

111TH CONGRESS
2D SESSION

H. R. 5853

To amend title XXXII of the Public Health Service Act to require review and approval by law prior to collection of premiums under the CLASS program, to require notice to individuals prior to enrollment, and to require termination of the program in the event of actuarial unsoundness, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2010

Mr. BOUSTANY introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XXXII of the Public Health Service Act to require review and approval by law prior to collection of premiums under the CLASS program, to require notice to individuals prior to enrollment, and to require termination of the program in the event of actuarial unsoundness, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

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

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

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

9 (1) in section 3203(a)—

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

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

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

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

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

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

6 “(1) RECEIPT OF REPORTS.—It shall not be in
7 order in the Senate or in the House of Representa-
8 tives to consider a joint resolution described in such
9 paragraph unless the Senate or the House of Rep-
10 resentatives, respectively, has received, not fewer
11 than 60 days prior to such consideration—

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

14 “(B) the report of the Chief Actuary of the
15 Centers for Medicare & Medicaid Services de-
16 scribed in paragraph (2).

17 “(2) REPORT OF CMS CHIEF ACTUARY.—Not
18 later than 60 days after the Secretary designates the
19 CLASS Independence Benefit Plan under section
20 3203(a)(3), the Chief Actuary of the Centers for
21 Medicare & Medicaid Services shall submit to Con-
22 gress a report on the long-term actuarial soundness
23 of the CLASS Independence Benefit Plan. Such re-
24 port shall include—

25 “(A) an estimate of the average premium
26 per enrollee per year that will be required to en-

1 sure that the CLASS Independence Fund will
2 be actuarially sound over the 75-year period be-
3 ginning with the fiscal year in which such re-
4 port is submitted; and

5 “(B) an estimate of the average amount of
6 benefits that will be paid per enrollee per year
7 over such period.

8 “(3) JOINT RESOLUTION DEFINED.—The term
9 ‘joint resolution’ means only a joint resolution, the
10 matter after the resolving clause of which is as fol-
11 lows: ‘That Congress approves of the CLASS Inde-
12 pendence Benefit Plan designated by the Secretary
13 of Health and Human Services under section
14 3203(a)(3) of the Public Health Service Act.’. Such
15 term does not include a resolution that specifies
16 more than one action.

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

19 “(1) as an exercise of the rulemaking power of
20 the Senate and the House of Representatives, re-
21 spectively, and is deemed to be part of the rules of
22 each House, respectively, but applicable only with re-
23 spect to the procedure to be followed in that House
24 in the case of a joint resolution under such sub-

1 section, and it supersedes other rules only to the ex-
 2 tent that it is inconsistent with such rules; and

3 “(2) with full recognition of the constitutional
 4 right of either House to change the rules (so far as
 5 they relate to the procedure of that House) at any
 6 time, in the same manner, and to the same extent
 7 as in the case of any other rule of that House.”.

8 **SEC. 3. REQUIRED NOTICE PRIOR TO ENROLLMENT.**

9 Section 3204(a) of the Public Health Service Act, as
 10 added by section 8002(a) of the Patient Protection and
 11 Affordable Care Act (Public Law 111–148), is amended
 12 by adding at the end the following new paragraph:

13 “(4) REQUIRED NOTICE PRIOR TO ENROLL-
 14 MENT.—

15 “(A) IN GENERAL.—An employer may not
 16 enroll an employee in the CLASS program
 17 under paragraph (1) unless, prior to enrolling
 18 the employee, the employer—

19 “(i) has provided to the employee the
 20 exact statements described in subpara-
 21 graph (C) in a single written notice that
 22 displays such statements in the order in
 23 which they are set forth in such subpara-
 24 graph; and

1 “(ii) certifies to the Secretary that the
2 individual has received such notice.

3 “(B) ENROLLMENT OTHER THAN BY EM-
4 PLOYER.—In the case of an individual seeking
5 to enroll in the CLASS program other than
6 through enrollment by the individual’s employer
7 under paragraph (1), the Secretary shall not
8 permit the individual to enroll unless, prior to
9 the individual’s enrollment, the Secretary has
10 provided to the individual the exact statements
11 described in subparagraph (C) in a single writ-
12 ten notice that displays such statements in the
13 order in which they are set forth in such sub-
14 paragraph and the individual has acknowledged
15 in writing the receipt of such notice.

16 “(C) STATEMENTS DESCRIBED.—The
17 statements described in this subparagraph are
18 the following:

19 “(i) The Chief Actuary of the Centers
20 for Medicare & Medicaid Services made the
21 following assessment in April 2010 regard-
22 ing the CLASS program: ‘In general, vol-
23 untary, unsubsidized, and non-under-
24 written insurance programs such as
25 CLASS face a significant risk of failure as

1 a result of adverse selection by partici-
2 pants. Individuals with health problems or
3 who anticipate a greater risk of functional
4 limitation would be more likely to partici-
5 pate than those in better-than-average
6 health. . . . [T]here is a very serious risk
7 that the problem of adverse selection will
8 make the CLASS program unsustainable.’.

9 “(ii) The Chief Actuary estimated in
10 April 2010 that the CLASS program will
11 likely begin to run deficits in 2025 and
12 continue to run deficits thereafter.

13 “(iii) The Chief Actuary further esti-
14 mated in April 2010 that an initial average
15 premium level of about \$240 per month
16 would be required to adequately fund
17 CLASS program costs.

18 “(iv) The Federal Government will
19 collect more than \$70 billion in CLASS
20 program premiums from 2012 through
21 2019, according to an estimate of the Con-
22 gressional Budget Office in March 2010.
23 Although these premiums are credited as
24 IOUs or United States Government securi-
25 ties in a ‘CLASS Independence Fund,’ the

1 money, itself, is used to pay for other Gov-
2 ernment expenses, including other pro-
3 grams under the health care law enacted in
4 March 2010 that are unrelated to the
5 CLASS program. There is no separate pool
6 of money set aside to pay CLASS program
7 benefits, and workers and retirees could be
8 required to repay these IOUs in the form
9 of higher taxes.

10 “(v) Under section 3212 of the Public
11 Health Service Act, the CLASS program
12 will terminate immediately if an annual re-
13 port of the Board of Trustees of the Class
14 Independence Fund indicates that the
15 CLASS program will not be actuarially
16 sound over the 75-year period beginning
17 with the fiscal year in which the report is
18 submitted.”.

19 **SEC. 4. NO COLLECTION OF PREMIUMS PENDING PROMUL-**
20 **GATION OF FINAL REGULATIONS.**

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

24 (1) by striking “The Secretary” and inserting
25 the following:

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

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

4 “(2) NO COLLECTION OF PREMIUMS PENDING
5 PROMULGATION OF FINAL REGULATIONS.—No pre-
6 miums may be deducted from an individual’s wages
7 or otherwise collected under section 3204(e) before
8 the Secretary has promulgated, in final form—

9 “(A) the regulations described in section
10 3202(6)(C);

11 “(B) the rule described in section
12 3203(a)(3); and

13 “(C) the regulations described in para-
14 graph (1).”.

15 **SEC. 5. TERMINATION OF PROGRAM IF CLASS INDEPEND-**
16 **ENCE FUND ACTUARIALLY UNSOUND.**

17 Title XXXII of the Public Health Service Act, as
18 amended by section 2, is further amended by adding at
19 the end the following new section:

20 **“SEC. 3212. TERMINATION OF PROGRAM IF CLASS INDE-**
21 **PENDENCE FUND ACTUARIALLY UNSOUND.**

22 “(a) IN GENERAL.—If the Board of Trustees of the
23 CLASS Independence Fund submits to Congress the re-
24 port described in subsection (b) (relating to the actuarial
25 unsoundness of the CLASS Independence Fund)—

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

4 “(2) no premiums shall be deducted from an in-
5 dividual’s wages or otherwise collected under section
6 3204(e) after such date;

7 “(3) no benefits shall be provided under section
8 3205(e) after such date;

9 “(4) the Secretary shall refund any amount re-
10 maining in the CLASS Independence Fund (estab-
11 lished under section 3206(a)) on such date, accord-
12 ing to the process described in subsection (c), and
13 send notification to the Secretary of the Treasury
14 when the refund is complete;

15 “(5) in the case of notification under paragraph
16 (4), the CLASS Independence Fund and the Board
17 of Trustees of the CLASS Independence Fund (es-
18 tablished under section 3206(c)(1)) shall be abol-
19 ished as of the date of such notification;

20 “(6) the CLASS Independence Advisory Council
21 (established under section 3207(a)) is abolished as
22 of the date of the submission of the report;

23 “(7) the Secretary shall take such other steps
24 as the Secretary considers necessary to terminate
25 the CLASS program;

1 “(8) in lieu of the annual report required by
2 section 3208(d), the Secretary shall submit to Con-
3 gress a quarterly report on the status of the termi-
4 nation of the CLASS program in accordance with
5 this section, until such time as the Secretary indi-
6 cates in such a report that the program has been
7 completely terminated; and

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

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

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

4 “(1) IN GENERAL.—Not later than 180 days
 5 after the date of the submission of the report de-
 6 scribed in subsection (b), subject to paragraph (2),
 7 the Secretary shall pay to each individual enrolled in
 8 the CLASS program on the date of the submission
 9 of such report an amount from the CLASS Inde-
 10 pendence Fund equal to the difference of—

11 “(A) the total amount such respective indi-
 12 vidual paid in premiums as of such date under
 13 the CLASS program; and

14 “(B) the lesser of—

15 “(i) the total amount of benefits de-
 16 scribed in section 3205(b) received as of
 17 such date by such individual under the
 18 program; or

19 “(ii) the amount described in subpara-
 20 graph (A).

21 “(2) INSUFFICIENT OR EXCESS FUNDS.—

22 “(A) INSUFFICIENT FUNDS.—If the
 23 amount remaining in the CLASS Independence
 24 Fund on the date of the submission of the re-
 25 port described in subsection (b) is insufficient

1 to make the refund described in paragraph (1),
2 the Secretary shall pay to each individual en-
3 rolled in the CLASS program on such date an
4 amount that bears the same ratio to the
5 amount remaining in the CLASS Independence
6 Fund on such date as the amount determined
7 under such paragraph for such respective indi-
8 vidual bears to the sum obtained by adding
9 each amount obtained by applying such para-
10 graph to each such individual.

11 “(B) EXCESS FUNDS.—If an amount re-
12 mains in the CLASS Independence Fund after
13 the Secretary makes the refund described in
14 paragraph (1), such amount shall be trans-
15 ferred to the general fund of the Treasury.

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

1 **SEC. 6. CONFORMING AMENDMENTS.**

2 Title XXXII of the Public Health Service Act, as
3 amended by sections 2 and 5, is further amended—

4 (1) in section 3204—

5 (A) in subsection (a)(1), by striking “para-
6 graph (2)” and inserting “paragraphs (2) and
7 (4)”; and

8 (B) in subsection (e)—

9 (i) in paragraph (1), by striking “An
10 amount” and inserting “Subject to sections
11 3203(a)(4), 3208(c)(2), and 3212(a)(2),
12 an amount”; and

13 (ii) in paragraph (2), by striking “The
14 Secretary” and inserting “Subject to sec-
15 tions 3203(a)(4), 3208(c)(2), and
16 3212(a)(2), the Secretary”;

17 (2) in section 3208(d), in the first sentence, by
18 striking “Beginning January 1” and inserting “Sub-
19 ject to section 3212(a)(8), beginning January 1”;
20 and

21 (3) in section 3209, in the first sentence, by
22 striking “The Inspector General” and inserting
23 “Subject to section 3212(a)(9), the Inspector Gen-
24 eral”.

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