.

D. MACROECONOMIC IMPACT ANALYSIS

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 1173 that the Committee concluded that it is appropriate to report the bill favorably to the House of Representatives with the recommendation that the bill do pass.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizing funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the revenue provision of the bill does not contain Federal mandates on the private sector. The Committee has determined that the revenue provision of the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(B)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the “IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE XXXII OF THE PUBLIC HEALTH SERVICE ACT

[TITLE XXXII—COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS

[SEC. 3201. PURPOSE.

[The purpose of this title is to establish a national voluntary insurance program for purchasing community living assistance services and supports in order to—

[(1) provide individuals with functional limitations with tools that will allow them to maintain their personal and financial independence and live in the community through a new financing strategy for community living assistance services and supports;

[(2) establish an infrastructure that will help address the Nation's community living assistance services and supports needs;

[(3) alleviate burdens on family caregivers; and

[(4) address institutional bias by providing a financing mechanism that supports personal choice and independence to live in the community.

[SEC. 3202. DEFINITIONS.

[In this title:

[(1) **ACTIVE ENROLLEE.**—The term “active enrollee” means an individual who is enrolled in the CLASS program in accordance with section 3204 and who has paid any premiums due to maintain such enrollment.

[(2) **ACTIVELY EMPLOYED.**—The term “actively employed” means an individual who—

[(A) is reporting for work at the individual's usual place of employment or at another location to which the individual is required to travel because of the individual's employment (or in the case of an individual who is a member of the uniformed services, is on active duty and is physically able to perform the duties of the individual's position); and

[(B) is able to perform all the usual and customary duties of the individual's employment on the individual's regular work schedule.

[(3) **ACTIVITIES OF DAILY LIVING.**—The term “activities of daily living” means each of the following activities specified in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986:

[(A) Eating.

[(B) Toileting.

[(C) Transferring.

[(D) Bathing.

[(E) Dressing.

[(F) Contenance.

[(4) CLASS PROGRAM.—The term “CLASS program” means the program established under this title.

[(5) ELIGIBILITY ASSESSMENT SYSTEM.—The term “Eligibility Assessment System” means the entity established by the Secretary under section 3205(a)(2) to make functional eligibility determinations for the CLASS program.

[(6) ELIGIBLE BENEFICIARY.—

[(A) IN GENERAL.—The term “eligible beneficiary” means any individual who is an active enrollee in the CLASS program and, as of the date described in subparagraph (B)—

[(i) has paid premiums for enrollment in such program for at least 60 months;

[(ii) has earned, with respect to at least 3 calendar years that occur during the first 60 months for which the individual has paid premiums for enrollment in the program, at least an amount equal to the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage under section 213(d) of the Social Security Act for the year; and

[(iii) has paid premiums for enrollment in such program for at least 24 consecutive months, if a lapse in premium payments of more than 3 months has occurred during the period that begins on the date of the individual’s enrollment and ends on the date of such determination.

[(B) DATE DESCRIBED.—For purposes of subparagraph (A), the date described in this subparagraph is the date on which the individual is determined to have a functional limitation described in section 3203(a)(1)(C) that is expected to last for a continuous period of more than 90 days.

[(C) REGULATIONS.—The Secretary shall promulgate regulations specifying exceptions to the minimum earnings requirements under subparagraph (A)(ii) for purposes of being considered an eligible beneficiary for certain populations.

[(7) HOSPITAL; NURSING FACILITY; INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED; INSTITUTION FOR MENTAL DISEASES.—The terms “hospital”, “nursing facility”, “intermediate care facility for the mentally retarded”, and “institution for mental diseases” have the meanings given such terms for purposes of Medicaid.

[(8) CLASS INDEPENDENCE ADVISORY COUNCIL.—The term “CLASS Independence Advisory Council” or “Council” means the Advisory Council established under section 3207 to advise the Secretary.

[(9) CLASS INDEPENDENCE BENEFIT PLAN.—The term “CLASS Independence Benefit Plan” means the benefit plan developed and designated by the Secretary in accordance with section 3203.

[(10) CLASS INDEPENDENCE FUND.—The term “CLASS Independence Fund” or “Fund” means the fund established under section 3206.

[(11) MEDICAID.—The term “Medicaid” means the program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

[(12) POVERTY LINE.—The term “poverty line” has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

[(13) PROTECTION AND ADVOCACY SYSTEM.—The term “Protection and Advocacy System” means the system for each State established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

[SEC. 3203. CLASS INDEPENDENCE BENEFIT PLAN.

[(a) PROCESS FOR DEVELOPMENT.—

[(1) IN GENERAL.—The Secretary, in consultation with appropriate actuaries and other experts, shall develop at least 3 actuarially sound benefit plans as alternatives for consideration for designation by the Secretary as the CLASS Independence Benefit Plan under which eligible beneficiaries shall receive benefits under this title. Each of the plan alternatives developed shall be designed to provide eligible beneficiaries with the benefits described in section 3205 consistent with the following requirements:

[(A) PREMIUMS.—

[(i) IN GENERAL.—Beginning with the first year of the CLASS program, and for each year thereafter, subject to clauses (ii) and (iii), the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis of the 75-year costs of the program that ensures solvency throughout such 75-year period.

[(ii) NOMINAL PREMIUM FOR POOREST INDIVIDUALS AND FULL-TIME STUDENTS.—

[(I) IN GENERAL.—The monthly premium for enrollment in the CLASS program shall not exceed the applicable dollar amount per month determined under subclause (II) for—

[(aa) any individual whose income does not exceed the poverty line; and

[(bb) any individual who has not attained age 22, and is actively employed during any period in which the individual is a full-time student (as determined by the Secretary).

[(II) APPLICABLE DOLLAR AMOUNT.—The applicable dollar amount described in this subclause is the amount equal to \$5, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for each year occurring after 2009 and before such year.

[(iii) CLASS INDEPENDENCE FUND RESERVES.—At such time as the CLASS program has been in operation for 10 years, the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis that accumulated reserves in the

CLASS Independence Fund would not decrease in that year. At such time as the Secretary determines the CLASS program demonstrates a sustained ability to finance expected yearly expenses with expected yearly premiums and interest credited to the CLASS Independence Fund, the Secretary may decrease the required amount of CLASS Independence Fund reserves.

【(B) VESTING PERIOD.—A 5-year vesting period for eligibility for benefits.

【(C) BENEFIT TRIGGERS.—A benefit trigger for provision of benefits that requires a determination that an individual has a functional limitation, as certified by a licensed health care practitioner, described in any of the following clauses that is expected to last for a continuous period of more than 90 days:

【(i) The individual is determined to be unable to perform at least the minimum number (which may be 2 or 3) of activities of daily living as are required under the plan for the provision of benefits without substantial assistance (as defined by the Secretary) from another individual.

【(ii) The individual requires substantial supervision to protect the individual from threats to health and safety due to substantial cognitive impairment.

【(iii) The individual has a level of functional limitation similar (as determined under regulations prescribed by the Secretary) to the level of functional limitation described in clause (i) or (ii).

【(D) CASH BENEFIT.—Payment of a cash benefit that satisfies the following requirements:

【(i) MINIMUM REQUIRED AMOUNT.—The benefit amount provides an eligible beneficiary with not less than an average of \$50 per day (as determined based on the reasonably expected distribution of beneficiaries receiving benefits at various benefit levels).

【(ii) AMOUNT SCALED TO FUNCTIONAL ABILITY.—The benefit amount is varied based on a scale of functional ability, with not less than 2, and not more than 6, benefit level amounts.

【(iii) DAILY OR WEEKLY.—The benefit is paid on a daily or weekly basis.

【(iv) NO LIFETIME OR AGGREGATE LIMIT.—The benefit is not subject to any lifetime or aggregate limit.

【(2) REVIEW AND RECOMMENDATION BY THE CLASS INDEPENDENCE ADVISORY COUNCIL.—The CLASS Independence Advisory Council shall—

【(A) evaluate the alternative benefit plans developed under paragraph (1); and

【(B) recommend for designation as the CLASS Independence Benefit Plan for offering to the public the plan that the Council determines best balances price and benefits to meet enrollees' needs in an actuarially sound manner, while optimizing the probability of the long-term sustainability of the CLASS program.

[(3) DESIGNATION BY THE SECRETARY.—Not later than October 1, 2012, the Secretary, taking into consideration the recommendation of the CLASS Independence Advisory Council under paragraph (2)(B), shall designate a benefit plan as the CLASS Independence Benefit Plan. The Secretary shall publish such designation, along with details of the plan and the reasons for the selection by the Secretary, in a final rule that allows for a period of public comment.

[(b) ADDITIONAL PREMIUM REQUIREMENTS.—

[(1) ADJUSTMENT OF PREMIUMS.—

[(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), (D), and (E), the amount of the monthly premium determined for an individual upon such individual's enrollment in the CLASS program shall remain the same for as long as the individual is an active enrollee in the program.

[(B) RECALCULATED PREMIUM IF REQUIRED FOR PROGRAM SOLVENCY.—

[(i) IN GENERAL.—Subject to clause (ii), if the Secretary determines, based on the most recent report of the Board of Trustees of the CLASS Independence Fund, the advice of the CLASS Independence Advisory Council, and the annual report of the Inspector General of the Department of Health and Human Services, and waste, fraud, and abuse, or such other information as the Secretary determines appropriate, that the monthly premiums and income to the CLASS Independence Fund for a year are projected to be insufficient with respect to the 20-year period that begins with that year, the Secretary shall adjust the monthly premiums for individuals enrolled in the CLASS program as necessary (but maintaining a nominal premium for enrollees whose income is below the poverty line or who are full-time students actively employed).

[(ii) EXEMPTION FROM INCREASE.—Any increase in a monthly premium imposed as result of a determination described in clause (i) shall not apply with respect to the monthly premium of any active enrollee who—

[(I) has attained age 65;

[(II) has paid premiums for enrollment in the program for at least 20 years; and

[(III) is not actively employed.

[(C) RECALCULATED PREMIUM IF REENROLLMENT AFTER MORE THAN A 3-MONTH LAPSE.—

[(i) IN GENERAL.—The reenrollment of an individual after a 90-day period during which the individual failed to pay the monthly premium required to maintain the individual's enrollment in the CLASS program shall be treated as an initial enrollment for purposes of age-adjusting the premium for reenrollment in the program.

[(ii) CREDIT FOR PRIOR MONTHS IF REENROLLED WITHIN 5 YEARS.—An individual who reenrolls in the CLASS program after such a 90-day period and before the end of the 5-year period that begins with the first

month for which the individual failed to pay the monthly premium required to maintain the individual's enrollment in the program shall be—

[(I) credited with any months of paid premiums that accrued prior to the individual's lapse in enrollment; and

[(II) notwithstanding the total amount of any such credited months, required to satisfy section 3202(6)(A)(ii) before being eligible to receive benefits.

[(D) NO LONGER STATUS AS A FULL-TIME STUDENT.—An individual subject to a nominal premium on the basis of being described in subsection (a)(1)(A)(ii)(I)(bb) who ceases to be described in that subsection, beginning with the first month following the month in which the individual ceases to be so described, shall be subject to the same monthly premium as the monthly premium that applies to an individual of the same age who first enrolls in the program under the most similar circumstances as the individual (such as the first year of eligibility for enrollment in the program or in a subsequent year).

[(E) PENALTY FOR REENROLLMENT AFTER 5-YEAR LAPSE.—In the case of an individual who reenrolls in the CLASS program after the end of the 5-year period described in subparagraph (C)(ii), the monthly premium required for the individual shall be the age-adjusted premium that would be applicable to an initially enrolling individual who is the same age as the reenrolling individual, increased by the greater of—

[(i) an amount that the Secretary determines is actuarially sound for each month that occurs during the period that begins with the first month for which the individual failed to pay the monthly premium required to maintain the individual's enrollment in the CLASS program and ends with the month preceding the month in which the reenrollment is effective; or

[(ii) 1 percent of the applicable age-adjusted premium for each such month occurring in such period.

[(2) ADMINISTRATIVE EXPENSES.—In determining the monthly premiums for the CLASS program the Secretary may factor in costs for administering the program, not to exceed for any year in which the program is in effect under this title, an amount equal to 3 percent of all premiums paid during the year.

[(3) NO UNDERWRITING REQUIREMENTS.—No underwriting (other than on the basis of age in accordance with subparagraphs (D) and (E) of paragraph (1)) shall be used to—

[(A) determine the monthly premium for enrollment in the CLASS program; or

[(B) prevent an individual from enrolling in the program.

[(c) SELF-ATTESTATION AND VERIFICATION OF INCOME.—The Secretary shall establish procedures to—

[(1) permit an individual who is eligible for the nominal premium required under subsection (a)(1)(A)(ii) to self-attest that

their income does not exceed the poverty line or that their status as a full-time student who is actively employed;

[(2) verify, using procedures similar to the procedures used by the Commissioner of Social Security under section 1631(e)(1)(B)(ii) of the Social Security Act and consistent with the requirements applicable to the conveyance of data and information under section 1942 of such Act, the validity of such self-attestation; and

[(3) require an individual to confirm, on at least an annual basis, that their income does not exceed the poverty line or that they continue to maintain such status.

[SEC. 3204. ENROLLMENT AND DISENROLLMENT REQUIREMENTS.

[(a) AUTOMATIC ENROLLMENT.—

[(1) IN GENERAL.—Subject to paragraph (2), the Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which each individual described in subsection (c) may be automatically enrolled in the CLASS program by an employer of such individual in the same manner as an employer may elect to automatically enroll employees in a plan under section 401(k), 403(b), or 457 of the Internal Revenue Code of 1986.

[(2) ALTERNATIVE ENROLLMENT PROCEDURES.—The procedures established under paragraph (1) shall provide for an alternative enrollment process for an individual described in subsection (c) in the case of such an individual—

[(A) who is self-employed;

[(B) who has more than 1 employer; or

[(C) whose employer does not elect to participate in the automatic enrollment process established by the Secretary.

[(3) ADMINISTRATION.—

[(A) IN GENERAL.—The Secretary and the Secretary of the Treasury shall, by regulation, establish procedures to ensure that an individual is not automatically enrolled in the CLASS program by more than 1 employer.

[(B) FORM.—Enrollment in the CLASS program shall be made in such manner as the Secretary may prescribe in order to ensure ease of administration.

[(b) ELECTION TO OPT-OUT.—An individual described in subsection (c) may elect to waive enrollment in the CLASS program at any time in such form and manner as the Secretary and the Secretary of the Treasury shall prescribe.

[(c) INDIVIDUAL DESCRIBED.—For purposes of enrolling in the CLASS program, an individual described in this paragraph is an individual—

[(1) who has attained age 18;

[(2) who—

[(A) receives wages or income on which there is imposed a tax under section 3101(a) or 3201(a) of the Internal Revenue Code of 1986; or

[(B) derives self-employment income on which there is imposed a tax under section 1401(a) of the Internal Revenue Code of 1986;

[(3) who is actively employed; and

[(4) who is not—

[(A) a patient in a hospital or nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental diseases and receiving medical assistance under Medicaid; or

[(B) confined in a jail, prison, other penal institution or correctional facility, or by court order pursuant to conviction of a criminal offense or in connection with a verdict or finding described in section 202(x)(1)(A)(ii) of the Social Security Act (42 U.S.C. 402(x)(1)(A)(ii)).

[(d) **RULE OF CONSTRUCTION.**—Nothing in this title shall be construed as requiring an active enrollee to continue to satisfy subparagraph (A) or (B) of subsection (c)(2) in order to maintain enrollment in the CLASS program.

[(e) **PAYMENT.**—

[(1) **PAYROLL DEDUCTION.**—An amount equal to the monthly premium for the enrollment in the CLASS program of an individual shall be deducted from the wages or self-employment income of such individual in accordance with such procedures as the Secretary, in coordination with the Secretary of the Treasury, shall establish for employers who elect to deduct and withhold such premiums on behalf of enrolled employees.

[(2) **ALTERNATIVE PAYMENT MECHANISM.**—The Secretary, in coordination with the Secretary of the Treasury, shall establish alternative procedures for the payment of monthly premiums by an individual enrolled in the CLASS program—

[(A) who does not have an employer who elects to deduct and withhold premiums in accordance with paragraph (1); or

[(B) who does not earn wages or derive self-employment income.

[(f) **TRANSFER OF PREMIUMS COLLECTED.**—

[(1) **IN GENERAL.**—During each calendar year the Secretary of the Treasury shall deposit into the CLASS Independence Fund a total amount equal, in the aggregate, to 100 percent of the premiums collected during that year.

[(2) **TRANSFERS BASED ON ESTIMATES.**—The amount deposited pursuant to paragraph (1) shall be transferred in at least monthly payments to the CLASS Independence Fund on the basis of estimates by the Secretary and certified to the Secretary of the Treasury of the amounts collected in accordance with subparagraphs (A) and (B) of paragraph (5). Proper adjustments shall be made in amounts subsequently transferred to the Fund to the extent prior estimates were in excess of, or were less than, actual amounts collected.

[(g) **OTHER ENROLLMENT AND DISENROLLMENT OPPORTUNITIES.**—The Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which—

[(1) an individual who, in the year of the individual's initial eligibility to enroll in the CLASS program, has not enrolled in the program, is eligible to elect to enroll in the program, in such form and manner as the Secretaries shall establish, only during an open enrollment period established by the Secretaries that is specific to the individual and that may not occur more frequently than biennially after the date on which the individual first elected to waive enrollment in the program; and

[(2) an individual shall only be permitted to disenroll from the program (other than for nonpayment of premiums) during an annual disenrollment period established by the Secretaries and in such form and manner as the Secretaries shall establish.

[SEC. 3205. BENEFITS.

[(a) DETERMINATION OF ELIGIBILITY.—

[(1) APPLICATION FOR RECEIPT OF BENEFITS.—The Secretary shall establish procedures under which an active enrollee shall apply for receipt of benefits under the CLASS Independence Benefit Plan.

[(2) ELIGIBILITY ASSESSMENTS.—

[(A) IN GENERAL.—Not later than January 1, 2012, the Secretary shall—

[(i) establish an Eligibility Assessment System (other than a service with which the Commissioner of Social Security has entered into an agreement, with respect to any State, to make disability determinations for purposes of title II or XVI of the Social Security Act) to provide for eligibility assessments of active enrollees who apply for receipt of benefits;

[(ii) enter into an agreement with the Protection and Advocacy System for each State to provide advocacy services in accordance with subsection (d); and

[(iii) enter into an agreement with public and private entities to provide advice and assistance counseling in accordance with subsection (e).

[(B) REGULATIONS.—The Secretary shall promulgate regulations to develop an expedited nationally equitable eligibility determination process, as certified by a licensed health care practitioner, an appeals process, and a redetermination process, as certified by a licensed health care practitioner, including whether an active enrollee is eligible for a cash benefit under the program and if so, the amount of the cash benefit (in accordance the sliding scale established under the plan).

[(C) PRESUMPTIVE ELIGIBILITY FOR CERTAIN INSTITUTIONALIZED ENROLLEES PLANNING TO DISCHARGE.—An active enrollee shall be deemed presumptively eligible if the enrollee—

[(i) has applied for, and attests is eligible for, the maximum cash benefit available under the sliding scale established under the CLASS Independence Benefit Plan;

[(ii) is a patient in a hospital (but only if the hospitalization is for long-term care), nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases; and

[(iii) is in the process of, or about to begin the process of, planning to discharge from the hospital, facility, or institution, or within 60 days from the date of discharge from the hospital, facility, or institution.

[(D) APPEALS.—The Secretary shall establish procedures under which an applicant for benefits under the CLASS

Independence Benefit Plan shall be guaranteed the right to appeal an adverse determination.

[(b) BENEFITS.—An eligible beneficiary shall receive the following benefits under the CLASS Independence Benefit Plan:

[(1) CASH BENEFIT.—A cash benefit established by the Secretary in accordance with the requirements of section 3203(a)(1)(D) that—

[(A) the first year in which beneficiaries receive the benefits under the plan, is not less than the average dollar amount specified in clause (i) of such section; and

[(B) for any subsequent year, is not less than the average per day dollar limit applicable under this subparagraph for the preceding year, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) over the previous year.

[(2) ADVOCACY SERVICES.—Advocacy services in accordance with subsection (d).

[(3) ADVICE AND ASSISTANCE COUNSELING.—Advice and assistance counseling in accordance with subsection (e).

[(4) ADMINISTRATIVE EXPENSES.—Advocacy services and advice and assistance counseling services under paragraphs (2) and (3) of this subsection shall be included as administrative expenses under section 3203(b)(3).

[(c) PAYMENT OF BENEFITS.—

[(1) LIFE INDEPENDENCE ACCOUNT.—

[(A) IN GENERAL.—The Secretary shall establish procedures for administering the provision of benefits to eligible beneficiaries under the CLASS Independence Benefit Plan, including the payment of the cash benefit for the beneficiary into a Life Independence Account established by the Secretary on behalf of each eligible beneficiary.

[(B) USE OF CASH BENEFITS.—Cash benefits paid into a Life Independence Account of an eligible beneficiary shall be used to purchase nonmedical services and supports that the beneficiary needs to maintain his or her independence at home or in another residential setting of their choice in the community, including (but not limited to) home modifications, assistive technology, accessible transportation, homemaker services, respite care, personal assistance services, home care aides, and nursing support. Nothing in the preceding sentence shall prevent an eligible beneficiary from using cash benefits paid into a Life Independence Account for obtaining assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions.

[(C) ELECTRONIC MANAGEMENT OF FUNDS.—The Secretary shall establish procedures for—

[(i) crediting an account established on behalf of a beneficiary with the beneficiary's cash daily benefit;

[(ii) allowing the beneficiary to access such account through debit cards; and

[(iii) accounting for withdrawals by the beneficiary from such account.

[(D) PRIMARY PAYOR RULES FOR BENEFICIARIES WHO ARE ENROLLED IN MEDICAID.—In the case of an eligible beneficiary who is enrolled in Medicaid, the following payment rules shall apply:

[(i) INSTITUTIONALIZED BENEFICIARY.—If the beneficiary is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall retain an amount equal to 5 percent of the beneficiary's daily or weekly cash benefit (as applicable) (which shall be in addition to the amount of the beneficiary's personal needs allowance provided under Medicaid), and the remainder of such benefit shall be applied toward the facility's cost of providing the beneficiary's care, and Medicaid shall provide secondary coverage for such care.

[(ii) BENEFICIARIES RECEIVING HOME AND COMMUNITY-BASED SERVICES.—

[(I) 50 PERCENT OF BENEFIT RETAINED BY BENEFICIARY.—Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for home and community based services, the beneficiary shall retain an amount equal to 50 percent of the beneficiary's daily or weekly cash benefit (as applicable), and the remainder of the daily or weekly cash benefit shall be applied toward the cost to the State of providing such assistance (and shall not be used to claim Federal matching funds under Medicaid), and Medicaid shall provide secondary coverage for the remainder of any costs incurred in providing such assistance.

[(II) REQUIREMENT FOR STATE OFFSET.—A State shall be paid the remainder of a beneficiary's daily or weekly cash benefit under subclause (I) only if the State home and community-based waiver under section 1115 of the Social Security Act (42 U.S.C. 1315) or subsection (c) or (d) of section 1915 of such Act (42 U.S.C. 1396n), or the State plan amendment under subsection (i) of such section does not include a waiver of the requirements of section 1902(a)(1) of the Social Security Act (relating to statewideness) or of section 1902(a)(10)(B) of such Act (relating to comparability) and the State offers at a minimum case management services, personal care services, habilitation services, and respite care under such a waiver or State plan amendment.

[(III) DEFINITION OF HOME AND COMMUNITY-BASED SERVICES.—In this clause, the term "home and community-based services" means any services which may be offered under a home and com-

munity-based waiver authorized for a State under section 1115 of the Social Security Act (42 U.S.C. 1315) or subsection (c) or (d) of section 1915 of such Act (42 U.S.C. 1396n) or under a State plan amendment under subsection (i) of such section.

[(iii) BENEFICIARIES ENROLLED IN PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE).—

[(I) IN GENERAL.—Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for PACE program services under section 1934 of the Social Security Act (42 U.S.C. 1396u-4), the beneficiary shall retain an amount equal to 50 percent of the beneficiary's daily or weekly cash benefit (as applicable), and the remainder of the daily or weekly cash benefit shall be applied toward the cost to the State of providing such assistance (and shall not be used to claim Federal matching funds under Medicaid), and Medicaid shall provide secondary coverage for the remainder of any costs incurred in providing such assistance.

[(II) INSTITUTIONALIZED RECIPIENTS OF PACE PROGRAM SERVICES.—If a beneficiary receiving assistance under Medicaid for PACE program services is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall be treated as in institutionalized beneficiary under clause (i).

[(2) AUTHORIZED REPRESENTATIVES.—

[(A) IN GENERAL.—The Secretary shall establish procedures to allow access to a beneficiary's cash benefits by an authorized representative of the eligible beneficiary on whose behalf such benefits are paid.

[(B) QUALITY ASSURANCE AND PROTECTION AGAINST FRAUD AND ABUSE.—The procedures established under subparagraph (A) shall ensure that authorized representatives of eligible beneficiaries comply with standards of conduct established by the Secretary, including standards requiring that such representatives provide quality services on behalf of such beneficiaries, do not have conflicts of interest, and do not misuse benefits paid on behalf of such beneficiaries or otherwise engage in fraud or abuse.

[(3) COMMENCEMENT OF BENEFITS.—Benefits shall be paid to, or on behalf of, an eligible beneficiary beginning with the first month in which an application for such benefits is approved.

[(4) ROLLOVER OPTION FOR LUMP-SUM PAYMENT.—An eligible beneficiary may elect to—

[(A) defer payment of their daily or weekly benefit and to rollover any such deferred benefits from month-to-month, but not from year-to-year; and

[(B) receive a lump-sum payment of such deferred benefits in an amount that may not exceed the lesser of—

[(i) the total amount of the accrued deferred benefits; or

[(ii) the applicable annual benefit.

[(5) PERIOD FOR DETERMINATION OF ANNUAL BENEFITS.—

[(A) IN GENERAL.—The applicable period for determining with respect to an eligible beneficiary the applicable annual benefit and the amount of any accrued deferred benefits is the 12-month period that commences with the first month in which the beneficiary began to receive such benefits, and each 12-month period thereafter.

[(B) INCLUSION OF INCREASED BENEFITS.—The Secretary shall establish procedures under which cash benefits paid to an eligible beneficiary that increase or decrease as a result of a change in the functional status of the beneficiary before the end of a 12-month benefit period shall be included in the determination of the applicable annual benefit paid to the eligible beneficiary.

[(C) RECOUPMENT OF UNPAID, ACCRUED BENEFITS.—

[(i) IN GENERAL.—The Secretary, in coordination with the Secretary of the Treasury, shall recoup any accrued benefits in the event of—

[(I) the death of a beneficiary; or

[(II) the failure of a beneficiary to elect under paragraph (4)(B) to receive such benefits as a lump-sum payment before the end of the 12-month period in which such benefits accrued.

[(ii) PAYMENT INTO CLASS INDEPENDENCE FUND.—

Any benefits recouped in accordance with clause (i) shall be paid into the CLASS Independence Fund and used in accordance with section 3206.

[(6) REQUIREMENT TO RECERTIFY ELIGIBILITY FOR RECEIPT OF BENEFITS.—An eligible beneficiary shall periodically, as determined by the Secretary—

[(A) recertify by submission of medical evidence the beneficiary's continued eligibility for receipt of benefits; and

[(B) submit records of expenditures attributable to the aggregate cash benefit received by the beneficiary during the preceding year.

[(7) SUPPLEMENT, NOT SUPPLANT OTHER HEALTH CARE BENEFITS.—Subject to the Medicaid payment rules under paragraph (1)(D), benefits received by an eligible beneficiary shall supplement, but not supplant, other health care benefits for which the beneficiary is eligible under Medicaid or any other Federally funded program that provides health care benefits or assistance.

[(d) ADVOCACY SERVICES.—An agreement entered into under subsection (a)(2)(A)(ii) shall require the Protection and Advocacy System for the State to—

[(1) assign, as needed, an advocacy counselor to each eligible beneficiary that is covered by such agreement and who shall provide an eligible beneficiary with—

[(A) information regarding how to access the appeals process established for the program;

[(B) assistance with respect to the annual recertification and notification required under subsection (c)(6); and

[(C) such other assistance with obtaining services as the Secretary, by regulation, shall require; and

[(2) ensure that the System and such counselors comply with the requirements of subsection (h).

[(e) ADVICE AND ASSISTANCE COUNSELING.—An agreement entered into under subsection (a)(2)(A)(iii) shall require the entity to assign, as requested by an eligible beneficiary that is covered by such agreement, an advice and assistance counselor who shall provide an eligible beneficiary with information regarding—

[(1) accessing and coordinating long-term services and supports in the most integrated setting;

[(2) possible eligibility for other benefits and services;

[(3) development of a service and support plan;

[(4) information about programs established under the Assistive Technology Act of 1998 and the services offered under such programs;

[(5) available assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions; and

[(6) such other services as the Secretary, by regulation, may require.

[(f) NO EFFECT ON ELIGIBILITY FOR OTHER BENEFITS.—Benefits paid to an eligible beneficiary under the CLASS program shall be disregarded for purposes of determining or continuing the beneficiary's eligibility for receipt of benefits under any other Federal, State, or locally funded assistance program, including benefits paid under titles II, XVI, XVIII, XIX, or XXI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq., 1395 et seq., 1396 et seq., 1397aa et seq.), under the laws administered by the Secretary of Veterans Affairs, under low-income housing assistance programs, or under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

[(g) RULE OF CONSTRUCTION.—Nothing in this title shall be construed as prohibiting benefits paid under the CLASS Independence Benefit Plan from being used to compensate a family caregiver for providing community living assistance services and supports to an eligible beneficiary.

[(h) PROTECTION AGAINST CONFLICT OF INTERESTS.—The Secretary shall establish procedures to ensure that the Eligibility Assessment System, the Protection and Advocacy System for a State, advocacy counselors for eligible beneficiaries, and any other entities that provide services to active enrollees and eligible beneficiaries under the CLASS program comply with the following:

[(1) If the entity provides counseling or planning services, such services are provided in a manner that fosters the best interests of the active enrollee or beneficiary.

[(2) The entity has established operating procedures that are designed to avoid or minimize conflicts of interest between the entity and an active enrollee or beneficiary.

[(3) The entity provides information about all services and options available to the active enrollee or beneficiary, to the best of its knowledge, including services available through other entities or providers.

[(4) The entity assists the active enrollee or beneficiary to access desired services, regardless of the provider.

[(5) The entity reports the number of active enrollees and beneficiaries provided with assistance by age, disability, and whether such enrollees and beneficiaries received services from the entity or another entity.

[(6) If the entity provides counseling or planning services, the entity ensures that an active enrollee or beneficiary is informed of any financial interest that the entity has in a service provider.

[(7) The entity provides an active enrollee or beneficiary with a list of available service providers that can meet the needs of the active enrollee or beneficiary.

[SEC. 3206. CLASS INDEPENDENCE FUND.]

[(a) ESTABLISHMENT OF CLASS INDEPENDENCE FUND.—There is established in the Treasury of the United States a trust fund to be known as the “CLASS Independence Fund”. The Secretary of the Treasury shall serve as Managing Trustee of such Fund. The Fund shall consist of all amounts derived from payments into the Fund under sections 3204(f) and 3205(c)(5)(C)(ii), and remaining after investment of such amounts under subsection (b), including additional amounts derived as income from such investments. The amounts held in the Fund are appropriated and shall remain available without fiscal year limitation—

[(1) to be held for investment on behalf of individuals enrolled in the CLASS program;

[(2) to pay the administrative expenses related to the Fund and to investment under subsection (b); and

[(3) to pay cash benefits to eligible beneficiaries under the CLASS Independence Benefit Plan.

[(b) INVESTMENT OF FUND BALANCE.—The Secretary of the Treasury shall invest and manage the CLASS Independence Fund in the same manner, and to the same extent, as the Federal Supplementary Medical Insurance Trust Fund may be invested and managed under subsections (c), (d), and (e) of section 1841(d) of the Social Security Act (42 U.S.C. 1395t).

[(c) BOARD OF TRUSTEES.—

[(1) IN GENERAL.—With respect to the CLASS Independence Fund, there is hereby created a body to be known as the Board of Trustees of the CLASS Independence Fund (hereinafter in this section referred to as the “Board of Trustees”) composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of 4 years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy

occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

[(2) DUTIES.—

[(A) IN GENERAL.—It shall be the duty of the Board of Trustees to do the following:

[(i) Hold the CLASS Independence Fund.

[(ii) Report to the Congress not later than the first day of April of each year on the operation and status of the CLASS Independence Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years.

[(iii) Report immediately to the Congress whenever the Board is of the opinion that the amount of the CLASS Independence Fund is not actuarially sound in regards to the projection under section 3203(b)(1)(B)(i).

[(iv) Review the general policies followed in managing the CLASS Independence Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the CLASS Independence Fund is to be managed.

[(B) REPORT.—The report provided for in subparagraph (A)(ii) shall—

[(i) include—

[(I) a statement of the assets of, and the disbursements made from, the CLASS Independence Fund during the preceding fiscal year;

[(II) an estimate of the expected income to, and disbursements to be made from, the CLASS Independence Fund during the current fiscal year and each of the next 2 fiscal years;

[(III) a statement of the actuarial status of the CLASS Independence Fund for the current fiscal year, each of the next 2 fiscal years, and as projected over the 75-year period beginning with the current fiscal year; and

[(IV) an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable; and

[(ii) be printed as a House document of the session of the Congress to which the report is made.

[(C) RECOMMENDATIONS.—If the Board of Trustees determines that enrollment trends and expected future benefit claims on the CLASS Independence Fund are not actuarially sound in regards to the projection under section 3203(b)(1)(B)(i) and are unlikely to be resolved with reasonable premium increases or through other means, the Board of Trustees shall include in the report provided for in subparagraph (A)(ii) recommendations for such legislative action as the Board of Trustees determine to be appropriate, including whether to adjust monthly premiums or impose a temporary moratorium on new enrollments.

[SEC. 3207. CLASS INDEPENDENCE ADVISORY COUNCIL.

[(a) ESTABLISHMENT.—There is hereby created an Advisory Committee to be known as the “CLASS Independence Advisory Council”.

[(b) MEMBERSHIP.—

[(1) IN GENERAL.—The CLASS Independence Advisory Council shall be composed of not more than 15 individuals, not otherwise in the employ of the United States—

[(A) who shall be appointed by the President without regard to the civil service laws and regulations; and

[(B) a majority of whom shall be representatives of individuals who participate or are likely to participate in the CLASS program, and shall include representatives of older and younger workers, individuals with disabilities, family caregivers of individuals who require services and supports to maintain their independence at home or in another residential setting of their choice in the community, individuals with expertise in long-term care or disability insurance, actuarial science, economics, and other relevant disciplines, as determined by the Secretary.

[(2) TERMS.—

[(A) IN GENERAL.—The members of the CLASS Independence Advisory Council shall serve overlapping terms of 3 years (unless appointed to fill a vacancy occurring prior to the expiration of a term, in which case the individual shall serve for the remainder of the term).

[(B) LIMITATION.—A member shall not be eligible to serve for more than 2 consecutive terms.

[(3) CHAIR.—The President shall, from time to time, appoint one of the members of the CLASS Independence Advisory Council to serve as the Chair.

[(c) DUTIES.—The CLASS Independence Advisory Council shall advise the Secretary on matters of general policy in the administration of the CLASS program established under this title and in the formulation of regulations under this title including with respect to—

[(1) the development of the CLASS Independence Benefit Plan under section 3203;

[(2) the determination of monthly premiums under such plan; and

[(3) the financial solvency of the program.

[(d) APPLICATION OF FACCA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of that Act, shall apply to the CLASS Independence Advisory Council.

[(e) AUTHORIZATION OF APPROPRIATIONS.—

[(1) IN GENERAL.—There are authorized to be appropriated to the CLASS Independence Advisory Council to carry out its duties under this section, such sums as may be necessary for fiscal year 2011 and for each fiscal year thereafter.

[(2) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

[(SEC. 3208. SOLVENCY AND FISCAL INDEPENDENCE; REGULATIONS; ANNUAL REPORT.

[(a) SOLVENCY.—The Secretary shall regularly consult with the Board of Trustees of the CLASS Independence Fund and the CLASS Independence Advisory Council, for purposes of ensuring that enrollees premiums are adequate to ensure the financial solvency of the CLASS program, both with respect to fiscal years occurring in the near-term and fiscal years occurring over 20- and 75-year periods, taking into account the projections required for such periods under subsections (a)(1)(A)(i) and (b)(1)(B)(i) of section 3202.

[(b) NO TAXPAYER FUNDS USED TO PAY BENEFITS.—No taxpayer funds shall be used for payment of benefits under a CLASS Independent Benefit Plan. For purposes of this subsection, the term “taxpayer funds” means any Federal funds from a source other than premiums deposited by CLASS program participants in the CLASS Independence Fund and any associated interest earnings.

[(c) REGULATIONS.—The Secretary shall promulgate such regulations as are necessary to carry out the CLASS program in accordance with this title. Such regulations shall include provisions to prevent fraud and abuse under the program.

[(d) ANNUAL REPORT.—Beginning January 1, 2014, the Secretary shall submit an annual report to Congress on the CLASS program. Each report shall include the following:

[(1) The total number of enrollees in the program.

[(2) The total number of eligible beneficiaries during the fiscal year.

[(3) The total amount of cash benefits provided during the fiscal year.

[(4) A description of instances of fraud or abuse identified during the fiscal year.

[(5) Recommendations for such administrative or legislative action as the Secretary determines is necessary to improve the program, ensure the solvency of the program, or to prevent the occurrence of fraud or abuse.

[(SEC. 3209. INSPECTOR GENERAL’S REPORT.

[(The Inspector General of the Department of Health and Human Services shall submit an annual report to the Secretary and Congress relating to the overall progress of the CLASS program and of the existence of waste, fraud, and abuse in the CLASS program. Each such report shall include findings in the following areas:

[(1) The eligibility determination process.

[(2) The provision of cash benefits.

[(3) Quality assurance and protection against waste, fraud, and abuse.

[(4) Recouping of unpaid and accrued benefits.

[SEC. 3210. TAX TREATMENT OF PROGRAM.

[The CLASS program shall be treated for purposes of the Internal Revenue Code of 1986 in the same manner as a qualified long-term care insurance contract for qualified long-term care services.]

PATIENT PROTECTION AND AFFORDABLE CARE ACT

* * * * *

[TITLE VIII—CLASS ACT

[SEC. 8001. SHORT TITLE OF TITLE.

[This title may be cited as the “Community Living Assistance Services and Supports Act” or the “CLASS Act”.

[SEC. 8002. ESTABLISHMENT OF NATIONAL VOLUNTARY INSURANCE PROGRAM FOR PURCHASING COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORT.

[(a) ESTABLISHMENT OF CLASS PROGRAM.—

[(1) IN GENERAL.—The Public Health Service Act (42 U.S.C. 201 et seq.), as amended by section 4302(a), is amended by adding at the end the following:

["TITLE XXXII—COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS

[“SEC. 3201. PURPOSE.

[The purpose of this title is to establish a national voluntary insurance program for purchasing community living assistance services and supports in order to—

[(1) provide individuals with functional limitations with tools that will allow them to maintain their personal and financial independence and live in the community through a new financing strategy for community living assistance services and supports;

[(2) establish an infrastructure that will help address the Nation’s community living assistance services and supports needs;

[(3) alleviate burdens on family caregivers; and

[(4) address institutional bias by providing a financing mechanism that supports personal choice and independence to live in the community.

[“SEC. 3202. DEFINITIONS.

[In this title:

[(1) ACTIVE ENROLLEE.—The term ‘active enrollee’ means an individual who is enrolled in the CLASS program in accordance with section 3204 and who has paid any premiums due to maintain such enrollment.

[(2) ACTIVELY EMPLOYED.—The term ‘actively employed’ means an individual who—

[(A) is reporting for work at the individual’s usual place of employment or at another location to which the indi-

vidual is required to travel because of the individual's employment (or in the case of an individual who is a member of the uniformed services, is on active duty and is physically able to perform the duties of the individual's position); and

["(B) is able to perform all the usual and customary duties of the individual's employment on the individual's regular work schedule.

["(3) ACTIVITIES OF DAILY LIVING.—The term 'activities of daily living' means each of the following activities specified in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986:

["(A) Eating.

["(B) Toileting.

["(C) Transferring.

["(D) Bathing.

["(E) Dressing.

["(F) Continence.

["(4) CLASS PROGRAM.—The term 'CLASS program' means the program established under this title.

["(5) ELIGIBILITY ASSESSMENT SYSTEM.—The term 'Eligibility Assessment System' means the entity established by the Secretary under section 3205(a)(2) to make functional eligibility determinations for the CLASS program.

["(6) ELIGIBLE BENEFICIARY.—

["(A) IN GENERAL.—The term 'eligible beneficiary' means any individual who is an active enrollee in the CLASS program and, as of the date described in subparagraph (B)—

["(i) has paid premiums for enrollment in such program for at least 60 months;

["(ii) has earned, with respect to at least 3 calendar years that occur during the first 60 months for which the individual has paid premiums for enrollment in the program, at least an amount equal to the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage under section 213(d) of the Social Security Act for the year; and

["(iii) has paid premiums for enrollment in such program for at least 24 consecutive months, if a lapse in premium payments of more than 3 months has occurred during the period that begins on the date of the individual's enrollment and ends on the date of such determination.

["(B) DATE DESCRIBED.—For purposes of subparagraph (A), the date described in this subparagraph is the date on which the individual is determined to have a functional limitation described in section 3203(a)(1)(C) that is expected to last for a continuous period of more than 90 days.

["(C) REGULATIONS.—The Secretary shall promulgate regulations specifying exceptions to the minimum earnings requirements under subparagraph (A)(ii) for purposes of being considered an eligible beneficiary for certain populations.

【“(7) HOSPITAL; NURSING FACILITY; INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED; INSTITUTION FOR MENTAL DISEASES.—The terms ‘hospital’, ‘nursing facility’, ‘intermediate care facility for the mentally retarded’, and ‘institution for mental diseases’ have the meanings given such terms for purposes of Medicaid.

【“(8) CLASS INDEPENDENCE ADVISORY COUNCIL.—The term ‘CLASS Independence Advisory Council’ or ‘Council’ means the Advisory Council established under section 3207 to advise the Secretary.

【“(9) CLASS INDEPENDENCE BENEFIT PLAN.—The term ‘CLASS Independence Benefit Plan’ means the benefit plan developed and designated by the Secretary in accordance with section 3203.

【“(10) CLASS INDEPENDENCE FUND.—The term ‘CLASS Independence Fund’ or ‘Fund’ means the fund established under section 3206.

【“(11) MEDICAID.—The term ‘Medicaid’ means the program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

【“(12) POVERTY LINE.—The term ‘poverty line’ has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

【“(13) PROTECTION AND ADVOCACY SYSTEM.—The term ‘Protection and Advocacy System’ means the system for each State established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

【“SEC. 3203. CLASS INDEPENDENCE BENEFIT PLAN.

【“(a) PROCESS FOR DEVELOPMENT.—

【“(1) IN GENERAL.—The Secretary, in consultation with appropriate actuaries and other experts, shall develop at least 3 actuarially sound benefit plans as alternatives for consideration for designation by the Secretary as the CLASS Independence Benefit Plan under which eligible beneficiaries shall receive benefits under this title. Each of the plan alternatives developed shall be designed to provide eligible beneficiaries with the benefits described in section 3205 consistent with the following requirements:

【“(A) PREMIUMS.—

【“(i) IN GENERAL.—Beginning with the first year of the CLASS program, and for each year thereafter, subject to clauses (ii) and (iii), the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis of the 75-year costs of the program that ensures solvency throughout such 75-year period.

【“(ii) NOMINAL PREMIUM FOR POOREST INDIVIDUALS AND FULL-TIME STUDENTS.—

【“(I) IN GENERAL.—The monthly premium for enrollment in the CLASS program shall not exceed the applicable dollar amount per month determined under subclause (II) for—

【“(aa) any individual whose income does not exceed the poverty line; and

[(bb) any individual who has not attained age 22, and is actively employed during any period in which the individual is a full-time student (as determined by the Secretary).

[(II) APPLICABLE DOLLAR AMOUNT.—The applicable dollar amount described in this subclause is the amount equal to \$5, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for each year occurring after 2009 and before such year.

[(iii) CLASS INDEPENDENCE FUND RESERVES.—At such time as the CLASS program has been in operation for 10 years, the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis that accumulated reserves in the CLASS Independence Fund would not decrease in that year. At such time as the Secretary determines the CLASS program demonstrates a sustained ability to finance expected yearly expenses with expected yearly premiums and interest credited to the CLASS Independence Fund, the Secretary may decrease the required amount of CLASS Independence Fund reserves.

[(B) VESTING PERIOD.—A 5-year vesting period for eligibility for benefits.

[(C) BENEFIT TRIGGERS.—A benefit trigger for provision of benefits that requires a determination that an individual has a functional limitation, as certified by a licensed health care practitioner, described in any of the following clauses that is expected to last for a continuous period of more than 90 days:

[(i) The individual is determined to be unable to perform at least the minimum number (which may be 2 or 3) of activities of daily living as are required under the plan for the provision of benefits without substantial assistance (as defined by the Secretary) from another individual.

[(ii) The individual requires substantial supervision to protect the individual from threats to health and safety due to substantial cognitive impairment.

[(iii) The individual has a level of functional limitation similar (as determined under regulations prescribed by the Secretary) to the level of functional limitation described in clause (i) or (ii).

[(D) CASH BENEFIT.—Payment of a cash benefit that satisfies the following requirements:

[(i) MINIMUM REQUIRED AMOUNT.—The benefit amount provides an eligible beneficiary with not less than an average of \$50 per day (as determined based on the reasonably expected distribution of beneficiaries receiving benefits at various benefit levels).

[(ii) AMOUNT SCALED TO FUNCTIONAL ABILITY.—The benefit amount is varied based on a scale of functional ability, with not less than 2, and not more than 6, benefit level amounts.

【“(iii) DAILY OR WEEKLY.—The benefit is paid on a daily or weekly basis.

【“(iv) NO LIFETIME OR AGGREGATE LIMIT.—The benefit is not subject to any lifetime or aggregate limit.

【“(2) REVIEW AND RECOMMENDATION BY THE CLASS INDEPENDENCE ADVISORY COUNCIL.—The CLASS Independence Advisory Council shall—

【“(A) evaluate the alternative benefit plans developed under paragraph (1); and

【“(B) recommend for designation as the CLASS Independence Benefit Plan for offering to the public the plan that the Council determines best balances price and benefits to meet enrollees’ needs in an actuarially sound manner, while optimizing the probability of the long-term sustainability of the CLASS program.

【“(3) DESIGNATION BY THE SECRETARY.—Not later than October 1, 2012, the Secretary, taking into consideration the recommendation of the CLASS Independence Advisory Council under paragraph (2)(B), shall designate a benefit plan as the CLASS Independence Benefit Plan. The Secretary shall publish such designation, along with details of the plan and the reasons for the selection by the Secretary, in a final rule that allows for a period of public comment.

【“(b) ADDITIONAL PREMIUM REQUIREMENTS.—

【“(1) ADJUSTMENT OF PREMIUMS.—

【“(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), (D), and (E), the amount of the monthly premium determined for an individual upon such individual’s enrollment in the CLASS program shall remain the same for as long as the individual is an active enrollee in the program.

【“(B) RECALCULATED PREMIUM IF REQUIRED FOR PROGRAM SOLVENCY.—

【“(i) IN GENERAL.—Subject to clause (ii), if the Secretary determines, based on the most recent report of the Board of Trustees of the CLASS Independence Fund, the advice of the CLASS Independence Advisory Council, and the annual report of the Inspector General of the Department of Health and Human Services, and waste, fraud, and abuse, or such other information as the Secretary determines appropriate, that the monthly premiums and income to the CLASS Independence Fund for a year are projected to be insufficient with respect to the 20-year period that begins with that year, the Secretary shall adjust the monthly premiums for individuals enrolled in the CLASS program as necessary (but maintaining a nominal premium for enrollees whose income is below the poverty line or who are full-time students actively employed).

【“(ii) EXEMPTION FROM INCREASE.—Any increase in a monthly premium imposed as result of a determination described in clause (i) shall not apply with respect to the monthly premium of any active enrollee who—

【“(I) has attained age 65;

【“(II) has paid premiums for enrollment in the program for at least 20 years; and

【“(III) is not actively employed.

【“(C) RECALCULATED PREMIUM IF REENROLLMENT AFTER MORE THAN A 3-MONTH LAPSE.—

【“(i) IN GENERAL.—The reenrollment of an individual after a 90-day period during which the individual failed to pay the monthly premium required to maintain the individual’s enrollment in the CLASS program shall be treated as an initial enrollment for purposes of age-adjusting the premium for reenrollment in the program.

【“(ii) CREDIT FOR PRIOR MONTHS IF REENROLLED WITHIN 5 YEARS.—An individual who reenrolls in the CLASS program after such a 90-day period and before the end of the 5-year period that begins with the first month for which the individual failed to pay the monthly premium required to maintain the individual’s enrollment in the program shall be—

【“(I) credited with any months of paid premiums that accrued prior to the individual’s lapse in enrollment; and

【“(II) notwithstanding the total amount of any such credited months, required to satisfy section 3202(6)(A)(ii) before being eligible to receive benefits.

【“(D) NO LONGER STATUS AS A FULL-TIME STUDENT.—An individual subject to a nominal premium on the basis of being described in subsection (a)(1)(A)(ii)(I)(bb) who ceases to be described in that subsection, beginning with the first month following the month in which the individual ceases to be so described, shall be subject to the same monthly premium as the monthly premium that applies to an individual of the same age who first enrolls in the program under the most similar circumstances as the individual (such as the first year of eligibility for enrollment in the program or in a subsequent year).

【“(E) PENALTY FOR REENROLLMENT AFTER 5-YEAR LAPSE.—In the case of an individual who reenrolls in the CLASS program after the end of the 5-year period described in subparagraph (C)(ii), the monthly premium required for the individual shall be the age-adjusted premium that would be applicable to an initially enrolling individual who is the same age as the reenrolling individual, increased by the greater of—

【“(i) an amount that the Secretary determines is actuarially sound for each month that occurs during the period that begins with the first month for which the individual failed to pay the monthly premium required to maintain the individual’s enrollment in the CLASS program and ends with the month preceding the month in which the reenrollment is effective; or

【“(ii) 1 percent of the applicable age-adjusted premium for each such month occurring in such period.

[(2) ADMINISTRATIVE EXPENSES.—In determining the monthly premiums for the CLASS program the Secretary may factor in costs for administering the program, not to exceed for any year in which the program is in effect under this title, an amount equal to 3 percent of all premiums paid during the year.

[(3) NO UNDERWRITING REQUIREMENTS.—No underwriting (other than on the basis of age in accordance with subparagraphs (D) and (E) of paragraph (1)) shall be used to—

[(A) determine the monthly premium for enrollment in the CLASS program; or

[(B) prevent an individual from enrolling in the program.

[(c) SELF-ATTESTATION AND VERIFICATION OF INCOME.—The Secretary shall establish procedures to—

[(1) permit an individual who is eligible for the nominal premium required under subsection (a)(1)(A)(ii) to self-attest that their income does not exceed the poverty line or that their status as a full-time student who is actively employed;

[(2) verify, using procedures similar to the procedures used by the Commissioner of Social Security under section 1631(e)(1)(B)(ii) of the Social Security Act and consistent with the requirements applicable to the conveyance of data and information under section 1942 of such Act, the validity of such self-attestation; and

[(3) require an individual to confirm, on at least an annual basis, that their income does not exceed the poverty line or that they continue to maintain such status.

[(SEC. 3204. ENROLLMENT AND DISENROLLMENT REQUIREMENTS.

[(a) AUTOMATIC ENROLLMENT.—

[(1) IN GENERAL.—Subject to paragraph (2), the Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which each individual described in subsection (c) may be automatically enrolled in the CLASS program by an employer of such individual in the same manner as an employer may elect to automatically enroll employees in a plan under section 401(k), 403(b), or 457 of the Internal Revenue Code of 1986.

[(2) ALTERNATIVE ENROLLMENT PROCEDURES.—The procedures established under paragraph (1) shall provide for an alternative enrollment process for an individual described in subsection (c) in the case of such an individual—

[(A) who is self-employed;

[(B) who has more than 1 employer; or

[(C) whose employer does not elect to participate in the automatic enrollment process established by the Secretary.

[(3) ADMINISTRATION.—

[(A) IN GENERAL.—The Secretary and the Secretary of the Treasury shall, by regulation, establish procedures to ensure that an individual is not automatically enrolled in the CLASS program by more than 1 employer.

[(B) FORM.—Enrollment in the CLASS program shall be made in such manner as the Secretary may prescribe in order to ensure ease of administration.

【“(b) ELECTION TO OPT-OUT.—An individual described in subsection (c) may elect to waive enrollment in the CLASS program at any time in such form and manner as the Secretary and the Secretary of the Treasury shall prescribe.

【“(c) INDIVIDUAL DESCRIBED.—For purposes of enrolling in the CLASS program, an individual described in this paragraph is an individual—

【“(1) who has attained age 18;

【“(2) who—

【“(A) receives wages or income on which there is imposed a tax under section 3101(a) or 3201(a) of the Internal Revenue Code of 1986; or

【“(B) derives self-employment income on which there is imposed a tax under section 1401(a) of the Internal Revenue Code of 1986;

【“(3) who is actively employed; and

【“(4) who is not—

【“(A) a patient in a hospital or nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental diseases and receiving medical assistance under Medicaid; or

【“(B) confined in a jail, prison, other penal institution or correctional facility, or by court order pursuant to conviction of a criminal offense or in connection with a verdict or finding described in section 202(x)(1)(A)(ii) of the Social Security Act (42 U.S.C. 402(x)(1)(A)(ii)).

【“(d) RULE OF CONSTRUCTION.—Nothing in this title shall be construed as requiring an active enrollee to continue to satisfy subparagraph (A) or (B) of subsection (c)(2) in order to maintain enrollment in the CLASS program.

【“(e) PAYMENT.—

【“(1) PAYROLL DEDUCTION.—An amount equal to the monthly premium for the enrollment in the CLASS program of an individual shall be deducted from the wages or self-employment income of such individual in accordance with such procedures as the Secretary, in coordination with the Secretary of the Treasury, shall establish for employers who elect to deduct and withhold such premiums on behalf of enrolled employees.

【“(2) ALTERNATIVE PAYMENT MECHANISM.—The Secretary, in coordination with the Secretary of the Treasury, shall establish alternative procedures for the payment of monthly premiums by an individual enrolled in the CLASS program—

【“(A) who does not have an employer who elects to deduct and withhold premiums in accordance with paragraph (1); or

【“(B) who does not earn wages or derive self-employment income.

【“(f) TRANSFER OF PREMIUMS COLLECTED.—

【“(1) IN GENERAL.—During each calendar year the Secretary of the Treasury shall deposit into the CLASS Independence Fund a total amount equal, in the aggregate, to 100 percent of the premiums collected during that year.

【“(2) TRANSFERS BASED ON ESTIMATES.—The amount deposited pursuant to paragraph (1) shall be transferred in at least monthly payments to the CLASS Independence Fund on the

basis of estimates by the Secretary and certified to the Secretary of the Treasury of the amounts collected in accordance with subparagraphs (A) and (B) of paragraph (5). Proper adjustments shall be made in amounts subsequently transferred to the Fund to the extent prior estimates were in excess of, or were less than, actual amounts collected.

[(g) OTHER ENROLLMENT AND DISENROLLMENT OPPORTUNITIES.—The Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which—

[(1) an individual who, in the year of the individual's initial eligibility to enroll in the CLASS program, has not enrolled in the program, is eligible to elect to enroll in the program, in such form and manner as the Secretaries shall establish, only during an open enrollment period established by the Secretaries that is specific to the individual and that may not occur more frequently than biennially after the date on which the individual first elected to waive enrollment in the program; and

[(2) an individual shall only be permitted to disenroll from the program (other than for nonpayment of premiums) during an annual disenrollment period established by the Secretaries and in such form and manner as the Secretaries shall establish.

[(SEC. 3205. BENEFITS.

[(a) DETERMINATION OF ELIGIBILITY.—

[(1) APPLICATION FOR RECEIPT OF BENEFITS.—The Secretary shall establish procedures under which an active enrollee shall apply for receipt of benefits under the CLASS Independence Benefit Plan.

[(2) ELIGIBILITY ASSESSMENTS.—

[(A) IN GENERAL.—Not later than January 1, 2012, the Secretary shall—

[(i) establish an Eligibility Assessment System (other than a service with which the Commissioner of Social Security has entered into an agreement, with respect to any State, to make disability determinations for purposes of title II or XVI of the Social Security Act) to provide for eligibility assessments of active enrollees who apply for receipt of benefits;

[(ii) enter into an agreement with the Protection and Advocacy System for each State to provide advocacy services in accordance with subsection (d); and

[(iii) enter into an agreement with public and private entities to provide advice and assistance counseling in accordance with subsection (e).

[(B) REGULATIONS.—The Secretary shall promulgate regulations to develop an expedited nationally equitable eligibility determination process, as certified by a licensed health care practitioner, an appeals process, and a redetermination process, as certified by a licensed health care practitioner, including whether an active enrollee is eligible for a cash benefit under the program and if so, the amount of the cash benefit (in accordance the sliding scale established under the plan).

[(C) PRESUMPTIVE ELIGIBILITY FOR CERTAIN INSTITUTIONALIZED ENROLLEES PLANNING TO DISCHARGE.—An ac-

tive enrollee shall be deemed presumptively eligible if the enrollee—

【“(i) has applied for, and attests is eligible for, the maximum cash benefit available under the sliding scale established under the CLASS Independence Benefit Plan;

【“(ii) is a patient in a hospital (but only if the hospitalization is for long-term care), nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases; and

【“(iii) is in the process of, or about to begin the process of, planning to discharge from the hospital, facility, or institution, or within 60 days from the date of discharge from the hospital, facility, or institution.

【“(D) APPEALS.—The Secretary shall establish procedures under which an applicant for benefits under the CLASS Independence Benefit Plan shall be guaranteed the right to appeal an adverse determination.

【“(b) BENEFITS.—An eligible beneficiary shall receive the following benefits under the CLASS Independence Benefit Plan:

【“(1) CASH BENEFIT.—A cash benefit established by the Secretary in accordance with the requirements of section 3203(a)(1)(D) that—

【“(A) the first year in which beneficiaries receive the benefits under the plan, is not less than the average dollar amount specified in clause (i) of such section; and

【“(B) for any subsequent year, is not less than the average per day dollar limit applicable under this subparagraph for the preceding year, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) over the previous year.

【“(2) ADVOCACY SERVICES.—Advocacy services in accordance with subsection (d).

【“(3) ADVICE AND ASSISTANCE COUNSELING.—Advice and assistance counseling in accordance with subsection (e).

【“(4) ADMINISTRATIVE EXPENSES.—Advocacy services and advice and assistance counseling services under paragraphs (2) and (3) of this subsection shall be included as administrative expenses under section 3203(b)(3).

【“(c) PAYMENT OF BENEFITS.—

【“(1) LIFE INDEPENDENCE ACCOUNT.—

【“(A) IN GENERAL.—The Secretary shall establish procedures for administering the provision of benefits to eligible beneficiaries under the CLASS Independence Benefit Plan, including the payment of the cash benefit for the beneficiary into a Life Independence Account established by the Secretary on behalf of each eligible beneficiary.

【“(B) USE OF CASH BENEFITS.—Cash benefits paid into a Life Independence Account of an eligible beneficiary shall be used to purchase nonmedical services and supports that the beneficiary needs to maintain his or her independence at home or in another residential setting of their choice in the community, including (but not limited to) home modifications, assistive technology, accessible transportation, homemaker services, respite care, personal assistance

services, home care aides, and nursing support. Nothing in the preceding sentence shall prevent an eligible beneficiary from using cash benefits paid into a Life Independence Account for obtaining assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions.

[(C) ELECTRONIC MANAGEMENT OF FUNDS.—The Secretary shall establish procedures for—

[(i) crediting an account established on behalf of a beneficiary with the beneficiary’s cash daily benefit;

[(ii) allowing the beneficiary to access such account through debit cards; and

[(iii) accounting for withdrawals by the beneficiary from such account.

[(D) PRIMARY PAYOR RULES FOR BENEFICIARIES WHO ARE ENROLLED IN MEDICAID.—In the case of an eligible beneficiary who is enrolled in Medicaid, the following payment rules shall apply:

[(i) INSTITUTIONALIZED BENEFICIARY.—If the beneficiary is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall retain an amount equal to 5 percent of the beneficiary’s daily or weekly cash benefit (as applicable) (which shall be in addition to the amount of the beneficiary’s personal needs allowance provided under Medicaid), and the remainder of such benefit shall be applied toward the facility’s cost of providing the beneficiary’s care, and Medicaid shall provide secondary coverage for such care.

[(ii) BENEFICIARIES RECEIVING HOME AND COMMUNITY-BASED SERVICES.—

[(I) 50 PERCENT OF BENEFIT RETAINED BY BENEFICIARY.—Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for home and community based services, the beneficiary shall retain an amount equal to 50 percent of the beneficiary’s daily or weekly cash benefit (as applicable), and the remainder of the daily or weekly cash benefit shall be applied toward the cost to the State of providing such assistance (and shall not be used to claim Federal matching funds under Medicaid), and Medicaid shall provide secondary coverage for the remainder of any costs incurred in providing such assistance.

[(II) REQUIREMENT FOR STATE OFFSET.—A State shall be paid the remainder of a beneficiary’s daily or weekly cash benefit under subclause (I) only if the State home and community-based waiver under section 1115 of the Social Se-

curity Act (42 U.S.C. 1315) or subsection (c) or (d) of section 1915 of such Act (42 U.S.C. 1396n), or the State plan amendment under subsection (i) of such section does not include a waiver of the requirements of section 1902(a)(1) of the Social Security Act (relating to statewideness) or of section 1902(a)(10)(B) of such Act (relating to comparability) and the State offers at a minimum case management services, personal care services, habilitation services, and respite care under such a waiver or State plan amendment.

【“(III) DEFINITION OF HOME AND COMMUNITY-BASED SERVICES.—In this clause, the term ‘home and community-based services’ means any services which may be offered under a home and community-based waiver authorized for a State under section 1115 of the Social Security Act (42 U.S.C. 1315) or subsection (c) or (d) of section 1915 of such Act (42 U.S.C. 1396n) or under a State plan amendment under subsection (i) of such section.

【“(iii) BENEFICIARIES ENROLLED IN PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE).—

【“(I) IN GENERAL.—Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for PACE program services under section 1934 of the Social Security Act (42 U.S.C. 1396u-4), the beneficiary shall retain an amount equal to 50 percent of the beneficiary’s daily or weekly cash benefit (as applicable), and the remainder of the daily or weekly cash benefit shall be applied toward the cost to the State of providing such assistance (and shall not be used to claim Federal matching funds under Medicaid), and Medicaid shall provide secondary coverage for the remainder of any costs incurred in providing such assistance.

【“(II) INSTITUTIONALIZED RECIPIENTS OF PACE PROGRAM SERVICES.—If a beneficiary receiving assistance under Medicaid for PACE program services is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall be treated as in institutionalized beneficiary under clause (i).

【“(2) AUTHORIZED REPRESENTATIVES.—

【“(A) IN GENERAL.—The Secretary shall establish procedures to allow access to a beneficiary’s cash benefits by an authorized representative of the eligible beneficiary on whose behalf such benefits are paid.

【“(B) QUALITY ASSURANCE AND PROTECTION AGAINST FRAUD AND ABUSE.—The procedures established under subparagraph (A) shall ensure that authorized representatives of eligible beneficiaries comply with standards of conduct established by the Secretary, including standards requiring that such representatives provide quality services on

behalf of such beneficiaries, do not have conflicts of interest, and do not misuse benefits paid on behalf of such beneficiaries or otherwise engage in fraud or abuse.

【“(3) COMMENCEMENT OF BENEFITS.—Benefits shall be paid to, or on behalf of, an eligible beneficiary beginning with the first month in which an application for such benefits is approved.

【“(4) ROLLOVER OPTION FOR LUMP-SUM PAYMENT.—An eligible beneficiary may elect to—

【“(A) defer payment of their daily or weekly benefit and to rollover any such deferred benefits from month-to-month, but not from year-to-year; and

【“(B) receive a lump-sum payment of such deferred benefits in an amount that may not exceed the lesser of—

【“(i) the total amount of the accrued deferred benefits; or

【“(ii) the applicable annual benefit.

【“(5) PERIOD FOR DETERMINATION OF ANNUAL BENEFITS.—

【“(A) IN GENERAL.—The applicable period for determining with respect to an eligible beneficiary the applicable annual benefit and the amount of any accrued deferred benefits is the 12-month period that commences with the first month in which the beneficiary began to receive such benefits, and each 12-month period thereafter.

【“(B) INCLUSION OF INCREASED BENEFITS.—The Secretary shall establish procedures under which cash benefits paid to an eligible beneficiary that increase or decrease as a result of a change in the functional status of the beneficiary before the end of a 12-month benefit period shall be included in the determination of the applicable annual benefit paid to the eligible beneficiary.

【“(C) RECOUPMENT OF UNPAID, ACCRUED BENEFITS.—

【“(i) IN GENERAL.—The Secretary, in coordination with the Secretary of the Treasury, shall recoup any accrued benefits in the event of—

【“(I) the death of a beneficiary; or

【“(II) the failure of a beneficiary to elect under paragraph (4)(B) to receive such benefits as a lump-sum payment before the end of the 12-month period in which such benefits accrued.

【“(ii) PAYMENT INTO CLASS INDEPENDENCE FUND.—

Any benefits recouped in accordance with clause (i) shall be paid into the CLASS Independence Fund and used in accordance with section 3206.

【“(6) REQUIREMENT TO RECERTIFY ELIGIBILITY FOR RECEIPT OF BENEFITS.—An eligible beneficiary shall periodically, as determined by the Secretary—

【“(A) recertify by submission of medical evidence the beneficiary’s continued eligibility for receipt of benefits; and

【“(B) submit records of expenditures attributable to the aggregate cash benefit received by the beneficiary during the preceding year.

【“(7) SUPPLEMENT, NOT SUPPLANT OTHER HEALTH CARE BENEFITS.—Subject to the Medicaid payment rules under paragraph

(1)(D), benefits received by an eligible beneficiary shall supplement, but not supplant, other health care benefits for which the beneficiary is eligible under Medicaid or any other Federally funded program that provides health care benefits or assistance.

[(d) **ADVOCACY SERVICES.**—An agreement entered into under subsection (a)(2)(A)(ii) shall require the Protection and Advocacy System for the State to—

[(1) assign, as needed, an advocacy counselor to each eligible beneficiary that is covered by such agreement and who shall provide an eligible beneficiary with—

[(A) information regarding how to access the appeals process established for the program;

[(B) assistance with respect to the annual recertification and notification required under subsection (c)(6); and

[(C) such other assistance with obtaining services as the Secretary, by regulation, shall require; and

[(2) ensure that the System and such counselors comply with the requirements of subsection (h).

[(e) **ADVICE AND ASSISTANCE COUNSELING.**—An agreement entered into under subsection (a)(2)(A)(iii) shall require the entity to assign, as requested by an eligible beneficiary that is covered by such agreement, an advice and assistance counselor who shall provide an eligible beneficiary with information regarding—

[(1) accessing and coordinating long-term services and supports in the most integrated setting;

[(2) possible eligibility for other benefits and services;

[(3) development of a service and support plan;

[(4) information about programs established under the Assistive Technology Act of 1998 and the services offered under such programs;

[(5) available assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions; and

[(6) such other services as the Secretary, by regulation, may require.

[(f) **NO EFFECT ON ELIGIBILITY FOR OTHER BENEFITS.**—Benefits paid to an eligible beneficiary under the CLASS program shall be disregarded for purposes of determining or continuing the beneficiary’s eligibility for receipt of benefits under any other Federal, State, or locally funded assistance program, including benefits paid under titles II, XVI, XVIII, XIX, or XXI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq., 1395 et seq., 1396 et seq., 1397aa et seq.), under the laws administered by the Secretary of Veterans Affairs, under low-income housing assistance programs, or under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

[(g) **RULE OF CONSTRUCTION.**—Nothing in this title shall be construed as prohibiting benefits paid under the CLASS Independence

Benefit Plan from being used to compensate a family caregiver for providing community living assistance services and supports to an eligible beneficiary.

[(h) PROTECTION AGAINST CONFLICT OF INTERESTS.—The Secretary shall establish procedures to ensure that the Eligibility Assessment System, the Protection and Advocacy System for a State, advocacy counselors for eligible beneficiaries, and any other entities that provide services to active enrollees and eligible beneficiaries under the CLASS program comply with the following:

[(1) If the entity provides counseling or planning services, such services are provided in a manner that fosters the best interests of the active enrollee or beneficiary.

[(2) The entity has established operating procedures that are designed to avoid or minimize conflicts of interest between the entity and an active enrollee or beneficiary.

[(3) The entity provides information about all services and options available to the active enrollee or beneficiary, to the best of its knowledge, including services available through other entities or providers.

[(4) The entity assists the active enrollee or beneficiary to access desired services, regardless of the provider.

[(5) The entity reports the number of active enrollees and beneficiaries provided with assistance by age, disability, and whether such enrollees and beneficiaries received services from the entity or another entity.

[(6) If the entity provides counseling or planning services, the entity ensures that an active enrollee or beneficiary is informed of any financial interest that the entity has in a service provider.

[(7) The entity provides an active enrollee or beneficiary with a list of available service providers that can meet the needs of the active enrollee or beneficiary.

[(SEC. 3206. CLASS INDEPENDENCE FUND.

[(a) ESTABLISHMENT OF CLASS INDEPENDENCE FUND.—There is established in the Treasury of the United States a trust fund to be known as the ‘CLASS Independence Fund’. The Secretary of the Treasury shall serve as Managing Trustee of such Fund. The Fund shall consist of all amounts derived from payments into the Fund under sections 3204(f) and 3205(c)(5)(C)(ii), and remaining after investment of such amounts under subsection (b), including additional amounts derived as income from such investments. The amounts held in the Fund are appropriated and shall remain available without fiscal year limitation—

[(1) to be held for investment on behalf of individuals enrolled in the CLASS program;

[(2) to pay the administrative expenses related to the Fund and to investment under subsection (b); and

[(3) to pay cash benefits to eligible beneficiaries under the CLASS Independence Benefit Plan.

[(b) INVESTMENT OF FUND BALANCE.—The Secretary of the Treasury shall invest and manage the CLASS Independence Fund in the same manner, and to the same extent, as the Federal Supplementary Medical Insurance Trust Fund may be invested and managed under subsections (c), (d), and (e) of section 1841(d) of the Social Security Act (42 U.S.C. 1395t).

[(c) BOARD OF TRUSTEES.—

[(1) IN GENERAL.—With respect to the CLASS Independence Fund, there is hereby created a body to be known as the Board of Trustees of the CLASS Independence Fund (hereinafter in this section referred to as the ‘Board of Trustees’) composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of 4 years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member’s term until the earlier of the time at which the member’s successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member’s term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

[(2) DUTIES.—

[(A) IN GENERAL.—It shall be the duty of the Board of Trustees to do the following:

[(i) Hold the CLASS Independence Fund.

[(ii) Report to the Congress not later than the first day of April of each year on the operation and status of the CLASS Independence Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years.

[(iii) Report immediately to the Congress whenever the Board is of the opinion that the amount of the CLASS Independence Fund is not actuarially sound in regards to the projection under section 3203(b)(1)(B)(i).

[(iv) Review the general policies followed in managing the CLASS Independence Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the CLASS Independence Fund is to be managed.

[(B) REPORT.—The report provided for in subparagraph (A)(ii) shall—

[(i) include—

[(I) a statement of the assets of, and the disbursements made from, the CLASS Independence Fund during the preceding fiscal year;

[(II) an estimate of the expected income to, and disbursements to be made from, the CLASS Independence Fund during the current fiscal year and each of the next 2 fiscal years;

【“(III) a statement of the actuarial status of the CLASS Independence Fund for the current fiscal year, each of the next 2 fiscal years, and as projected over the 75-year period beginning with the current fiscal year; and

【“(IV) an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable; and

【“(ii) be printed as a House document of the session of the Congress to which the report is made.

【“(C) RECOMMENDATIONS.—If the Board of Trustees determines that enrollment trends and expected future benefit claims on the CLASS Independence Fund are not actuarially sound in regards to the projection under section 3203(b)(1)(B)(i) and are unlikely to be resolved with reasonable premium increases or through other means, the Board of Trustees shall include in the report provided for in subparagraph (A)(ii) recommendations for such legislative action as the Board of Trustees determine to be appropriate, including whether to adjust monthly premiums or impose a temporary moratorium on new enrollments.

【“SEC. 3207. CLASS INDEPENDENCE ADVISORY COUNCIL.

【“(a) ESTABLISHMENT.—There is hereby created an Advisory Committee to be known as the ‘CLASS Independence Advisory Council’.

【“(b) MEMBERSHIP.—

【“(1) IN GENERAL.—The CLASS Independence Advisory Council shall be composed of not more than 15 individuals, not otherwise in the employ of the United States—

【“(A) who shall be appointed by the President without regard to the civil service laws and regulations; and

【“(B) a majority of whom shall be representatives of individuals who participate or are likely to participate in the CLASS program, and shall include representatives of older and younger workers, individuals with disabilities, family caregivers of individuals who require services and supports to maintain their independence at home or in another residential setting of their choice in the community, individuals with expertise in long-term care or disability insurance, actuarial science, economics, and other relevant disciplines, as determined by the Secretary.

【“(2) TERMS.—

【“(A) IN GENERAL.—The members of the CLASS Independence Advisory Council shall serve overlapping terms of 3 years (unless appointed to fill a vacancy occurring prior to the expiration of a term, in which case the individual shall serve for the remainder of the term).

【“(B) LIMITATION.—A member shall not be eligible to serve for more than 2 consecutive terms.

【“(3) CHAIR.—The President shall, from time to time, appoint one of the members of the CLASS Independence Advisory Council to serve as the Chair.

[(c) DUTIES.—The CLASS Independence Advisory Council shall advise the Secretary on matters of general policy in the administration of the CLASS program established under this title and in the formulation of regulations under this title including with respect to—

[(1) the development of the CLASS Independence Benefit Plan under section 3203;

[(2) the determination of monthly premiums under such plan; and

[(3) the financial solvency of the program.

[(d) APPLICATION OF FACa.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of that Act, shall apply to the CLASS Independence Advisory Council.

[(e) AUTHORIZATION OF APPROPRIATIONS.—

[(1) IN GENERAL.—There are authorized to be appropriated to the CLASS Independence Advisory Council to carry out its duties under this section, such sums as may be necessary for fiscal year 2011 and for each fiscal year thereafter.

[(2) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

[(SEC. 3208. SOLVENCY AND FISCAL INDEPENDENCE; REGULATIONS; ANNUAL REPORT.

[(a) SOLVENCY.—The Secretary shall regularly consult with the Board of Trustees of the CLASS Independence Fund and the CLASS Independence Advisory Council, for purposes of ensuring that enrollees premiums are adequate to ensure the financial solvency of the CLASS program, both with respect to fiscal years occurring in the near-term and fiscal years occurring over 20- and 75-year periods, taking into account the projections required for such periods under subsections (a)(1)(A)(i) and (b)(1)(B)(i) of section 3202.

[(b) NO TAXPAYER FUNDS USED TO PAY BENEFITS.—No taxpayer funds shall be used for payment of benefits under a CLASS Independent Benefit Plan. For purposes of this subsection, the term ‘taxpayer funds’ means any Federal funds from a source other than premiums deposited by CLASS program participants in the CLASS Independence Fund and any associated interest earnings.

[(c) REGULATIONS.—The Secretary shall promulgate such regulations as are necessary to carry out the CLASS program in accordance with this title. Such regulations shall include provisions to prevent fraud and abuse under the program.

[(d) ANNUAL REPORT.—Beginning January 1, 2014, the Secretary shall submit an annual report to Congress on the CLASS program. Each report shall include the following:

[(1) The total number of enrollees in the program.

[(2) The total number of eligible beneficiaries during the fiscal year.

[(3) The total amount of cash benefits provided during the fiscal year.

[(4) A description of instances of fraud or abuse identified during the fiscal year.

[(5) Recommendations for such administrative or legislative action as the Secretary determines is necessary to improve the

program, ensure the solvency of the program, or to prevent the occurrence of fraud or abuse.

["SEC. 3209. INSPECTOR GENERAL'S REPORT.

["The Inspector General of the Department of Health and Human Services shall submit an annual report to the Secretary and Congress relating to the overall progress of the CLASS program and of the existence of waste, fraud, and abuse in the CLASS program. Each such report shall include findings in the following areas:

["(1) The eligibility determination process.

["(2) The provision of cash benefits.

["(3) Quality assurance and protection against waste, fraud, and abuse.

["(4) Recouping of unpaid and accrued benefits.

["SEC. 3210. TAX TREATMENT OF PROGRAM.

["The CLASS program shall be treated for purposes of the Internal Revenue Code of 1986 in the same manner as a qualified long-term care insurance contract for qualified long-term care services.”.

["(2) CONFORMING AMENDMENTS TO MEDICAID.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 6505, is amended by inserting after paragraph (80) the following:

["(81) provide that the State will comply with such regulations regarding the application of primary and secondary payor rules with respect to individuals who are eligible for medical assistance under this title and are eligible beneficiaries under the CLASS program established under title XXXII of the Public Health Service Act as the Secretary shall establish; and”.

["(b) ASSURANCE OF ADEQUATE INFRASTRUCTURE FOR THE PROVISION OF PERSONAL CARE ATTENDANT WORKERS.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by subsection (a)(2), is amended by inserting after paragraph (81) the following:

["(82) provide that, not later than 2 years after the date of enactment of the Community Living Assistance Services and Supports Act, each State shall—

["(A) assess the extent to which entities such as providers of home care, home health services, home and community service providers, public authorities created to provide personal care services to individuals eligible for medical assistance under the State plan, and nonprofit organizations, are serving or have the capacity to serve as fiscal agents for, employers of, and providers of employment-related benefits for, personal care attendant workers who provide personal care services to individuals receiving benefits under the CLASS program established under title XXXII of the Public Health Service Act, including in rural and underserved areas;

["(B) designate or create such entities to serve as fiscal agents for, employers of, and providers of employment-related benefits for, such workers to ensure an adequate supply of the workers for individuals receiving benefits under the CLASS program, including in rural and underserved areas; and

“(C) ensure that the designation or creation of such entities will not negatively alter or impede existing programs, models, methods, or administration of service delivery that provide for consumer controlled or self-directed home and community services and further ensure that such entities will not impede the ability of individuals to direct and control their home and community services, including the ability to select, manage, dismiss, co-employ, or employ such workers or inhibit such individuals from relying on family members for the provision of personal care services.”.

[(c) PERSONAL CARE ATTENDANTS WORKFORCE ADVISORY PANEL.—

[(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Secretary of Health and Human Services shall establish a Personal Care Attendants Workforce Advisory Panel for the purpose of examining and advising the Secretary and Congress on workforce issues related to personal care attendant workers, including with respect to the adequacy of the number of such workers, the salaries, wages, and benefits of such workers, and access to the services provided by such workers.

[(2) MEMBERSHIP.—In appointing members to the Personal Care Attendants Workforce Advisory Panel, the Secretary shall ensure that such members include the following:

[(A) Individuals with disabilities of all ages.

[(B) Senior individuals.

[(C) Representatives of individuals with disabilities.

[(D) Representatives of senior individuals.

[(E) Representatives of workforce and labor organizations.

[(F) Representatives of home and community-based service providers.

[(G) Representatives of assisted living providers.

[(d) INCLUSION OF CLASS PROGRAM INFORMATION IN THE NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION; EXTENSION OF FUNDING.—Section 6021(d) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396p note) is amended—

[(1) in paragraph (2)(A)—

[(A) in clause (ii), by striking “and” at the end;

[(B) in clause (iii), by striking the period at the end and inserting “; and”; and

[(C) by adding at the end the following:

[(iv) include information regarding the CLASS program established under title XXXII of the Public Health Service Act and information regarding how benefits provided under a CLASS Independence Benefit Plan differ from disability insurance benefits.”; and

[(2) in paragraph (3), by striking “2010” and inserting “2015”.

[(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (d) take effect on January 1, 2011.

[(f) RULE OF CONSTRUCTION.—Nothing in this title or the amendments made by this title are intended to replace or displace public

or private disability insurance benefits, including such benefits that are for income replacement.】

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SOCIAL SECURITY ACT

* * * * *

TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

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STATE PLANS FOR MEDICAL ASSISTANCE

SEC. 1902. (a) A State plan for medical assistance must—

(1) * * *

* * * * *

(80) provide that the State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States; *and*

【(81) provide that the State will comply with such regulations regarding the application of primary and secondary payor rules with respect to individuals who are eligible for medical assistance under this title and are eligible beneficiaries under the CLASS program established under title XXXII of the Public Health Service Act as the Secretary shall establish;

【(82) provide that, not later than 2 years after the date of enactment of the Community Living Assistance Services and Supports Act, each State shall—

【(A) assess the extent to which entities such as providers of home care, home health services, home and community service providers, public authorities created to provide personal care services to individuals eligible for medical assistance under the State plan, and nonprofit organizations, are serving or have the capacity to serve as fiscal agents for, employers of, and providers of employment-related benefits for, personal care attendant workers who provide personal care services to individuals receiving benefits under the CLASS program established under title XXXII of the Public Health Service Act, including in rural and underserved areas;

【(B) designate or create such entities to serve as fiscal agents for, employers of, and providers of employment-related benefits for, such workers to ensure an adequate supply of the workers for individuals receiving benefits under the CLASS program, including in rural and underserved areas; and

【(C) ensure that the designation or creation of such entities will not negatively alter or impede existing programs, models, methods, or administration of service delivery that provide for consumer controlled or self-directed home and community services and further ensure that such entities will not impede the ability of individuals to direct and con-

trol their home and community services, including the ability to select, manage, dismiss, co-employ, or employ such workers or inhibit such individuals from relying on family members for the provision of personal care services; and]

[(83)] (81) provide for implementation of the payment models specified by the Secretary under section 1115A(c) for implementation on a nationwide basis unless the State demonstrates to the satisfaction of the Secretary that implementation would not be administratively feasible or appropriate to the health care delivery system of the State.

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DEFICIT REDUCTION ACT OF 2005

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TITLE VI—MEDICAID AND SCHIP

Subtitle A—Medicaid

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CHAPTER 2—LONG-TERM CARE UNDER MEDICAID

* * * * *

Subchapter B—Expanded Access to Certain Benefits

SEC. 6021. EXPANSION OF STATE LONG-TERM CARE PARTNERSHIP PROGRAM.

(a) * * *

* * * * *

(d) NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION.—

(1) * * *

(2) DUTIES.—

(A) IN GENERAL.—The National Clearinghouse for Long-Term Care Information shall—

(i) * * *

(ii) provide objective information to assist consumers with the decisionmaking process for determining whether to purchase long-term care insurance or to pursue other private market alternatives for purchasing long-term care and provide contact information for additional objective resources on planning for long-term care needs; and

(iii) maintain a list of States with State long-term care insurance partnerships under the Medicaid program that provide reciprocal recognition of long-term care insurance policies issued under such partnerships[; and].

[(iv) include information regarding the CLASS program established under title XXXII of the Public Health Service Act and information regarding how benefits provided under a CLASS Independence Benefit Plan differ from disability insurance benefits.]

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(3) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this subsection, \$3,000,000 for each of fiscal years 2006 through [2015] 2010.

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VII. DISSENTING VIEWS

DISSENTING VIEWS ON H.R. 1173, FISCAL RESPONSIBILITY AND RETIREMENT SECURITY ACT OF 2011

We are opposed to H.R. 1173, the so-called Fiscal Responsibility and Retirement Security Act of 2011. This bill would repeal the Community Living Assistance Services and Supports (CLASS) Act that was enacted as part of the Affordable Care Act in 2010. In considering H.R. 1173, precious Committee time has been used on the repeal of something that will not be implemented. H.R. 1173 does nothing to advance the nation's economic recovery, and it does nothing to address the long-term care needs of the nation. It serves only to divide and distract.

There is clearly a need for a national effort to address the growing costs of and demand for long-term care. This pressing concern must be addressed responsibly. The national average cost of a private room in a nursing home is \$70,000 per year, and the average rate for a home health aide is \$25 per hour. These are costs that are well beyond the means of average middle-class families, senior citizens, and individuals with disabilities. There are presently tax incentives for qualified long-term care insurance policies. However, private insurance is not the answer for all, or even most, American families. Many families simply cannot afford the high cost of these policies, which become significantly more expensive as individuals grow older. Presently, private insurance pays for only about seven percent of all spending on long-term care, with approximately seven million policies in force. The typical purchaser of such private insurance has income of more than \$75,000 per year and three-fourths of the policyholders have liquid assets in excess of \$100,000. In contrast, one-half of all spending on long-term care is paid for by the federal government and the states through Medicaid—a program that is only available to low-income individuals and families. Long-term care services makes up approximately one-third of federal and state Medicaid spending—\$111 billion in 2009. The CLASS Act should remain on the books, even in its dormant form, as a reminder of the need to address the long-term care needs of the nation and to serve as a guide in fulfilling this endeavor.

We agree with many of the policy issues raised by our colleagues in the Committee on Energy and Commerce during their mark-up of H.R. 1173.¹ We also rebut two claims that were made during the Ways and Means mark-up of H.R. 1173.

First, it was claimed during the mark-up that repeal of the CLASS Act was necessary in order to prevent a court ordering the Administration to implement the CLASS program. This claim is highly dubious. No such case has yet been filed in court. Furthermore, the Congressional Research Services analysis that was cited in making this claim does not suggest that such an outcome would be likely. The analysis, when read in its entirety, notes that there

¹ See Dissenting Views, House Report 112–342, Part 1.

are a range of outcomes—one of which could be ordering the Administration to implement the program, but another of which could be agreeing with the Administration that the program cannot be implemented.

Second, it was claimed during the mark-up that the CLASS program was added to the Affordable Care Act so that the Act would reduce the federal deficit. This is wrong. In a letter dated February 18, 2011, to Speaker Boehner, the Congressional Budget Office and the Joint Committee on Taxation estimated that repeal of the Affordable Care Act would increase the federal deficit by \$210 billion during 2011–2021. Of the deficit reduction achieved by the Affordable Care Act, approximately \$86 billion was due to premiums collected under the CLASS program. Therefore, even if the \$86 billion in deficit reduction that is attributed to the CLASS program is subtracted from the total amount, the Affordable Care Act still reduces the federal deficit by \$124 billion during the window. It is important to note that the Congressional Budget Office has also said that the Affordable Care Act’s deficit reduction actually increases in the second 10 years of its existence. And it does so while also ensuring affordable, quality health coverage for all uninsured and under-insured Americans, eliminating job lock, and creating a functional private marketplace where hardworking individuals and families can shop for coverage options that meet their needs.

The mark-up of H.R. 1173 is all the more striking because it occurs almost one year after the majority passed H.R. 2, a bill that would repeal the Affordable Care Act—including the CLASS Act. In that bill, the majority pledged to repeal *and* replace the health reform law. However, to date, there has been *no* replacement offered at all. Nothing has been offered by the majority that would allow adult children to remain on their parents’ health insurance policies, ban pre-existing condition limitations with respect to children, assist small businesses in the purchase of health insurance, or help senior citizens and people with disabilities fill the “donut hole” gap that exists with Medicare prescription drug coverage. Certainly, nothing has been offered that would help control health care costs or guarantee affordable, quality health coverage for all. These and other valuable benefits are all presently being provided pursuant to the Affordable Care Act. Assistance that the majority would repeal, but as of yet, not replace.

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