

TERRORISM RISK INSURANCE REVISION ACT OF 2005

DECEMBER 6, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

DISSENTING AND ADDITIONAL VIEWS

[To accompany H.R. 4314]

The Committee on Financial Services, to whom was referred the bill (H.R. 4314) to extend the applicability of the Terrorism Risk Insurance Act of 2002, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Terrorism Risk Insurance Revision Act of 2005”.

SEC. 2. EXTENSION OF PROGRAM AND PROGRAM CHANGES.

(a) **IN GENERAL.**—Title I of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) is amended—

(1) by striking sections 101 through 106 and inserting the following new sections:

“SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

“(a) **FINDINGS.**—The Congress finds that—

“(1) the ability of businesses and individuals to obtain property, casualty, group life, and NBCR insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

“(2) property, casualty, and life insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

“(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

“(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

“(5) a decision by property, casualty, group life, and NBCR insurers to deal with such uncertainties, either by terminating property, casualty, group life and NBCR coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

“(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

“(b) **PURPOSE.**—The purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

“(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property, casualty, group life, and NBCR insurance for terrorism risk; and

“(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

“SEC. 102. DEFINITIONS.

“In this title, the following definitions shall apply:

“(1) **ACT OF TERRORISM.**—

“(A) **CERTIFICATION.**—The term ‘act of terrorism’ means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—

“(i) to be an act of terrorism;

“(ii) to be a violent act or an act that is dangerous to—

“(I) human life;

“(II) property; or

“(III) infrastructure;

“(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

“(I) an air carrier or vessel described in paragraph (5)(B); or

“(II) the premises of a United States mission; and

“(iv) to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

“(B) LIMITATION.—No act shall be certified by the Secretary as an act of terrorism if the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers’ compensation or group life insurance.

“(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

“(D) NONDELEGATION.—The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

“(2) AFFILIATE.—The term ‘affiliate’ means, with respect to an insurer, any insurer that owns, is owned by, or is under common ownership with another insurer.

“(3) CASUALTY INSURANCE.—The term ‘casualty insurance’ means—

“(A) insurance, including excess insurance and surety insurance, against legal liability for losses caused by the death, injury, or disability of any person or for damage to property, with provision for medical, hospital and surgical benefits to the injured persons; and

“(B) for the purposes of this Act, does not include any type of commercial automobile or workers’ compensation insurance.

“(4) COVERED LINE OF INSURANCE.—The term ‘covered line of insurance’ means—

“(A) commercial property insurance, commercial casualty insurance, workers’ compensation insurance and group life insurance; and

“(B) does not include—

“(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;

“(ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance;

“(iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;

“(iv) insurance for medical malpractice;

“(v) health or life insurance, except group life insurance;

“(vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.);

“(vii) reinsurance or retrocessional reinsurance; or

“(viii) commercial automobile insurance.

“(5) DIRECT EARNED PREMIUM.—The term ‘direct earned premium’ means a direct earned premium for commercial property, commercial casualty, workers’ compensation, or group life insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraphs (A) and (B) of paragraph (10).

“(6) EXEMPT COMMERCIAL PURCHASER.—The term ‘exempt commercial purchaser’ means any person purchasing commercial insurance that meets the following requirements:

“(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

“(B) The person meets at least two of the following criteria:

“(i) The person possesses a net worth in excess of \$20,000,000.

“(ii) The person generates annual revenues in excess of \$50,000,000.

“(iii) The person employs more than 500 full time or full time equivalent employees per individual insured or is a member of affiliated group employing more than 1,000 employees in the aggregate.

“(iv) The person pays annual aggregate nationwide insurance premiums in excess of \$100,000 for covered lines of insurance.

“(v) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000.

“(vi) The person is a municipality with a population in excess of 50,000 persons.

“(7) EXEMPT COMMERCIAL PURCHASER CERTIFICATION.—The term ‘exempt commercial purchaser certification’ means a written certification that the insurer offering a policy to an exempt commercial purchaser has obtained, at least within the previous 12 months, a certification signed by the qualified risk manager, the chief executive officer, or the chief financial officer of the exempt commercial purchaser, certifying with respect to the insurance to which the requirements of section 103(c)(1) apply to that insurer that—

“(A) the purchaser has an employee that meets the definition of a qualified risk manager under this section;

“(B) the purchaser meets the definition of an exempt commercial purchaser in accordance with this section;

“(C) the purchaser is aware that the policy being considered for purchase contains forms and rates that are not subject to State regulatory review or approval;

“(D) the purchaser has or has retained the necessary expertise to negotiate its own policy language and rates; and

“(E) the purchaser agrees to the use of exempted rates and forms by its insurer or insurers.

“(8) GROUP LIFE INSURANCE.—The term ‘group life insurance’ means an insurance contract that provides term life insurance coverage, accidental death coverage, or a combination thereof, for a number of individuals under a single contract, on the basis of a group selection of risks, but does not include ‘Corporate Owned Life Insurance’ or ‘Business Owned Life Insurance,’ each as defined under the Internal Revenue Code of 1986, or any similar product.

“(9) HOME STATE.—The term ‘home State’ means as follows:

“(A) In the case of a policy written for commercial risks that are primarily located in a State, such term means such State.

“(B) If subparagraph (A) does not apply, such term means the State where the commercial policyholder has its principal place of business (such as where the policyholder’s headquarters are located, as determined by the predominant physical location in the United States of the officers and senior management of the policyholder).

“(10) INSURED LOSS.—The term ‘insured loss’ means any loss resulting from an act of terrorism (including an act of war, in the case of workers’ compensation and group life insurance) that is covered by primary or excess property, casualty, workers’ compensation, or group life insurance issued by an insurer if such loss—

“(A) occurs within the United States; or

“(B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

“(11) INSURER.—The term ‘insurer’ means any entity, including any affiliate thereof—

“(A) that is—

“(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;

“(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

“(iii) approved for the purpose of offering a covered line of insurance by a Federal agency in connection with maritime, energy, or aviation activity;

“(iv) a State residual market insurance entity or State workers’ compensation fund; or

“(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

“(B) that receives direct earned premiums for any type of covered line of insurance coverage, other than in the case of entities described in subsections (d) and (f) of section 103; and

“(C) that meets any other criteria that the Secretary may reasonably prescribe.

“(12) INSURER DEDUCTIBLE.—The term ‘insurer deductible’ means—

“(A) for the Transition Period, the value of an insurer’s direct earned premiums over the calendar year immediately preceding the date of enactment of this Act, multiplied by 1 percent;

“(B) for Program Year 1, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 1, multiplied by 7 percent;

“(C) for Program Year 2, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 2, multiplied by 10 percent;

“(D) for Program Year 3, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 3, multiplied by 15 percent;

“(E) for Program Year 4—

“(i) except as provided in clause (ii), the value of an insurer’s direct earned premium for a covered line of insurance over the calendar year immediately preceding Program Year 4, multiplied by—

“(I) for workers’ compensation insurance, 16 percent;

“(II) for group life insurance, 21.5 percent;

“(III) for property insurance, 20 percent; and

“(IV) for casualty insurance, 25 percent; and

“(ii) with respect to NBCR terrorism coverage, the value of an insurer’s direct earned premium for a covered line of insurance over the calendar year immediately preceding Program Year 4, multiplied by the following percentages which shall be treated as sub-deductibles that apply in lieu of the deductibles set forth in clause (i) for NBCR terrorism losses—

“(I) for workers’ compensation insurance, 7.5 percent;

“(II) for group life insurance, 7.5 percent;

“(III) for property insurance, 7.5 percent; and

“(IV) for casualty insurance, 7.5 percent; and

“(iii) if, for any covered line of insurance, an insurer incurs insured losses caused by NBCR terrorism, such NBCR insured losses shall be applied against both the deductible set forth in clause (i) and the NBCR terrorism deductible set forth in clause (ii) for that covered line of insurance;

“(F) for any Additional Program Years—

“(i) except as provided in clause (ii), the value of an insurer’s direct earned premium for a covered line of insurance over the calendar year immediately preceding that year, multiplied by the insurer deductible for each covered line of insurance for the preceding calendar year plus an additional percentage, as follows—

“(I) for workers’ compensation insurance, 2.0 percent;

“(II) for group life insurance, 2.5 percent;

“(III) for property insurance, 2.5 percent; and

“(IV) for casualty insurance, 5.0 percent; and

“(ii) with respect to NBCR terrorism coverage, the value of an insurer’s direct earned premium for a covered line of insurance over the calendar year immediately preceding that year, multiplied by the NBCR terrorism deductible for the preceding year for that covered line of insurance plus the following additional percentages, all of which shall be treated as subdeductibles that apply in lieu of the deductibles listed in clause (i) for NBCR terrorism insured losses—

“(I) for workers’ compensation insurance, 0.75 percent;

“(II) for group life insurance, 0.75 percent;

“(III) for property insurance, 0.75 percent; and

“(IV) for casualty insurance, 0.75 percent; and

“(iii) if, for any covered line of insurance, an insurer incurs insured losses caused by NBCR terrorism, such NBCR insured losses shall be applied against both the deductible set forth in clause (i) and the NBCR terrorism deductible set forth in clause (ii) for that covered line of insurance;

“(G) notwithstanding subparagraphs (A) through (F), for the Transition Period and any other Program Year or other calendar year, if an insurer has not had a full year of operations during the calendar year immediately preceding such Period or year, such portion of the direct earned premiums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums; and

“(H) if, in any calendar year, aggregate industry insured losses exceed \$1,000,000,000, the insurer deductibles for the next calendar year shall be reduced by 0.1 percent for each \$1,000,000,000 in insured losses that have occurred during the preceding calendar year, except that no insurer deductible shall be reduced below 5 percent.

“(13) NAIC.—The term ‘NAIC’ means the National Association of Insurance Commissioners.

“(14) OWNERSHIP.—An insurer ‘owns’ another insurer if the insurer, directly or indirectly or acting through one or more other persons, owns 25 percent or more of any class of voting securities of the other insurer.

“(15) NBCR TERRORISM.—The term ‘NBCR terrorism’ means an act of terrorism involving nuclear, biological, chemical, or radioactive reactions, releases, or contaminations, to the extent any insured losses are caused by any such reactions, releases, or contaminations.

“(16) PERSON.—The term ‘person’ means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

“(17) PROGRAM.—The term ‘Program’ means the Terrorism Insurance Program established by this title.

“(18) PROGRAM YEARS.—

“(A) TRANSITION PERIOD.—The term ‘Transition Period’ means the period beginning on the date of enactment of this Act and ending on December 31, 2002.

“(B) PROGRAM YEAR 1.—The term ‘Program Year 1’ means the period beginning on January 1, 2003 and ending on December 31, 2003.

“(C) PROGRAM YEAR 2.—The term ‘Program Year 2’ means the period beginning on January 1, 2004 and ending on December 31, 2004.

“(D) PROGRAM YEAR 3.—The term ‘Program Year 3’ means the period beginning on January 1, 2005 and ending on December 31, 2005.

“(E) PROGRAM YEAR 4.—The term ‘Program Year 4’ means the period beginning on January 1, 2006 and ending on December 31, 2006.

“(F) ADDITIONAL PROGRAM YEARS.—The term ‘Additional Program Year’ means any additional one-year period after Program Year 4 during which the Program is in effect, which period shall begin on January 1 and end on December 31 of the same calendar year.

“(19) PROPERTY INSURANCE.—The term ‘property insurance’ means—

“(A) except as provided in subparagraph (B), insurance on real or personal property of every kind, including excess insurance, against loss or damage from any and all hazard or cause and against loss consequential upon such loss or damage, including business interruption insurance, other than non-contractual legal liability for such loss or damage; and

“(B) does not include any type of commercial automobile or workers’ compensation insurance.

“(20) QUALIFIED RISK MANAGER.—The term ‘qualified risk manager’ means any person who meets all of the following criteria:

“(A) The person is an employee of, or third party consultant retained by, the commercial policyholder.

“(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

“(C) The person possesses at least 1 of the following credentials:

“(i) A bachelor’s or higher degree in risk management issued by an accredited college or university.

“(ii) A designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as ‘CPCU’) issued by the American Institute for CPCU/Insurance Institute of America.

“(iii) A designation as an Associate in Risk Management (ARM) issued by American Institute for CPCU/Insurance Institute of America.

“(iv) A designation as a Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research.

“(v) A designation as a RIMS Fellow (RS) issued by the Global Risk Management Institute.

“(vi) At least 5 years of experience in 1 or more of the following areas of commercial property insurance or commercial casualty insurance:

“(I) Risk financing.

“(II) Claims administration.

“(III) Loss prevention.

“(IV) Risk and insurance coverage analysis.

“(21) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

“(22) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

“(23) UNITED STATES.—The term ‘United States’ means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

“(24) WORKERS’ COMPENSATION.—The term ‘workers’ compensation’ means insurance against loss from liability imposed by law upon employers to compensate employees and their dependents for injury sustained by the employees arising out of and in the course of the employment, irrespective of negligence or of the fault of either party.

“(25) RULE OF CONSTRUCTION FOR DATES.—With respect to any reference to a date in this title, such day shall be construed—

“(A) to begin at 12:01 a.m. on that date; and

“(B) to end at midnight on that date.

“SEC. 103. TERRORISM INSURANCE PROGRAM.

“(a) ESTABLISHMENT OF PROGRAM.—

“(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insurance Program.

“(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

“(3) MANDATORY PARTICIPATION.—Each entity that meets the definition of an insurer under this title shall participate in the Program.

“(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under this section with respect to an insured loss that is covered by an insurer, unless—

“(1) the person that suffers the insured loss, or a person acting on behalf of that person, files a claim with the insurer;

“(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the program and the Federal share of compensation for insured losses under the Program—

“(A) in the case of any policy that is issued before the date of enactment of this Act, not later than 90 days after that date of enactment;

“(B) in the case of any policy that is issued within 90 days of the date of enactment of this Act, at the time of offer, purchase, and renewal of the policy; and

“(C) in the case of any policy that is issued more than 90 days after the date of enactment of this Act, on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy;

“(3) the insurer processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe; and

“(4) the insurer submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

“(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

“(B) written certification—

“(i) of the underlying claim; and

“(ii) of all payments made for insured losses; and

“(C) certification of its compliance with the provisions of this subsection.

“(c) MANDATORY AVAILABILITY.—Each entity that meets the definition of an insurer under section 102—

“(1) shall make available, in all of its covered lines of insurance policies, coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism;

“(2) shall make available, in any of its covered lines of insurance policies that exclude coverage for losses resulting from NBCR terrorism, coverage for losses resulting from NBCR terrorism that may differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than NBCR terrorism; and

“(3) shall make available, in any life insurance policy, coverage that does not preclude future lawful foreign travel by the person insured, and shall not

charge a premium for such coverage that is excessive and not based on a good faith actuarial analysis.

“(d) STATE RESIDUAL MARKET INSURANCE ENTITIES.—

“(1) IN GENERAL.—The Secretary shall issue regulations, as soon as practicable after the date of enactment of this Act, that apply the provisions of this title to State residual market insurance entities, State workers’ compensation funds, and State workers’ compensation reinsurance pools.

“(2) TREATMENT OF CERTAIN ENTITIES.—For purposes of the regulations issued pursuant to paragraph (1)—

“(A) a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer; and

“(B) a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer’s insured losses.

“(3) TREATMENT OF PARTICIPATION IN CERTAIN ENTITIES.—Any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.

“(e) INSURED LOSS SHARED COMPENSATION.—

“(1) FEDERAL SHARE.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during each Program Year shall be equal to that portion of the amount of such insured losses for each covered line of insurance that exceeds the applicable insurer deductible required to be paid during such Program Year, multiplied by a percentage based on aggregate industry insured losses for a Program Year, which shall be as follows:

“(i) 80 percent of the aggregate industry insured losses of less than \$10,000,000,000;

“(ii) 85 percent of the aggregate industry insured losses between \$10,000,000,000 and \$20,000,000,000;

“(iii) 90 percent of the aggregate industry insured losses between \$20,000,000,000 and \$40,000,000,000; and

“(iv) 95 percent of the aggregate industry insured losses above industry losses above \$40,000,000,000;

and shall be prorated by insurer based on each insurer’s percentage of the aggregate industry insured losses for that Program Year.

“(B) PROGRAM TRIGGER.—No compensation shall be paid by the Secretary under subsection (a) unless the aggregate industry insured losses exceed—

“(i) \$50,000,000, with respect to insured losses occurring in Program Year 4;

“(ii) \$100,000,000, with respect to insured losses occurring in the Additional Program Year beginning on January 1, 2007;

“(iii) with respect to each Additional Program Year thereafter that coverage is provided under the Program, the amount that is equal to the sum of (I) the dollar amount applicable under this subparagraph for the Program Year preceding such Additional Program Year, and (II) \$50,000,000;

except that the applicable Program Trigger amount shall be reduced by \$10,000,000 for each \$1,000,000,000 in insured losses occurring in any preceding year, provided that the Program Trigger shall not be reduced below \$50,000,000 for any year.

“(C) PROHIBITION ON DUPLICATIVE COMPENSATION.—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses.

“(2) TRIA CAPITAL RESERVE FUNDS.—

“(A) ESTABLISHMENT.—Any insurer may establish a TRIA Capital Reserve Fund (in this section referred to as a ‘CRF’) in which it may hold funds in a fiduciary capacity on behalf of the Secretary.

“(B) FUNDING.—An insurer may fund a CRF by making an election, in advance, to treat some or all of the premiums it has disclosed pursuant to section 103(b)(2) as TRIA program fee charges imposed by the Secretary. Any such premiums for which such an election has been made must be maintained in segregated accounts in a fiduciary capacity on behalf of the Secretary. Such funds may be invested in any otherwise legally permissible

manner but all interest, dividends, and capital accumulations also shall be retained in such segregated accounts on behalf of the Secretary.

“(C) USE.—Funds from a CRF shall be collected and used by the Secretary to offset, in whole or in part, the Federal share of compensation provided to all insurers under the Program as provided for in paragraph (1), except that an insurer may first use the funds in a CRF of that insurer to satisfy any one or more of the following:

“(i) The applicable insurer deductibles for the insurer.

“(ii) The portion of the insurer’s losses that exceed the insurer deductible but are not compensated by the Federal share pursuant to paragraph (1).

“(iii) The insurer’s obligations to pay for insured losses if the program trigger established in paragraph (1)(B) is not satisfied.

“(iv) Any risk sharing obligations the insurer may have under any agreements made pursuant to or in accordance with paragraph (3).

“(D) TERMINATION.—

“(i) TERMINATION OF PROGRAM.—Upon termination of the Program under section 108(a), and subject to the Secretary’s continuing authority under section 108(b) to adjust claims in satisfaction of the Federal share of compensation under the Program as provided in paragraph (1) of this subsection, 10 percent of each insurer’s CRF funds shall be remitted to the Secretary and the remainder shall be remitted to the insurer. The Secretary shall determine the manner in which the remittance of such income to the insurer shall be made.

“(ii) ELIMINATION OF FEDERAL SHARE OF COMPENSATION.—If the Program remains in effect but the Federal share of compensation for insured losses under the Program is eliminated from the Program, the CRF funds shall be retained and used for the purposes set forth in subparagraph (C) of this paragraph. At such time as an insurer’s liability for insured losses under the Program terminates, as a consequence of the insurer’s termination of its business or otherwise, the insurer shall remit any remaining CRF funds to the Secretary.

“(3) RISK-SHARING MECHANISMS.—

“(A) FINDING; RULE OF CONSTRUCTION.—Congress finds that it is desirable to encourage the growth of nongovernmental, private market reinsurance capacity for protection against losses arising from acts of terrorism. Therefore, nothing in this title shall prohibit insurers from developing risk-sharing mechanisms (including mutual reinsurance facilities and agreements) to voluntarily reinsure terrorism losses between and among themselves that are not subject to reimbursement under this section 103.

“(B) ESTABLISHMENT OF ADVISORY COMMITTEE.—The Secretary shall appoint an Advisory Committee to—

“(i) encourage the creation and development of such mechanisms;

“(ii) assist the Secretary and be available to administer such mechanisms; and

“(iii) develop articles of incorporation, bylaws, and a plan of operation for any long-term reinsurance facility authorized or created in the future.

“(C) MEMBERSHIP.—The Advisory Committee shall be composed of nine members who are directors, officers, or other employees of insurers that are participating or that desire to participate in such mechanisms, and who are representative of the affected sectors of the insurance industry. In making these appointments, the Secretary shall solicit major trade associations of the insurance industry to nominate lists of qualified individuals representative of the commercial property insurance, commercial casualty insurance, group life insurance, and reinsurance industries.

“(4) CAP ON ANNUAL LIABILITY.—

“(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed \$100,000,000,000 during any Program Year (until such time as the Congress may act otherwise with respect to such losses)—

“(i) the Secretary shall not make any payment under this title for any portion of the amount of such losses that exceeds \$100,000,000,000; and

“(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of that amount that exceeds \$100,000,000,000.

“(B) INSURER SHARE.—For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program.

“(5) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed \$100,000,000,000 during any Program Year and the Congress shall determine the procedures for and the source of any payments for such excess insured losses.

“(6) FINAL NETTING.—The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

“(7) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, unless expressly provided, and shall not be subject to judicial review.

“(8) FULL RECOUPMENT OF FEDERAL SHARE.—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers’ compensation and group life insurance), terrorism loss risk-spreading premiums in an amount equal to the total amount paid by the Secretary in accordance with this section.

“(9) POLICY SURCHARGE FOR TERRORISM LOSS RISK-SPREADING PREMIUMS.—

“(A) POLICYHOLDER PREMIUM.—Any amount established by the Secretary as a terrorism loss risk-spreading premium shall—

“(i) be imposed as a policyholder premium surcharge on all covered lines of insurance policies in force after the date of such establishment;

“(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and

“(iii) be based on a percentage of the premium amount charged for covered lines of insurance coverage under the policy.

“(B) COLLECTION.—The Secretary shall provide for insurers to collect terrorism loss risk-spreading premiums and remit such amounts collected to the Secretary.

“(C) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for covered lines of insurance coverage under the policy.

“(D) ADJUSTMENT FOR URBAN AND SMALLER COMMERCIAL AND RURAL AREAS AND DIFFERENT LINES OF INSURANCE.—

“(i) ADJUSTMENTS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—

“(I) the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

“(II) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

“(III) the various exposures to terrorism risk for different lines of insurance.

“(ii) RECOUPMENT OF ADJUSTMENTS.—Any recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums.

“(E) TIMING OF PREMIUMS.—The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.

“(F) REPLENISHMENT OF TRIA CAPITAL RESERVE FUNDS.—After any funds expended directly from the United States Treasury are fully repaid, the balance of the amounts collected under this paragraph shall be used to fully replenish all insurer CRFs used by the Secretary in accordance with the provisions of paragraph (2)(C) that were not used by the insurer to satisfy its obligations in accordance with clauses (i) through (iv) of paragraph (2)(C).

“(f) CAPTIVE INSURERS AND OTHER SELF-INSURANCE ARRANGEMENTS.—The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers’ compensation self-insurance programs and State workers’ compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an in-

sured loss and all of the provisions of this title are applied comparably to such entities.

“(g) REINSURANCE TO COVER EXPOSURE.—

“(1) OBTAINING COVERAGE.—This title may not be construed to limit or prevent insurers from obtaining reinsurance coverage for insurer deductibles or insured losses retained by insurers pursuant to this section, nor shall the obtaining of such coverage affect the calculation of such deductibles or retentions.

“(2) LIMITATION ON FINANCIAL ASSISTANCE.—The amount of financial assistance provided pursuant to this section, including amounts from a CRF used pursuant to subsection (e)(2)(C), shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the Transition Period or a Program Year provided pursuant to this section, may not exceed the aggregate amount of the insurer’s insured losses for such period. If such recoveries and financial assistance for the Transition Period or a Program Year exceed such aggregate amount of insured losses for that period and there is no agreement between the insurer and any reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

“(h) PERSONAL LINES STUDY.—

“(1) IN GENERAL.—The Comptroller General of the United States, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, including a cross-section of insurers, independent insurance agents and brokers, and policyholders, shall conduct a study concerning the exposure of personal lines (including homeowners insurance) to terrorism risk, the coverage currently available, and potential policy responses.

“(2) REPORT.—Not later than September 1, 2006, the Comptroller General shall submit a report to the Congress on the results of the study conducted under subparagraph (1), together with specific policy recommendations.

“(i) STUDY OF RISKS STEMMING FROM NUCLEAR, BIOLOGICAL, CHEMICAL AND RADIOACTIVE EVENTS.—

“(1) IN GENERAL.—The Comptroller General of the United States, after consultation with the NAIC, representatives of the insurance industry, including a cross-section of insurers, independent insurance agents and brokers, and policyholders, and other experts in the insurance field, shall conduct a study concerning the risk of potential terrorist acts stemming from the use of nuclear, biological, chemical, and radioactive weapons.

“(2) REPORT.—Not later than September 1, 2006, the Comptroller General shall submit a report to the Congress on the results of the study conducted under paragraph (1), together with specific policy recommendations.

“(j) STUDY OF NEED FOR FEDERAL NATURAL DISASTER CATASTROPHE PROGRAM.—

“(1) IN GENERAL.—The Comptroller General of the United States, after consultation with the NAIC, representatives of the insurance industry, including a cross-section of insurers, independent insurance agents and brokers, and policyholders, and other experts in the insurance field, shall conduct a study concerning the need for a Federal program that provides for a system of shared public and private compensation for insured losses resulting from natural disaster.

“(2) ISSUES.—The study under this section shall include an analysis of whether, and in what manner, such a Federal program should incorporate any or all of the following concepts: tax-free capital reserves; voluntary mutual reinsurance pools; a distinction between sophisticated and non-sophisticated commercial purchasers for the purposes of exemption from regulation; or Federal support for the purchase of reinsurance by State disaster insurance programs.

“(3) REPORT.—Not later than September 1, 2006, the Comptroller General shall submit a report to the Congress on the results of the study conducted under this subsection together with specific policy recommendations.

“SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

“(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the program, including authority—

“(1) to investigate and audit all claims under the Program; and

“(2) to prescribe regulations and procedures to effectively administer and implement the Program, and to ensure that all insurers and self-insured entities that participate in the Program are treated comparably under the Program.

“(b) INTERIM RULES AND PROCEDURES.—The Secretary may issue interim final rules or procedures specifying the manner in which—

“(1) insurers may file and certify claims under the Program;

“(2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;

“(3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and

“(4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

“(c) CONSULTATION.—The Secretary shall consult with the NAIC, as the Secretary determines appropriate, concerning the Program.

“(d) CONTRACTS FOR SERVICES.—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

“(e) CIVIL PENALTIES.—

“(1) IN GENERAL.—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any insurer that the Secretary determines, on the record after opportunity for a hearing—

“(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

“(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

“(C) submits to the Secretary fraudulent claims under the Program for insured losses;

“(D) has failed to provide the disclosures required under subsection (f);

or

“(E) has otherwise failed to comply with the provisions of, or the regulations issued under, this title.

“(2) AMOUNT.—The amount under this paragraph is the greater of \$1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

“(3) RECOVERY OF AMOUNT IN DISPUTE.—A penalty under this subsection for any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations under this title shall be in addition to any such amounts recovered by the Secretary.

“(f) SUBMISSION OF PREMIUM INFORMATION.—

“(1) IN GENERAL.—The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year.

“(2) ACCESS TO INFORMATION.—To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

“(3) AVAILABILITY TO CONGRESS.—The Secretary shall make information compiled under this subsection available to the Congress, upon request.

“(g) FUNDING.—

“(1) FEDERAL PAYMENTS.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program to the extent such Federal share exceeds funds collected by the Secretary pursuant to section 103(e)(2).

“(2) ADMINISTRATIVE EXPENSES.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay reasonable costs of administering the Program.

“SEC. 105. ESTABLISHMENT OF COMMISSION ON TERRORISM RISK INSURANCE.

“(a) IN GENERAL.—There is hereby established the Commission on Terrorism Risk Insurance (in this section referred to as the ‘Commission’).

“(b) MEMBERSHIP.—

“(1) The Commission shall consist of 11 members, as follows:

“(A) The Secretary of the Treasury or his designee.

“(B) One State insurance commissioner designated by the members of the NAIC.

“(C) Nine members appointed by the President, who shall be—

“(i) a representative of group life insurers;

“(ii) a representative of property and casualty insurers with direct written premium of \$1,000,000,000 or less;

“(iii) a representative of property and casualty insurers with direct written premium of more than \$1,000,000,000;

“(iv) a representative of multiline insurers;

- “(v) a representative of independent insurance agents;
- “(vi) a representative of insurance brokers;
- “(vii) a policyholder representative;
- “(viii) a representative of the survivors of the victims of the attacks of September 11, 2001; and
- “(ix) a representative of the reinsurance industry.

“(2) SECRETARY.—The Program Director of the Terrorism Risk Insurance Act shall serve as Secretary of the Commission. The Secretary of the Commission shall determine the manner in which the Commission shall operate, including funding and staffing.

“(c) DUTIES.—

“(1) IN GENERAL.—The Commission shall identify and make recommendations regarding—

“(A) possible actions to encourage, facilitate, and sustain provision by the private insurance industry in the United States of affordable coverage for losses due to an act or acts of terrorism;

“(B) possible actions or mechanisms to sustain or supplement the ability of the insurance industry in the United States to cover losses resulting from acts of terrorism in the event that—

“(i) such losses jeopardize the capital and surplus of the insurance industry in the United States as a whole; or

“(ii) other consequences from such acts occur, as determined by the Commission, that may significantly affect the ability of the insurance industry in the United States to independently cover such losses; and

“(C) significantly reducing the expected Federal role over time in any continuing Federal terrorism risk insurance program.

“(2) EVALUATIONS.—In identifying and making the recommendations required under paragraph (1), the Commission shall specifically evaluate the utility and viability of TRIA Capital Reserve Funds made available under section 103(e)(2), any risk sharing mechanism created or made available under section 103(e)(3), a Federally created or mandated reinsurance facility, empowering such a facility to issue pre-event financing bonds, post-event financing bonds, assessments, single or multiple pooling arrangements, and other risk sharing arrangements to accomplish, in whole or in part, the specified objectives, taking into consideration the studies and reports to the Congress pursuant to subsections (h) and (i) of section 103.

“(3) REPORT.—Not later than December 31, 2006, the Commission shall submit a report to Congress evaluating and making recommendations regarding whether there is a need for a Federal terrorism risk insurance program and, if so, shall make a specific, detailed recommendation for the replacement of the Program, including specific, detailed recommendations for the creation of a terrorism reinsurance facility or facilities or single or multiple pooling arrangements, or both.

“(d) EFFECT ON EXISTING PROGRAM.—For purposes of section 108(a), the Secretary shall make a determination not later than January 31, 2007, of whether the Commission has satisfied its obligations under subsection (c)(3).

“SEC. 106. PRESERVATION PROVISIONS.

“(a) STATE LAW.—Nothing in this title shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person—

“(1) except as specifically provided in this title; and

“(2) except that—

“(A) the definition of the term ‘act of terrorism’ in section 102 shall be the exclusive definition of that term for purposes of compensation for insured losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title; and

“(B) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 108, including authority in subsection 108(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access; and

“(3) except that with respect to coverage required to be made available under section 103(c)—

“(A) no laws or regulations of a State imposing a diligent search requirement for the placement of a surplus lines policy shall apply in connection

with the purchase of such insurance by an exempt commercial policyholder; and

“(B) no laws or regulations of a State, except of the home State, imposing a diligent search requirement for the placement of a surplus lines policy shall apply with respect to the placement of a multi-State surplus lines commercial insurance policy, provided the contract of insurance insures risks in the home State.

“(b) STREAMLINED RATE AND FORM FILING.—The Congress intends that, by December 31, 2007, all States, with respect to submission of a commercial property insurance policy or commercial casualty insurance policy that includes coverage for acts of terrorism—

“(1) implement and fully utilize the System for Electronic Rate and Form Filing (in this section referred to as ‘SERFF’), developed by the NAIC, without deviation to provide a single point for electronic filing of property insurance and casualty insurance forms for review;

“(2) update SERFF to provide a single coordinated checklist for inputting the required information used by various States for filing reviews and designating to which States the information will be submitted;

“(3) allow the option of filing of self-certified commercial property insurance and commercial casualty insurance forms through a substantially nationwide coordinated electronic filing system that—

“(A) includes a review checklist with uniform nomenclature clearly establishing what is required under the laws of such State for a compliant filing of such forms;

“(B) uses a single input system and transmittal document that allows the filer to submit such form for review without required format deviations to any combination of the States participating in the system;

“(C) does not require prior approval for such self-certified form filing;

“(D) keeps such filings confidential until they are implemented, deemed implemented, or disapproved; and

“(E) only allows disapproval of such filings in writing based on specific standards that are published in statute, rule, or regulation.

“(c) STREAMLINED SURPLUS LINES PLACEMENT.—The Congress intends that, by December 31, 2007, all States streamline their surplus lines diligent search rules with respect to the placement of surplus lines policies in any covered line of insurance that includes coverage for acts of terrorism by providing for—

“(1) automatic export for exempt commercial purchasers, under which a surplus lines broker seeking to obtain, provide, or place insurance in a State for an insured that qualifies as an exempt commercial purchaser may procure surplus lines insurance from or place surplus lines insurance with any non-admitted insurer without making a diligent search to determine whether the full amount or type of insurance sought by the exempt commercial purchaser can be obtained from admitted insurers in such State.

“(2) home State regulation of diligent search requirements, that provides that, except as provided in paragraph (1), only the home State may impose a diligent search requirement for the placement of a multi-State surplus lines commercial insurance policy, provided the contract of insurance insures risks in the Home State.

“(d) EXISTING REINSURANCE AGREEMENTS.—Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act. The terms and conditions of such an agreement shall be determined by the language of that agreement.”; and

(2) in section 108—

(A) by striking subsection (a) and inserting the following new subsection:

“(a) TERMINATION OF PROGRAM.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the Program shall terminate on December 31, 2008.

“(2) FAILURE OF COMMISSION TO SUBMIT REPORT.—If the Secretary determines pursuant to section 105(d) that the Commission on Terrorism Risk Insurance established under section 105 has not satisfied its obligations under section 105(c)(3), the Program shall terminate on December 31, 2007.”; and

(B) in subsection (c)(1), by striking “paragraph (4), (5), (6), (7), or (8) of”.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply beginning on January 1, 2006. The provisions of the Terrorism Risk Insurance Act of 2002, as in effect on the day before the date of the enactment of this Act, shall apply through the end of December 31, 2005.

PURPOSE AND SUMMARY

H.R. 4314, the Terrorism Risk Insurance Revision Act of 2005 (TRIRA), extends the economic backstop provided for consumers and the insurance marketplace in the Terrorism Risk Insurance Act (TRIA) while increasing taxpayer protections and adjusting the program to better address evolving marketplace needs. It narrows the taxpayer exposure by requiring full mandatory payback of all Federal assistance provided, significantly increases the minimum event levels before Federal involvement is triggered, increases the insurer deductibles for all covered lines, greatly increases the private sector's co-share of any lower level losses, and requires the development of a replacement for TRIA that would significantly reduce any Federal involvement or exposure.

TRIRA excludes commercial auto insurance from coverage while including some group life products. Insurers are allowed to set aside a portion of the terrorism premiums charged as dedicated capital. This capital would be available to the Federal government to reduce its expenditures and also used by the insurers to reduce their own terrorist losses, in order to stabilize the long-term terrorism marketplace and facilitate risk pooling efforts. Treasury is directed to facilitate various private sector risk-sharing mechanisms. The ability of exempt commercial purchasers to access the surplus lines market is enhanced, and the States are directed to streamline both filing and review of commercial insurance and rules for accessing the surplus lines marketplace.

BACKGROUND AND NEED FOR LEGISLATION

The terrorist attacks of September 11, 2001, resulted in a tragic number of deaths and injuries, along with the complete destruction of the World Trade Center complex. After sustaining more than \$30 billion in insured losses from the attacks, many insurers began to exclude terrorism coverage from commercial insurance policies and reinsurers began to leave the marketplace.

Congress passed the Terrorism Risk Insurance Act of 2002 (TRIA) to address concerns that the lack of available terrorism insurance could have significant adverse effects on jobs and economic growth. The purpose of TRIA was twofold: to make terrorism insurance widely available and affordable for the duration of the Act, and to provide a transition period during which insurance market participants could diversify their exposure and develop resources and mechanisms that would enable them to offer terrorism insurance after the program expired. TRIA is set to expire on December 31, 2005.

TRIA is a public-private partnership designed to allow the private market to develop mechanisms to provide commercial terrorism risk coverage while guaranteeing that any Federal assistance in the interim is partly repaid by the insurance industry and beneficiaries of the program. The bill established the Terrorism Risk Insurance Program in the Department of the Treasury, through which the Federal government would share the risk of loss from future terrorist attacks with the insurance industry for a temporary period of time.

Under TRIA, the Federal government shares 90 percent of each insurer's covered terrorism losses over a per company deductible.

The insurance marketplace as a whole is then required to pay back a portion of the Government share over time (the “retention”). The insurer deductibles are gradually increased each year of the TRIA program (10 percent to 12.5 percent to 15 percent), as are the retention levels (\$10 billion to \$12.5 billion to \$15 billion).

In April 28, 2004, testimony before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises on the implementation of the TRIA program, the Government Accountability Office (GAO) reported that TRIA improved the availability of terrorism insurance and prompted reinsurers to offer a limited amount of coverage for terrorist events. In particular, terrorism coverage has been made available for high-risk properties. Additionally, GAO determined that TRIA contributed to better credit ratings for some commercial mortgage-backed securities.

The Department of the Treasury reported to Congress on the effectiveness of the TRIA program on June 30, 2005. Specifically, the report explained that insurers now provide terrorism coverage on a greater share of commercial property and casualty insurance policies than in 2002, the year before TRIA took effect. Policyholders are now more likely to purchase terrorism risk insurance than in 2002. In a letter accompanying the report, Treasury Secretary John W. Snow stated that financial strength has improved substantially since 2002 and both insurers and policyholders have had time to adjust to the post-September 11th view of terrorism risk. The Secretary concluded that continuation of the TRIA program in its current form is likely to hinder the further development of the insurance market by crowding out innovation and capacity. The Secretary additionally indicated that the Administration would not support an extension of the TRIA program in its current form, but could support a revised, temporary program, with raised trigger levels, deductibles and retention levels and a reduction in taxpayer exposure. The Secretary also expressed support for the elimination of certain covered lines from the program, as well as reasonable litigation reform.

The Committee on Financial Services approved H.R. 4314, the Terrorism Risk Insurance Revision Act of 2005 (TRIRA), to extend the economic backstop provided for consumers and the insurance marketplace in TRIA while increasing taxpayer protections and adjusting the program to better address evolving marketplace needs.

TRIRA narrows the taxpayer exposure by requiring full mandatory payback of all Federal assistance provided. This bill also significantly increases the minimum event levels before Federal involvement is triggered, from \$5 million in the current program to \$50 million for the first year of the extension, \$100 million for the second year of the extension, and an additional \$50 million for any additional year the program is in existence.

The current TRIA insurer deductible is 15 percent for all covered lines. Under TRIRA, insurer deductibles for all covered lines are increased. The deductibles are as follows: workers' compensation, 16 percent, to increase by 2.0 percent points each year; commercial property, 20 percent, to increase by 2.5 percent points each year; group life, 21.5 percent, to increase by 2.5 percent points each year; and casualty, 25 percent, to increase by 5 percent points each year. Insurers would also be directed to make coverage available for nuclear, biological, chemical, and radioactive (NBCR) risks for any

covered line with a 7.5 percent deductible, to increase by .75 percent points each year.

TRIRA revises the industry co-share requirements. Currently, TRIA co-shares are set at 10 percent. In the revised bill, industry co-shares are increased for smaller events and decreased for larger events. For the first \$10 billion of losses, insurers will be responsible for a 20 percent co-share. From \$10 to 20 billion of losses, insurers will be responsible for a 15 percent co-share. From \$20 to 40 billion of losses, insurers will be responsible for a 10 percent co-share. For losses over \$40 billion, insurers will be responsible for a 5 percent co-share.

TRIRA incorporates market reforms to streamline certain regulatory rules and practices. These reforms include exempting sophisticated commercial purchasers from state declination rules for surplus lines policies; and expressing the intent of Congress that States subjecting multi-state terrorism policies to review only in the policyholder's home state; and expressing the intent of Congress that States allowing sophisticated commercial purchasers easier access to the surplus lines marketplace for terrorism coverage.

TRIRA eliminates commercial auto insurance from the program while including group life insurance, but excluding corporate-owned and bank-owned life insurance (COLI/BOLI). To encourage the growth of the private marketplace, TRIRA allows insurers to set aside a portion of their terrorism premiums as dedicated terrorism capital reserves. This capital would be available to the Federal government to reduce its expenditures and could also be used by the insurers to reduce their own terrorist losses, in order to stabilize the long-term terrorism marketplace and facilitate risk-pooling efforts. Further, Treasury is directed to establish rules to encourage various private-sector risk sharing mechanisms.

TRIRA removes the distinction between foreign and domestic terrorism. The program is extended for 2006 and 2007. The bill creates a public-private commission to draft specific proposals to establish a private long-term risk sharing or pooling mechanism that would significantly reduce the Federal government's involvement and exposure over time. Unless the Secretary determines that the Commission did not fulfill its obligations, TRIRA would be extended for 2008 as a transition to a new long-term program.

HEARINGS

The Committee on Financial Services held a hearing on July 13, 2005, on the Treasury Department's report to Congress on the Terrorism Risk Insurance Act. Testimony was received by the Honorable John W. Snow, Secretary, Department of the Treasury.

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing on July 27, 2005, entitled "The Future of Terrorism Insurance." The following witnesses testified: Mr. Howard Mills, Superintendent, New York Insurance Department; Mr. Lawrence H. Mirel, Commissioner, Department of Insurance and Securities Regulation, District of Columbia; Mr. William G. Stiglitz, III, Hyland, Block, and Hyland and President-elect, Independent Insurance Agents and Brokers of America; Mr. John T. Sinnott, Vice Chairman, Marsh & McLennan Companies, Inc., on behalf of the Council of Insurance Agents and Brokers; Mr.

James E. Maurin, Chairman, Stirling Properties, on behalf of the Coalition to Insure Against Terrorism; Mr. Robert Hunter, Director of Insurance, Consumer Federation of America; Mr. Ernst N. Csiszar, President and Chief Executive Officer, Property Casualty Insurers Association of America; Mr. Jason M. Schupp, Vice President and Senior Assistant General Counsel, Zurich Financial Services Group, on behalf of the American Insurance Association; Mr. Warren Heck, Chairman and Chief Executive Officer, Greater New York Mutual Insurance Company, on behalf of the National Association of Mutual Insurance Companies; Mr. Ed Harper, Senior Vice President, Assurant, Inc. and Chairman, Group Life Coalition; and Ms. Penny S. Pritzker, President and Chief Executive Officer, Pritzker Realty Group, L.P.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 16, 2005, and ordered H.R. 4314, The Terrorism Risk Insurance Revision Act of 2005, favorably reported to the House as amended by a record vote of 64 yeas and 3 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Oxley to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 64 yeas and 3 nays (Record vote no. FC-8). The names of Members voting for and against follow:

RECORD VOTE NO. FC-8

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley	X	.....	.....	Mr. Frank (MA)	X	.....	.....
Mr. Leach	X	.....	.....	Mr. Kanjorski	X	.....	.....
Mr. Baker	X	.....	.....	Ms. Waters	X	.....	.....
Ms. Pryce (OH)	X	.....	.....	Mr. Sanders	X	.....	.....
Mr. Bachus	X	.....	.....	Mrs. Maloney .....	.....	.....	.....
Mr. Castle	X	.....	.....	Mr. Gutierrez	X	.....	.....
Mr. King (NY) .....	.....	.....	.....	Ms. Velázquez	X	.....	.....
Mr. Royce .....	.....	X	.....	Mr. Watt	X	.....	.....
Mr. Lucas	X	.....	.....	Mr. Ackerman	X	.....	.....
Mr. Ney	X	.....	.....	Ms. Hooley	X	.....	.....
Mrs. Kelly	X	.....	.....	Ms. Carson	X	.....	.....
Mr. Paul .....	.....	X	.....	Mr. Sherman	X	.....	.....
Mr. Gillmor	X	.....	.....	Mr. Meeks (NY)	X	.....	.....
Mr. Ryan (KS)	X	.....	.....	Ms. Lee	X	.....	.....
Mr. La Tourette	X	.....	.....	Mr. Moore (KS)	X	.....	.....
Mr. Manzullo	X	.....	.....	Mr. Capuano	X	.....	.....
Mr. Jones (NC)	X	.....	.....	Mr. Ford	X	.....	.....
Mrs. Biggert	X	.....	.....	Mr. Hinojosa	X	.....	.....
Mr. Shays	X	.....	.....	Mr. Crowley	X	.....	.....
Mr. Fossella	X	.....	.....	Mr. Clay	X	.....	.....
Mr. Gary G. Miller (CA)	X	.....	.....	Mr. Israel	X	.....	.....
Mr. Tiberi	X	.....	.....	Mrs. McCarthy	X	.....	.....
Mr. Kennedy (MN)	X	.....	.....	Mr. Baca	X	.....	.....
Mr. Feeney .....	.....	X	.....	Mr. Matheson	X	.....	.....
Mr. Hensarling	X	.....	.....	Mr. Lynch	X	.....	.....
Mr. Garrett (NJ)	X	.....	.....	Mr. Miller (NC)	X	.....	.....
Ms. Brown-Waite (FL)	X	.....	.....	Mr. Scott (GA)	X	.....	.....
Mr. Barrett (SC)	X	.....	.....	Mr. Davis (AL)	X	.....	.....

RECORD VOTE NO. FC-8—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Harris	X	.....	.....	Mr. Al Green (TX)	X	.....	.....
Mr. Renzi	X	.....	.....	Mr. Cleaver	X	.....	.....
Mr. Gerlach	X	.....	.....	Ms. Bean	X	.....	.....
Mr. Pearce .....	.....	.....	.....	Ms. Wasserman Schultz	X	.....	.....
Mr. Neugebauer	X	.....	.....	Ms. Moore (WI)	X	.....	.....
Mr. Price (GA)	X	.....	.....	.....	.....	.....	.....
Mr. Fitzpatrick (PA)	X	.....	.....	.....	.....	.....	.....
Mr. Davis (KY)	X	.....	.....	.....	.....	.....	.....
Mr. McHenry	X	.....	.....	.....	.....	.....	.....

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

The following other amendments were also considered by the Committee:

An amendment by Mr. Oxley, No. 1, making various technical and substantive changes to the bill, was AGREED TO by a voice vote.

An amendment by Mr. Frank, No. 2, regarding minimum requirements for exempt commercial purchasers, was AGREED TO by a voice vote.

An amendment by Ms. Wasserman Schultz, No. 3, regarding life insurer requirements with respect to foreign travel, was AGREED TO by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 4314, The Terrorism Risk Insurance Revision Act of 2005 (TRIRA), extends the economic backstop provided for consumers and the insurance marketplace in the Terrorism Risk Insurance Act (TRIA) while increasing taxpayer protections and adjusting the program to better address evolving marketplace.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act, when received.

COMMITTEE COST ESTIMATE

The Committee will adopt as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974, when received.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the cost estimate to be provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not received in time to be filed with this report.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of the bill, the “Terrorism Risk Insurance Revision Act of 2005”.

TRIA Section 2. Extension of program and program changes

This section amends the Terrorism Risk Insurance Act of 2002 (“TRIA”) to extend and revise the program, replacing sections 101 through 106 and 108(a).

TRIA Section 101. Congressional findings and purpose

This section amends the findings and purposes of TRIA to reflect the importance of ensuring a vibrant insurance marketplace for nuclear, biological, chemical, and radioactive (NBCR) loss exposures, and the need for a group life reinsurance backstop.

TRIA Section 102. Definitions

This section establishes definitions for the terms: “act of terrorism”, “affiliate”, “casualty insurance”, “covered line of insurance”, “direct earned premium”, “exempt commercial purchaser”, “exempt commercial purchaser certification”, “group life insurance”, “home state”, “insured loss”, “insurer”, “insurer deductible”,

“NAIC”, “ownership”, “NBCR terrorism”, “person”, “program”, “program years”, “property insurance”, “qualified risk manager”, “Secretary”, “State”, “United States”, and “workers” compensation”.

In particular, TRIRA revises the definition of an “act of terrorism” to eliminate the requirement that it be committed by individuals acting on behalf of foreign interests. The definition of “affiliate” is also revised. Group life insurance is added as a covered line while commercial auto insurance is deleted. New definitions are added for “exempt commercial purchaser”, “exempt commercial purchaser certification”, “home state”, “qualified risk manager” relating to the new market reforms in TRIA section 106.

The “insurer deductible” definition was amended to increase the per company deductible before federal assistance is received from 15% to a per line deductible of 16% for workers’ compensation (increasing by 2% points per year), 21.5% for group life (increasing by 2.5% points per year), 20% percent for property (increasing by 2.5% points per year), and 25% for casualty (increasing by 5% per points year). A sub-deductible of 7.5% (increasing by .75% points per year) is created for acts of terrorism causing NBCR damage. A reset mechanism is provided for the insurer deductibles reducing them by .1% points for each \$1 billion in insured losses in any calendar year.

TRIA Section 103. Terrorism Insurance Program

This section continues the Terrorism Insurance Program in the Department of the Treasury while making a number of improvements to the terrorism backstop. Insurers are required to offer coverage for losses resulting from NBCR terrorism, although the offer may have different terms, amounts, and coverage limitations than the underlying policies. Covered insurers offering life insurance are required to offer coverage that does not preclude lawful future foreign travel, and the additional coverage option must either be not excessive or based on a good faith actuarial estimate.

The Federal share of insured loss compensation, for the portion of an insurer’s insured losses that exceeds its applicable insurer deductible, is adjusted from 90% for all covered to 80% of the aggregate industry insured losses of less than \$10 billion, 85% of the aggregate insured industry losses between \$10 billion and \$20 billion, 90% of the aggregate insured industry losses between \$20 billion and \$40 billion, and 95% of the aggregate insured industry losses above \$40 billion. The share shall be prorated by insurer based upon each insurer’s percentage of aggregate industry insured losses for each Program Year. The minimum level of terrorist event required to trigger any potential Federal assistance is increased from \$5 million to \$50 million for Program Year 4, and an additional \$50 million for each subsequent year.

The bill creates TRIA Capital Reserve Funds (CRF), allowing insurers to hold a portion of the terrorism premiums it charges in a fiduciary capacity on behalf of the Secretary. An insurer may fund a CRF by making an advanced election to treat some or all of the premiums it has disclosed under the Program for terrorism insurance coverage as a fee charge imposed by the Secretary. The Secretary is directed to use the CRFs to reduce any Federal expenditure under the Program, with amounts used for such purposes replenished over time through policyholder surcharges after any di-

rect Federal assistance is repaid. Before being subject to call by the Secretary, an insurer may use the CRF funds to satisfy its applicable insurer deductible, its portions of its losses over the deductible, its obligations to pay insured losses that are under the program trigger level, or any risk-sharing obligations it has made under this section. The bill does not determine the Federal tax treatment of the creation of a CFR by an insurer nor the Federal tax treatment of contributions to the CRF, amounts used to fund the CRF (including premiums, fees, and other similar amounts), earnings or amounts that fund the CRF, or distributions or other uses of amounts in the CRF.

An Advisory Committee is created to encourage the development of risk-sharing mechanisms, including mutual reinsurance facilities and pooling agreements, to voluntarily reinsure terrorism losses between and among insurers. The cap on the annual liability of the Federal government and the private sector in the revised program remains at \$100 billion. Full recoupment of the entire federal assistance paid by the Secretary under this Act is made mandatory, collected through a policy surcharge that is capped at 3% per year for covered lines of insurance.

The Comptroller General of the United States shall conduct studies of the exposure of personal lines to terrorism risk, the risk of potential terrorist acts involving nuclear, biological, chemical, or radioactive weapons, and the need for a federal natural disaster catastrophe program, which shall be submitted to Congress by September 1, 2006. The natural catastrophe study shall include consideration of tax-free capital reserves, voluntary mutual reinsurance pools, a distinction between sophisticated and non-sophisticated commercial purchasers for the purposes of exemption from regulation, and the need for Federal support for the purchase of reinsurance by State disaster insurance programs.

TRIA Section 104. General authority and administration of claims

This section maintains the powers and authority of the Secretary necessary to carry out the program, including the authority to audit all claims under the program and to proscribe regulations and procedures to effectively implement and administer the program.

TRIA Section 105. Establishment of Commission on Terrorism Risk Insurance

This section establishes a Commission on Terrorism Risk Insurance, whose membership shall consist of the Secretary, a State insurance regulator appointed by the National Association of Insurance Commissioners, and nine members appointed by the President including: a representative of group life insurers, a representative of property and casualty insurers with direct written premium of less than \$1 billion, a representative of a property and casualty insurers with direct written premium of more that \$1 billion, a representative of multi-line insurers, a representative of independent insurance agents, a representative of insurance brokers, a representative of commercial policyholders, a representative of reinsurers, and a representative of the survivors of the victims of the September 11, 2001 terrorist attacks.

The Commission shall make recommendations to encourage private industry to develop dedicated capital for underwriting terrorism risks, and to significantly reduce the potential Federal exposure and participation in terrorism insurance over time. The Commission will specifically review and evaluate the utility and viability of the Capital Reserve Funds and any risk-sharing mechanism created or made available by the Committee established in section 103, a Federally created or mandated reinsurance facility or facilities, the use of pre-event and post-event financing bonds, assessments, single and multiple pooling arrangements, and other risk-sharing arrangements that could facilitate more private sector coverage of terrorism risks. The Commission will take into account the studies and reports to Congress pursuant to Section 103 and shall report to Congress with specific recommendations no later than December 31, 2006. Unless the Secretary determines that the Commission has not fulfilled its obligations, the Program shall remain in effect until December 31, 2008.

TRIA Section 106. Preservation provisions

This section continues to preserve the jurisdiction and regulatory authority of the state insurance commissioners except as specifically provided. The definition of “act of terrorism” in Section 102 shall be the exclusive definition of that term for the purposes of compensation for insured losses under this title. The records and books of any insurer that are relevant to the Program may be requested by the Secretary, notwithstanding any provisions of State law that may limit such access. State diligent search requirements for placement of surplus lines policies for exempt commercial policyholders are preempted. For other commercial policyholders that are placing a multi-state surplus lines commercial insurance policy that includes risks in the policyholder’s state of domicile, only that home state of the policyholder shall govern any diligent search requirements.

To streamline rate-and-form filing for covered lines of commercial property and casualty insurance, this section expresses the intent of Congress that the States implement and fully utilize the System for Electronic Rate and Form Filing (“SERFF”). Congress expresses its intent that SERFF be updated to provide, without deviation, a single point for electronic filing of property and casualty insurance forms for review, and that SERFF provide a single coordinated checklist for imputing required information used by states for filing reviews. Congress further intends that the states update SERFF to allow the optional filing of self-certified commercial property and casualty insurance forms through a nationwide coordinated electronic system. Such a system should include a review check list with uniform nomenclature clearly establishing what is required by the State for compliance. It should use a single input system and uniform transmittal document that allows submission of self-certified for review without required format deviations to any combinations of states. The system shall not require prior approval for self-certified form filings and shall keep filings confidential until they are implemented, deemed implemented, or disapproved. Disapprovals of filings must be in writing based on specific published standards. Congress further intends that the States regulation of surplus lines placement is streamlined to revise their diligent

search rules to provide for automatic export for exempt commercial purchasers to allow their surplus lines brokers to procure coverage for them in the non-admitted market without making a diligent search in the home State. For other commercial purchasers, Congress intends that the applicable diligent search requirements will be governed solely by the home state of the policyholder.

TRIA Section 108(a). Termination of program

Unless the Commission's reporting requirements under this title are satisfied, the Program will terminate on December 31, 2007. The Secretary shall have continuing authority to pay or adjust compensation following the termination of the Act. The amendment made by this section shall apply on January 1, 2006.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, December 6, 2005.

Hon. MICHAEL OXLEY,
*Chairman, Committee on Financial Services,
U.S. House of Representatives, Washington, DC.*

DEAR CHAIRMAN OXLEY: In recognition of the desire to expedite consideration of H.R. 4314, the "Terrorism Risk Insurance Revision Act of 2005," the Committee on the Judiciary hereby waives consideration of the bill. There are several provisions contained in H.R. 4314 that implicate the rule X jurisdiction of the Committee on the Judiciary. Specifically, the legislation contains litigation management and judicial review provisions, and extends provisions of the "Terrorism Risk Insurance Act of 2002."

The Committee takes this action with the understanding that by foregoing consideration of H.R. 4314, the Committee on the Judiciary does not waive any jurisdiction over subject matter contained in this or similar legislation. The Committee also reserves the right to seek appointment to any House-Senate conference on this legislation and requests your support if such a request is made. Finally, I would appreciate your including this letter in your Committee's report for H.R. 4314 and in the Congressional Record during consideration of H.R. 4314 on the House floor. Thank you for your attention to these matters.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, December 6, 2005.

Hon. F. JAMES SENSENBRENNER, Jr.,
*Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, DC.*

DEAR CHAIRMAN SENSENBRENNER: Thank you for your letter of December 6, 2005, concerning H.R. 4314, the Terrorism Risk Insurance Revision Act of 2005. This bill was reported by the Committee

on Financial Services on November 16, 2005, and it is our hope that the House will address this issue shortly on the floor.

I want to confirm our mutual understanding concerning further consideration of this bill. I agree that H.R. 4314 as reported by this Committee implicated the jurisdiction of the Committee on the Judiciary under rule X. However, I appreciate your willingness to waive further consideration of the bill in order to expedite its consideration. Provisions within the jurisdiction of the Committee on the Judiciary will be excluded from the version of H.R. 4314 considered on the floor. I will support appropriate representation from the Judiciary Committee in the event of a House-Senate conference.

I will include this exchange of correspondence in the Committee report on the bill. Thank you for your assistance.

Yours truly,

MICHAEL G. OXLEY,
Chairman.

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):

TERRORISM RISK INSURANCE ACT OF 2002

* * * * *

TITLE I—TERRORISM INSURANCE PROGRAM

[SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

[(a) FINDINGS.—The Congress finds that—

[(1) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

[(2) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

[(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

[(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

[(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

[(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

[(b) PURPOSE.—The purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

[(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

[(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

[SEC. 102. DEFINITIONS.

In this title, the following definitions shall apply:

[(1) ACT OF TERRORISM.—

[(A) CERTIFICATION.—The term “act of terrorism” means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—

[(i) to be an act of terrorism;

[(ii) to be a violent act or an act that is dangerous to—

[(I) human life;

[(II) property; or

[(III) infrastructure;

[(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

[(I) an air carrier or vessel described in paragraph (5)(B); or

[(II) the premises of a United States mission; and

[(iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian

population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

[(B) LIMITATION.—No act shall be certified by the Secretary as an act of terrorism if—

[(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or

[(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

[(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

[(D) NONDELEGATION.—The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

[(2) AFFILIATE.—The term “affiliate” means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer.

[(3) CONTROL.—An entity has “control” over another entity, if—

[(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other entity;

[(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

[(C) the Secretary determines, after notice and opportunity for hearing, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

[(4) DIRECT EARNED PREMIUM.—The term “direct earned premium” means a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraphs (A) and (B) of paragraph (5).

[(5) INSURED LOSS.—The term “insured loss” means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—

[(A) occurs within the United States; or

[(B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

[(6) INSURER.—The term “insurer” means any entity, including any affiliate thereof—

[(A) that is—

[(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;

[(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

[(iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity;

[(iv) a State residual market insurance entity or State workers’ compensation fund; or

[(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

[(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in sections 103(d) and 103(f); and

[(C) that meets any other criteria that the Secretary may reasonably prescribe.

[(7) INSURER DEDUCTIBLE.—The term “insurer deductible” means—

[(A) for the Transition Period, the value of an insurer’s direct earned premiums over the calendar year immediately preceding the date of enactment of this Act, multiplied by 1 percent;

[(B) for Program Year 1, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 1, multiplied by 7 percent;

[(C) for Program Year 2, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 2, multiplied by 10 percent;

[(D) for Program Year 3, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 3, multiplied by 15 percent; and

[(E) notwithstanding subparagraphs (A) through (D), for the Transition Period, Program Year 1, Program Year 2, or Program Year 3, if an insurer has not had a full year of operations during the calendar year immediately preceding such Period or Program Year, such portion of the direct earned premiums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums.

[(8) NAIC.—The term “NAIC” means the National Association of Insurance Commissioners.

[(9) PERSON.—The term “person” means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

[(10) PROGRAM.—The term “Program” means the Terrorism Insurance Program established by this title.

[(11) PROGRAM YEARS.—

[(A) TRANSITION PERIOD.—The term “Transition Period” means the period beginning on the date of enactment of this Act and ending on December 31, 2002.

[(B) PROGRAM YEAR 1.—The term “Program Year 1” means the period beginning on January 1, 2003 and ending on December 31, 2003.

[(C) PROGRAM YEAR 2.—The term “Program Year 2” means the period beginning on January 1, 2004 and ending on December 31, 2004.

[(D) PROGRAM YEAR 3.—The term “Program Year 3” means the period beginning on January 1, 2005 and ending on December 31, 2005.

[(12) PROPERTY AND CASUALTY INSURANCE.—The term “property and casualty insurance”—

[(A) means commercial lines of property and casualty insurance, including excess insurance, workers’ compensation insurance, and surety insurance; and

[(B) does not include—

[(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;

[(ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance;

[(iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;

[(iv) insurance for medical malpractice;

[(v) health or life insurance, including group life insurance;

[(vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.); or

[(vii) reinsurance or retrocessional reinsurance.

[(13) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

[(14) STATE.—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

[(15) UNITED STATES.—The term “United States” means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

[(16) RULE OF CONSTRUCTION FOR DATES.—With respect to any reference to a date in this title, such day shall be construed—

[(A) to begin at 12:01 a.m. on that date; and

[(B) to end at midnight on that date.

[SEC. 103. TERRORISM INSURANCE PROGRAM.**[(a) ESTABLISHMENT OF PROGRAM.—**

[(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insurance Program.

[(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

[(3) MANDATORY PARTICIPATION.—Each entity that meets the definition of an insurer under this title shall participate in the Program.

[(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under this section with respect to an insured loss that is covered by an insurer, unless—

[(1) the person that suffers the insured loss, or a person acting on behalf of that person, files a claim with the insurer;

[(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program—

[(A) in the case of any policy that is issued before the date of enactment of this Act, not later than 90 days after that date of enactment;

[(B) in the case of any policy that is issued within 90 days of the date of enactment of this Act, at the time of offer, purchase, and renewal of the policy; and

[(C) in the case of any policy that is issued more than 90 days after the date of enactment of this Act, on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy;

[(3) the insurer processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe; and

[(4) the insurer submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

[(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

[(B) written certification—

[(i) of the underlying claim; and

[(ii) of all payments made for insured losses; and

[(C) certification of its compliance with the provisions of this subsection.

[(c) MANDATORY AVAILABILITY.—

[(1) INITIAL PROGRAM PERIODS.—During the period beginning on the first day of the Transition Period and ending on the last day of Program Year 2, each entity that meets the definition of an insurer under section 102—

[(A) shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

[(B) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

[(2) PROGRAM YEAR 3.—Not later than September 1, 2004, the Secretary shall, based on the factors referred to in section 108(d)(1), determine whether the provisions of subparagraphs (A) and (B) of paragraph (1) should be extended through Program Year 3.

[(d) STATE RESIDUAL MARKET INSURANCE ENTITIES.—

[(1) IN GENERAL.—The Secretary shall issue regulations, as soon as practicable after the date of enactment of this Act, that apply the provisions of this title to State residual market insurance entities and State workers' compensation funds.

[(2) TREATMENT OF CERTAIN ENTITIES.—For purposes of the regulations issued pursuant to paragraph (1)—

[(A) a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer; and

[(B) a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.

[(3) TREATMENT OF PARTICIPATION IN CERTAIN ENTITIES.—Any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.

[(e) INSURED LOSS SHARED COMPENSATION.—

[(1) FEDERAL SHARE.—

[(A) IN GENERAL.—The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during the Transition Period and each Program Year shall be equal to 90 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Transition Period or such Program Year.

[(B) PROHIBITION ON DUPLICATIVE COMPENSATION.—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses.

[(2) CAP ON ANNUAL LIABILITY.—

[(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed \$100,000,000,000, during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during Program Year 2 or Program Year 3 (until such time as the Congress may act otherwise with respect to such losses)—

[(i) the Secretary shall not make any payment under this title for any portion of the amount of such losses that exceeds \$100,000,000,000; and

[(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of that amount that exceeds \$100,000,000,000.

[(B) INSURER SHARE.—For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program.

[(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed \$100,000,000,000 during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during Program Year 2 or Program Year 3, and the Congress shall determine the procedures for and the source of any payments for such excess insured losses.

[(4) FINAL NETTING.—The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

[(5) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, unless expressly provided, and shall not be subject to judicial review.

[(6) INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.—For purposes of paragraph (7), the insurance marketplace aggregate retention amount shall be—

[(A) for the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, the lesser of—

[(i) \$10,000,000,000; and

[(ii) the aggregate amount, for all insurers, of insured losses during such period;

[(B) for Program Year 2, the lesser of—

[(i) \$12,500,000,000; and

[(ii) the aggregate amount, for all insurers, of insured losses during such Program Year; and

[(C) for Program Year 3, the lesser of—

[(i) \$15,000,000,000; and

[(ii) the aggregate amount, for all insurers, of insured losses during such Program Year.

[(7) RECOUPMENT OF FEDERAL SHARE.—

[(A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount for each of the periods referred to in subparagraphs (A), (B), and (C) of paragraph (6) shall be the difference between—

[(i) the insurance marketplace aggregate retention amount under paragraph (6) for such period; and

[(ii) the aggregate amount, for all insurers, of insured losses during such period that are not compensated by the Federal Government because such losses—

[(I) are within the insurer deductible for the insurer subject to the losses; or

[(II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).

[(B) NO MANDATORY RECOUPMENT IF UNCOMPENSATED LOSSES EXCEED INSURANCE MARKETPLACE RETENTION.—Notwithstanding subparagraph (A), if the aggregate amount of uncompensated insured losses referred to in clause (ii) of such subparagraph for any period referred to

in subparagraph (A), (B), or (C) of paragraph (6) is greater than the insurance marketplace aggregate retention amount under paragraph (6) for such period, the mandatory recoupment amount shall be \$0.

[(C) MANDATORY ESTABLISHMENT OF SURCHARGES TO RECOUP MANDATORY RECOUPMENT AMOUNT.—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers compensation) occurring during any of the periods referred to in subparagraph (A), (B), or (C) of paragraph (6), terrorism loss risk-spreading premiums in an amount equal to any mandatory recoupment amount for such period.

[(D) DISCRETIONARY RECOUPMENT OF REMAINDER OF FINANCIAL ASSISTANCE.—To the extent that the amount of Federal financial assistance provided exceeds any mandatory recoupment amount, the Secretary may recoup, through terrorism loss risk-spreading premiums, such additional amounts that the Secretary believes can be recouped, based on—

[(i) the ultimate costs to taxpayers of no additional recoupment;

[(ii) the economic conditions in the commercial marketplace, including the capitalization, profitability, and investment returns of the insurance industry and the current cycle of the insurance markets;

[(iii) the affordability of commercial insurance for small- and medium-sized businesses; and

[(iv) such other factors as the Secretary considers appropriate.

[(8) POLICY SURCHARGE FOR TERRORISM LOSS RISK-SPREADING PREMIUMS.—

[(A) POLICYHOLDER PREMIUM.—Any amount established by the Secretary as a terrorism loss risk-spreading premium shall—

[(i) be imposed as a policyholder premium surcharge on property and casualty insurance policies in force after the date of such establishment;

[(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and

[(iii) be based on a percentage of the premium amount charged for property and casualty insurance coverage under the policy.

[(B) COLLECTION.—The Secretary shall provide for insurers to collect terrorism loss risk-spreading premiums and remit such amounts collected to the Secretary.

[(C) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium (including any additional amount included in such premium on a discretionary basis pursuant to paragraph (7)(D)) may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for property and casualty insurance coverage under the policy.

[(D) ADJUSTMENT FOR URBAN AND SMALLER COMMERCIAL AND RURAL AREAS AND DIFFERENT LINES OF INSURANCE.—

[(i) ADJUSTMENTS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—

[(I) the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

[(II) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

[(III) the various exposures to terrorism risk for different lines of insurance.

[(ii) RECOUPMENT OF ADJUSTMENTS.—Any mandatory recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums.

[(E) TIMING OF PREMIUMS.—The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.

[(f) CAPTIVE INSURERS AND OTHER SELF-INSURANCE ARRANGEMENTS.—The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.

[(g) REINSURANCE TO COVER EXPOSURE.—

[(1) OBTAINING COVERAGE.—This title may not be construed to limit or prevent insurers from obtaining reinsurance coverage for insurer deductibles or insured losses retained by insurers pursuant to this section, nor shall the obtaining of such coverage affect the calculation of such deductibles or retentions.

[(2) LIMITATION ON FINANCIAL ASSISTANCE.—The amount of financial assistance provided pursuant to this section shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the Transition Period or a Program Year provided pursuant to this section, may not exceed the aggregate amount of the insurer's insured losses for such period. If such recoveries and financial assistance for the Transition Period or a Program Year exceed such aggregate amount of insured losses for that period and there is no

agreement between the insurer and any reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

[(h) GROUP LIFE INSURANCE STUDY.—

[(1) STUDY.—The Secretary shall study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that issue group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance coverage for consumers in the United States.

[(2) CONDITIONAL COVERAGE.—To the extent that the Secretary determines that such coverage is not or will not be reasonably available to both such insurers and consumers, the Secretary shall, in consultation with the NAIC—

[(A) apply the provisions of this title, as appropriate, to providers of group life insurance; and

[(B) provide such restrictions, limitations, or conditions with respect to any financial assistance provided that the Secretary deems appropriate, based on the study under paragraph (1).

[(i) STUDY AND REPORT.—

[(1) STUDY.—The Secretary, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage, including personal lines.

[(2) REPORT.—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

[SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

[(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

[(1) to investigate and audit all claims under the Program; and

[(2) to prescribe regulations and procedures to effectively administer and implement the Program, and to ensure that all insurers and self-insured entities that participate in the Program are treated comparably under the Program.

[(b) INTERIM RULES AND PROCEDURES.—The Secretary may issue interim final rules or procedures specifying the manner in which—

[(1) insurers may file and certify claims under the Program;

[(2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;

[(3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and

[(4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share

of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

[(c) CONSULTATION.—The Secretary shall consult with the NAIC, as the Secretary determines appropriate, concerning the Program.

[(d) CONTRACTS FOR SERVICES.—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

[(e) CIVIL PENALTIES.—

[(1) IN GENERAL.—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any insurer that the Secretary determines, on the record after opportunity for a hearing—

[(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

[(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

[(C) submits to the Secretary fraudulent claims under the Program for insured losses;

[(D) has failed to provide the disclosures required under subsection (f); or

[(E) has otherwise failed to comply with the provisions of, or the regulations issued under, this title.

[(2) AMOUNT.—The amount under this paragraph is the greater of \$1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

[(3) RECOVERY OF AMOUNT IN DISPUTE.—A penalty under this subsection for any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations under this title shall be in addition to any such amounts recovered by the Secretary.

[(f) SUBMISSION OF PREMIUM INFORMATION.—

[(1) IN GENERAL.—The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year.

[(2) ACCESS TO INFORMATION.—To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

[(3) AVAILABILITY TO CONGRESS.—The Secretary shall make information compiled under this subsection available to the Congress, upon request.

[(g) FUNDING.—

[(1) FEDERAL PAYMENTS.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program.

[(2) ADMINISTRATIVE EXPENSES.—There are hereby appropriated, out of funds in the Treasury not otherwise appro-

priated, such sums as may be necessary to pay reasonable costs of administering the Program.

[SEC. 105. PREEMPTION AND NULLIFICATION OF PRE-EXISTING TERRORISM EXCLUSIONS.

[(a) GENERAL NULLIFICATION.—Any terrorism exclusion in a contract for property and casualty insurance that is in force on the date of enactment of this Act shall be void to the extent that it excludes losses that would otherwise be insured losses.

[(b) GENERAL PREEMPTION.—Any State approval of any terrorism exclusion from a contract for property and casualty insurance that is in force on the date of enactment of this Act, shall be void to the extent that it excludes losses that would otherwise be insured losses.

[(c) REINSTATEMENT OF TERRORISM EXCLUSIONS.—Notwithstanding subsections (a) and (b) or any provision of State law, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that is in force on the date of enactment of this Act and that excludes coverage for an act of terrorism only—

[(1) if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

[(2) if—

[(A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage; and

[(B) the insurer provided notice, at least 30 days before any such reinstatement, of—

[(i) the increased premium for such terrorism coverage; and

[(ii) the rights of the insured with respect to such coverage, including any date upon which the exclusion would be reinstated if no payment is received.

[SEC. 106. PRESERVATION PROVISIONS.

[(a) STATE LAW.—Nothing in this title shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person—

[(1) except as specifically provided in this title; and

[(2) except that—

[(A) the definition of the term “act of terrorism” in section 102 shall be the exclusive definition of that term for purposes of compensation for insured losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title;

[(B) during the period beginning on the date of enactment of this Act and ending on December 31, 2003, rates and forms for terrorism risk insurance covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory, and,

with respect to forms, where a State has prior approval authority, it shall apply to allow subsequent review of such forms; and

[(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 108, including authority in subsection 108(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access.

[(b) EXISTING REINSURANCE AGREEMENTS.—Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act. The terms and conditions of such an agreement shall be determined by the language of that agreement.]

SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) *FINDINGS.*—*The Congress finds that—*

(1) *the ability of businesses and individuals to obtain property, casualty, group life, and NBCR insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;*

(2) *property, casualty, and life insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;*

(3) *the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;*

(4) *widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;*

(5) *a decision by property, casualty, group life, and NBCR insurers to deal with such uncertainties, either by terminating property, casualty, group life and NBCR coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and*

(6) *the United States Government should provide temporary financial compensation to insured parties, contributing to the*

stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

(b) *PURPOSE.*—*The purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—*

(1) *protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property, casualty, group life, and NBCR insurance for terrorism risk; and*

(2) *allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.*

SEC. 102. DEFINITIONS.

In this title, the following definitions shall apply:

(1) **ACT OF TERRORISM.**—

(A) **CERTIFICATION.**—*The term “act of terrorism” means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—*

(i) *to be an act of terrorism;*

(ii) *to be a violent act or an act that is dangerous to—*

(I) *human life;*

(II) *property; or*

(III) *infrastructure;*

(iii) *to have resulted in damage within the United States, or outside of the United States in the case of—*

(I) *an air carrier or vessel described in paragraph (5)(B); or*

(II) *the premises of a United States mission; and*

(iv) *to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.*

(B) **LIMITATION.**—*No act shall be certified by the Secretary as an act of terrorism if the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers’ compensation or group life insurance.*

(C) **DETERMINATIONS FINAL.**—*Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.*

(D) **NONDELEGATION.**—*The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.*

(2) *AFFILIATE.*—The term “affiliate” means, with respect to an insurer, any insurer that owns, is owned by, or is under common ownership with another insurer.

(3) *CASUALTY INSURANCE.*—The term “casualty insurance” means—

(A) insurance, including excess insurance and surety insurance, against legal liability for losses caused by the death, injury, or disability of any person or for damage to property, with provision for medical, hospital and surgical benefits to the injured persons; and

(B) for the purposes of this Act, does not include any type of commercial automobile or workers’ compensation insurance.

(4) *COVERED LINE OF INSURANCE.*—The term “covered line of insurance” means—

(A) commercial property insurance, commercial casualty insurance, workers’ compensation insurance and group life insurance; and

(B) does not include—

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;

(ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance;

(iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) insurance for medical malpractice;

(v) health or life insurance, except group life insurance;

(vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.);

(vii) reinsurance or retrocessional reinsurance; or

(viii) commercial automobile insurance.

(5) *DIRECT EARNED PREMIUM.*—The term “direct earned premium” means a direct earned premium for commercial property, commercial casualty, workers’ compensation, or group life insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraphs (A) and (B) of paragraph (10).

(6) *EXEMPT COMMERCIAL PURCHASER.*—The term “exempt commercial purchaser” means any person purchasing commercial insurance that meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person meets at least two of the following criteria:

(i) The person possesses a net worth in excess of \$20,000,000.

(ii) The person generates annual revenues in excess of \$50,000,000.

(iii) The person employs more than 500 full time or full time equivalent employees per individual insured

or is a member of affiliated group employing more than 1,000 employees in the aggregate.

(iv) The person pays annual aggregate nationwide insurance premiums in excess of \$100,000 for covered lines of insurance.

(v) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000.

(vi) The person is a municipality with a population in excess of 50,000 persons.

(7) **EXEMPT COMMERCIAL PURCHASER CERTIFICATION.**—The term “exempt commercial purchaser certification” means a written certification that the insurer offering a policy to an exempt commercial purchaser has obtained, at least within the previous 12 months, a certification signed by the qualified risk manager, the chief executive officer, or the chief financial officer of the exempt commercial purchaser, certifying with respect to the insurance to which the requirements of section 103(c)(1) apply to that insurer that—

(A) the purchaser has an employee that meets the definition of a qualified risk manager under this section;

(B) the purchaser meets the definition of an exempt commercial purchaser in accordance with this section;

(C) the purchaser is aware that the policy being considered for purchase contains forms and rates that are not subject to State regulatory review or approval;

(D) the purchaser has or has retained the necessary expertise to negotiate its own policy language and rates; and

(E) the purchaser agrees to the use of exempted rates and forms by its insurer or insurers.

(8) **GROUP LIFE INSURANCE.**—The term “group life insurance” means an insurance contract that provides term life insurance coverage, accidental death coverage, or a combination thereof, for a number of individuals under a single contract, on the basis of a group selection of risks, but does not include “Corporate Owned Life Insurance” or “Business Owned Life Insurance,” each as defined under the Internal Revenue Code of 1986, or any similar product.

(9) **HOME STATE.**—The term “home State” means as follows:

(A) In the case of a policy written for commercial risks that are primarily located in a State, such term means such State.

(B) If subparagraph (A) does not apply, such term means the State where the commercial policyholder has its principal place of business (such as where the policyholder’s headquarters are located, as determined by the predominant physical location in the United States of the officers and senior management of the policyholder).

(10) **INSURED LOSS.**—The term “insured loss” means any loss resulting from an act of terrorism (including an act of war, in the case of workers’ compensation and group life insurance) that is covered by primary or excess property, casualty, workers’ compensation, or group life insurance issued by an insurer if such loss—

(A) occurs within the United States; or

(B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

(11) *INSURER*.—The term “insurer” means any entity, including any affiliate thereof—

(A) that is—

(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;

(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

(iii) approved for the purpose of offering a covered line of insurance by a Federal agency in connection with maritime, energy, or aviation activity;

(iv) a State residual market insurance entity or State workers’ compensation fund; or

(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

(B) that receives direct earned premiums for any type of covered line of insurance coverage, other than in the case of entities described in subsections (d) and (f) of section 103; and

(C) that meets any other criteria that the Secretary may reasonably prescribe.

(12) *INSURER DEDUCTIBLE*.—The term “insurer deductible” means—

(A) for the Transition Period, the value of an insurer’s direct earned premiums over the calendar year immediately preceding the date of enactment of this Act, multiplied by 1 percent;

(B) for Program Year 1, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 1, multiplied by 7 percent;

(C) for Program Year 2, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 2, multiplied by 10 percent;

(D) for Program Year 3, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 3, multiplied by 15 percent;

(E) for Program Year 4—

(i) except as provided in clause (ii), the value of an insurer’s direct earned premium for a covered line of insurance over the calendar year immediately preceding Program Year 4, multiplied by—

(I) for workers’ compensation insurance, 16 percent;

(II) for group life insurance, 21.5 percent;

(III) for property insurance, 20 percent; and

(IV) for casualty insurance, 25 percent; and

(ii) with respect to NBCR terrorism coverage, the value of an insurer's direct earned premium for a covered line of insurance over the calendar year immediately preceding Program Year 4, multiplied by the following percentages which shall be treated as subdeductibles that apply in lieu of the deductibles set forth in clause (i) for NBCR terrorism losses—

(I) for workers' compensation insurance, 7.5 percent;

(II) for group life insurance, 7.5 percent;

(III) for property insurance, 7.5 percent; and

(IV) for casualty insurance, 7.5 percent; and

(iii) if, for any covered line of insurance, an insurer incurs insured losses caused by NBCR terrorism, such NBCR insured losses shall be applied against both the deductible set forth in clause (i) and the NBCR terrorism deductible set forth in clause (ii) for that covered line of insurance;

(F) for any Additional Program Years—

(i) except as provided in clause (ii), the value of an insurer's direct earned premium for a covered line of insurance over the calendar year immediately preceding that year, multiplied by the insurer deductible for each covered line of insurance for the preceding calendar year plus an additional percentage, as follows—

(I) for workers' compensation insurance, 2.0 percent;

(II) for group life insurance, 2.5 percent;

(III) for property insurance, 2.5 percent; and

(IV) for casualty insurance, 5.0 percent; and

(ii) with respect to NBCR terrorism coverage, the value of an insurer's direct earned premium for a covered line of insurance over the calendar year immediately preceding that year, multiplied by the NBCR terrorism deductible for the preceding year for that covered line of insurance plus the following additional percentages, all of which shall be treated as subdeductibles that apply in lieu of the deductibles listed in clause (i) for NBCR terrorism insured losses—

(I) for workers' compensation insurance, 0.75 percent;

(II) for group life insurance, 0.75 percent;

(III) for property insurance, 0.75 percent; and

(IV) for casualty insurance, 0.75 percent; and

(iii) if, for any covered line of insurance, an insurer incurs insured losses caused by NBCR terrorism, such NBCR insured losses shall be applied against both the deductible set forth in clause (i) and the NBCR terrorism deductible set forth in clause (ii) for that covered line of insurance;

(G) notwithstanding subparagraphs (A) through (F), for the Transition Period and any other Program Year or other calendar year, if an insurer has not had a full year of operations during the calendar year immediately preceding such Period or year, such portion of the direct earned pre-

miums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums; and

(H) if, in any calendar year, aggregate industry insured losses exceed \$1,000,000,000, the insurer deductibles for the next calendar year shall be reduced by 0.1 percent for each \$1,000,000,000 in insured losses that have occurred during the preceding calendar year, except that no insurer deductible shall be reduced below 5 percent.

(13) NAIC.—The term “NAIC” means the National Association of Insurance Commissioners.

(14) OWNERSHIP.—An insurer “owns” another insurer if the insurer, directly or indirectly or acting through one or more other persons, owns 25 percent or more of any class of voting securities of the other insurer.

(15) NBCR TERRORISM.—The term “NBCR terrorism” means an act of terrorism involving nuclear, biological, chemical, or radioactive reactions, releases, or contaminations, to the extent any insured losses are caused by any such reactions, releases, or contaminations.

(16) PERSON.—The term “person” means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(17) PROGRAM.—The term “Program” means the Terrorism Insurance Program established by this title.

(18) PROGRAM YEARS.—

(A) TRANSITION PERIOD.—The term “Transition Period” means the period beginning on the date of enactment of this Act and ending on December 31, 2002.

(B) PROGRAM YEAR 1.—The term “Program Year 1” means the period beginning on January 1, 2003 and ending on December 31, 2003.

(C) PROGRAM YEAR 2.—The term “Program Year 2” means the period beginning on January 1, 2004 and ending on December 31, 2004.

(D) PROGRAM YEAR 3.—The term “Program Year 3” means the period beginning on January 1, 2005 and ending on December 31, 2005.

(E) PROGRAM YEAR 4.—The term “Program Year 4” means the period beginning on January 1, 2006 and ending on December 31, 2006.

(F) ADDITIONAL PROGRAM YEARS.—The term “Additional Program Year” means any additional one-year period after Program Year 4 during which the Program is in effect, which period shall begin on January 1 and end on December 31 of the same calendar year.

(19) PROPERTY INSURANCE.—The term “property insurance” means—

(A) except as provided in subparagraph (B), insurance on real or personal property of every kind, including excess insurance, against loss or damage from any and all hazard or cause and against loss consequential upon such loss or

damage, including business interruption insurance, other than non-contractual legal liability for such loss or damage; and

(B) does not include any type of commercial automobile or workers' compensation insurance.

(20) **QUALIFIED RISK MANAGER.**—The term “qualified risk manager” means any person who meets all of the following criteria:

(A) The person is an employee of, or third party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person possesses at least 1 of the following credentials:

(i) A bachelor's or higher degree in risk management issued by an accredited college or university.

(ii) A designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as “CPCU”) issued by the American Institute for CPCU/ Insurance Institute of America.

(iii) A designation as an Associate in Risk Management (ARM) issued by American Institute for CPCU/ Insurance Institute of America.

(iv) A designation as a Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research.

(v) A designation as a RIMS Fellow (RS) issued by the Global Risk Management Institute.

(vi) At least 5 years of experience in 1 or more of the following areas of commercial property insurance or commercial casualty insurance:

(I) Risk financing.

(II) Claims administration.

(III) Loss prevention.

(IV) Risk and insurance coverage analysis.

(21) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury.

(22) **STATE.**—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(23) **UNITED STATES.**—The term “United States” means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

(24) **WORKERS' COMPENSATION.**—The term “workers' compensation” means insurance against loss from liability imposed by law upon employers to compensate employees and their dependents for injury sustained by the employees arising out of and in the course of the employment, irrespective of negligence or of the fault of either party.

- (25) *RULE OF CONSTRUCTION FOR DATES.*—With respect to any reference to a date in this title, such day shall be construed—
 (A) to begin at 12:01 a.m. on that date; and
 (B) to end at midnight on that date.

SEC. 103. TERRORISM INSURANCE PROGRAM.

(a) *ESTABLISHMENT OF PROGRAM.*—

(1) *IN GENERAL.*—There is established in the Department of the Treasury the Terrorism Insurance Program.

(2) *AUTHORITY OF THE SECRETARY.*—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

(3) *MANDATORY PARTICIPATION.*—Each entity that meets the definition of an insurer under this title shall participate in the Program.

(b) *CONDITIONS FOR FEDERAL PAYMENTS.*—No payment may be made by the Secretary under this section with respect to an insured loss that is covered by an insurer, unless—

(1) the person that suffers the insured loss, or a person acting on behalf of that person, files a claim with the insurer;

(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the program and the Federal share of compensation for insured losses under the Program—

(A) in the case of any policy that is issued before the date of enactment of this Act, not later than 90 days after that date of enactment;

(B) in the case of any policy that is issued within 90 days of the date of enactment of this Act, at the time of offer, purchase, and renewal of the policy; and

(C) in the case of any policy that is issued more than 90 days after the date of enactment of this Act, on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy;

(3) the insurer processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe; and

(4) the insurer submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

(B) written certification—

(i) of the underlying claim; and

(ii) of all payments made for insured losses; and

(C) certification of its compliance with the provisions of this subsection.

(c) *MANDATORY AVAILABILITY.*—Each entity that meets the definition of an insurer under section 102—

(1) shall make available, in all of its covered lines of insurance policies, coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism;

(2) shall make available, in any of its covered lines of insurance policies that exclude coverage for losses resulting from

NBCR terrorism, coverage for losses resulting from NBCR terrorism that may differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than NBCR terrorism; and

(3) shall make available, in any life insurance policy, coverage that does not preclude future lawful foreign travel by the person insured, and shall not charge a premium for such coverage that is excessive and not based on a good faith actuarial analysis.

(d) STATE RESIDUAL MARKET INSURANCE ENTITIES.—

(1) IN GENERAL.—The Secretary shall issue regulations, as soon as practicable after the date of enactment of this Act, that apply the provisions of this title to State residual market insurance entities, State workers' compensation funds, and State workers' compensation reinsurance pools.

(2) TREATMENT OF CERTAIN ENTITIES.—For purposes of the regulations issued pursuant to paragraph (1)—

(A) a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer; and

(B) a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.

(3) TREATMENT OF PARTICIPATION IN CERTAIN ENTITIES.—Any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.

(e) INSURED LOSS SHARED COMPENSATION.—

(1) FEDERAL SHARE.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during each Program Year shall be equal to that portion of the amount of such insured losses for each covered line of insurance that exceeds the applicable insurer deductible required to be paid during such Program Year, multiplied by a percentage based on aggregate industry insured losses for a Program Year, which shall be as follows:

(i) 80 percent of the aggregate industry insured losses of less than \$10,000,000,000;

(ii) 85 percent of the aggregate industry insured losses between \$10,000,000,000 and \$20,000,000,000;

(iii) 90 percent of the aggregate industry insured losses between \$20,000,000,000 and \$40,000,000,000; and

(iv) 95 percent of the aggregate industry insured losses above industry losses above \$40,000,000,000; and shall be prorated by insurer based on each insurer's percentage of the aggregate industry insured losses for that Program Year.

(B) *PROGRAM TRIGGER.*—No compensation shall be paid by the Secretary under subsection (a) unless the aggregate industry insured losses exceed—

(i) \$50,000,000, with respect to insured losses occurring in Program Year 4;

(ii) \$100,000,000, with respect to insured losses occurring in the Additional Program Year beginning on January 1, 2007;

(iii) with respect to each Additional Program Year thereafter that coverage is provided under the Program, the amount that is equal to the sum of (I) the dollar amount applicable under this subparagraph for the Program Year preceding such Additional Program Year, and (II) \$50,000,000;

except that the applicable Program Trigger amount shall be reduced by \$10,000,000 for each \$1,000,000,000 in insured losses occurring in any preceding year, provided that the Program Trigger shall not be reduced below \$50,000,000 for any year.

(C) *PROHIBITION ON DUPLICATIVE COMPENSATION.*—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses.

(2) *TRIA CAPITAL RESERVE FUNDS.*—

(A) *ESTABLISHMENT.*—Any insurer may establish a TRIA Capital Reserve Fund (in this section referred to as a “CRF”) in which it may hold funds in a fiduciary capacity on behalf of the Secretary.

(B) *FUNDING.*—An insurer may fund a CRF by making an election, in advance, to treat some or all of the premiums it has disclosed pursuant to section 103(b)(2) as TRIA program fee charges imposed by the Secretary. Any such premiums for which such an election has been made must be maintained in segregated accounts in a fiduciary capacity on behalf of the Secretary. Such funds may be invested in any otherwise legally permissible manner but all interest, dividends, and capital accumulations also shall be retained in such segregated accounts on behalf of the Secretary.

(C) *USE.*—Funds from a CRF shall be collected and used by the Secretary to offset, in whole or in part, the Federal share of compensation provided to all insurers under the Program as provided for in paragraph (1), except that an insurer may first use the funds in a CRF of that insurer to satisfy any one or more of the following:

(i) The applicable insurer deductibles for the insurer.

(ii) The portion of the insurer’s losses that exceed the insurer deductible but are not compensated by the Federal share pursuant to paragraph (1).

(iii) The insurer’s obligations to pay for insured losses if the program trigger established in paragraph (1)(B) is not satisfied.

(iv) Any risk sharing obligations the insurer may have under any agreements made pursuant to or in accordance with paragraph (3).

(D) TERMINATION.—

(i) TERMINATION OF PROGRAM.—Upon termination of the Program under section 108(a), and subject to the Secretary's continuing authority under section 108(b) to adjust claims in satisfaction of the Federal share of compensation under the Program as provided in paragraph (1) of this subsection, 10 percent of each insurer's CRF funds shall be remitted to the Secretary and the remainder shall be remitted to the insurer. The Secretary shall determine the manner in which the remittance of such income to the insurer shall be made.

(ii) ELIMINATION OF FEDERAL SHARE OF COMPENSATION.—If the Program remains in effect but the Federal share of compensation for insured losses under the Program is eliminated from the Program, the CRF funds shall be retained and used for the purposes set forth in subparagraph (C) of this paragraph. At such time as an insurer's liability for insured losses under the Program terminates, as a consequence of the insurer's termination of its business or otherwise, the insurer shall remit any remaining CRF funds to the Secretary.

(3) RISK-SHARING MECHANISMS.—

(A) FINDING; RULE OF CONSTRUCTION.—Congress finds that it is desirable to encourage the growth of nongovernmental, private market reinsurance capacity for protection against losses arising from acts of terrorism. Therefore, nothing in this title shall prohibit insurers from developing risk-sharing mechanisms (including mutual reinsurance facilities and agreements) to voluntarily reinsure terrorism losses between and among themselves that are not subject to reimbursement under this section 103.

(B) ESTABLISHMENT OF ADVISORY COMMITTEE.—The Secretary shall appoint an Advisory Committee to—

(i) encourage the creation and development of such mechanisms;

(ii) assist the Secretary and be available to administer such mechanisms; and

(iii) develop articles of incorporation, bylaws, and a plan of operation for any long-term reinsurance facility authorized or created in the future.

(C) MEMBERSHIP.—The Advisory Committee shall be composed of nine members who are directors, officers, or other employees of insurers that are participating or that desire to participate in such mechanisms, and who are representative of the affected sectors of the insurance industry. In making these appointments, the Secretary shall solicit major trade associations of the insurance industry to nominate lists of qualified individuals representative of the commercial property insurance, commercial casualty insurance, group life insurance, and reinsurance industries.

(4) CAP ON ANNUAL LIABILITY.—

(A) *IN GENERAL.*—Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed \$100,000,000,000 during any Program Year (until such time as the Congress may act otherwise with respect to such losses)—

(i) the Secretary shall not make any payment under this title for any portion of the amount of such losses that exceeds \$100,000,000,000; and

(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of that amount that exceeds \$100,000,000,000.

(B) *INSURER SHARE.*—For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program.

(5) *NOTICE TO CONGRESS.*—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed \$100,000,000,000 during any Program Year and the Congress shall determine the procedures for and the source of any payments for such excess insured losses.

(6) *FINAL NETTING.*—The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(7) *DETERMINATIONS FINAL.*—Any determination of the Secretary under this subsection shall be final, unless expressly provided, and shall not be subject to judicial review.

(8) *FULL RECOUPMENT OF FEDERAL SHARE.*—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers' compensation and group life insurance), terrorism loss risk-spreading premiums in an amount equal to the total amount paid by the Secretary in accordance with this section.

(9) *POLICY SURCHARGE FOR TERRORISM LOSS RISK-SPREADING PREMIUMS.*—

(A) *POLICYHOLDER PREMIUM.*—Any amount established by the Secretary as a terrorism loss risk-spreading premium shall—

(i) be imposed as a policyholder premium surcharge on all covered lines of insurance policies in force after the date of such establishment;

(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and

(iii) be based on a percentage of the premium amount charged for covered lines of insurance coverage under the policy.

(B) *COLLECTION.*—The Secretary shall provide for insurers to collect terrorism loss risk-spreading premiums and remit such amounts collected to the Secretary.

(C) *PERCENTAGE LIMITATION.*—A terrorism loss risk-spreading premium may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for covered lines of insurance coverage under the policy.

(D) *ADJUSTMENT FOR URBAN AND SMALLER COMMERCIAL AND RURAL AREAS AND DIFFERENT LINES OF INSURANCE.*—

(i) *ADJUSTMENTS.*—*In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—*

(I) *the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;*

(II) *the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and*

(III) *the various exposures to terrorism risk for different lines of insurance.*

(ii) *RECOUPMENT OF ADJUSTMENTS.*—*Any recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums.*

(E) *TIMING OF PREMIUMS.*—*The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.*

(F) *REPLENISHMENT OF TRIA CAPITAL RESERVE FUNDS.*—*After any funds expended directly from the United States Treasury are fully repaid, the balance of the amounts collected under this paragraph shall be used to fully replenish all insurer CRFs used by the Secretary in accordance with the provisions of paragraph (2)(C) that were not used by the insurer to satisfy its obligations in accordance with clauses (i) through (iv) of paragraph (2)(C).*

(f) *CAPTIVE INSURERS AND OTHER SELF-INSURANCE ARRANGEMENTS.*—*The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.*

(g) *REINSURANCE TO COVER EXPOSURE.*—

(1) *OBTAINING COVERAGE.*—*This title may not be construed to limit or prevent insurers from obtaining reinsurance coverage for insurer deductibles or insured losses retained by insurers pursuant to this section, nor shall the obtaining of such coverage affect the calculation of such deductibles or retentions.*

(2) *LIMITATION ON FINANCIAL ASSISTANCE.*—*The amount of financial assistance provided pursuant to this section, including amounts from a CRF used pursuant to subsection (e)(2)(C),*

shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the Transition Period or a Program Year provided pursuant to this section, may not exceed the aggregate amount of the insurer's insured losses for such period. If such recoveries and financial assistance for the Transition Period or a Program Year exceed such aggregate amount of insured losses for that period and there is no agreement between the insurer and any reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

(h) *PERSONAL LINES STUDY.*—

(1) *IN GENERAL.*—The Comptroller General of the United States, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, including a cross-section of insurers, independent insurance agents and brokers, and policyholders, shall conduct a study concerning the exposure of personal lines (including homeowners insurance) to terrorism risk, the coverage currently available, and potential policy responses.

(2) *REPORT.*—Not later than September 1, 2006, the Comptroller General shall submit a report to the Congress on the results of the study conducted under subparagraph (1), together with specific policy recommendations.

(i) *STUDY OF RISKS STEMMING FROM NUCLEAR, BIOLOGICAL, CHEMICAL AND RADIOACTIVE EVENTS.*—

(1) *IN GENERAL.*—The Comptroller General of the United States, after consultation with the NAIC, representatives of the insurance industry, including a cross-section of insurers, independent insurance agents and brokers, and policyholders, and other experts in the insurance field, shall conduct a study concerning the risk of potential terrorist acts stemming from the use of nuclear, biological, chemical, and radioactive weapons.

(2) *REPORT.*—Not later than September 1, 2006, the Comptroller General shall submit a report to the Congress on the results of the study conducted under paragraph (1), together with specific policy recommendations.

(j) *STUDY OF NEED FOR FEDERAL NATURAL DISASTER CATASTROPHE PROGRAM.*—

(1) *IN GENERAL.*—The Comptroller General of the United States, after consultation with the NAIC, representatives of the insurance industry, including a cross-section of insurers, independent insurance agents and brokers, and policyholders, and other experts in the insurance field, shall conduct a study concerning the need for a Federal program that provides for a system of shared public and private compensation for insured losses resulting from natural disaster.

(2) *ISSUES.*—The study under this section shall include an analysis of whether, and in what manner, such a Federal program should incorporate any or all of the following concepts: tax-free capital reserves; voluntary mutual reinsurance pools; a distinction between sophisticated and non-sophisticated commercial purchasers for the purposes of exemption from regulation; or Federal support for the purchase of reinsurance by State disaster insurance programs.

(3) *REPORT.*—Not later than September 1, 2006, the Comptroller General shall submit a report to the Congress on the results of the study conducted under this subsection together with specific policy recommendations.

SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

(a) *GENERAL AUTHORITY.*—The Secretary shall have the powers and authorities necessary to carry out the program, including authority—

- (1) to investigate and audit all claims under the Program; and
- (2) to prescribe regulations and procedures to effectively administer and implement the Program, and to ensure that all insurers and self-insured entities that participate in the Program are treated comparably under the Program.

(b) *INTERIM RULES AND PROCEDURES.*—The Secretary may issue interim final rules or procedures specifying the manner in which—

- (1) insurers may file and certify claims under the Program;
- (2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;
- (3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and
- (4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

(c) *CONSULTATION.*—The Secretary shall consult with the NAIC, as the Secretary determines appropriate, concerning the Program.

(d) *CONTRACTS FOR SERVICES.*—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

(e) *CIVIL PENALTIES.*—

(1) *IN GENERAL.*—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any insurer that the Secretary determines, on the record after opportunity for a hearing—

(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

(C) submits to the Secretary fraudulent claims under the Program for insured losses;

(D) has failed to provide the disclosures required under subsection (f); or

(E) has otherwise failed to comply with the provisions of, or the regulations issued under, this title.

(2) *AMOUNT.*—The amount under this paragraph is the greater of \$1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

(3) *RECOVERY OF AMOUNT IN DISPUTE.*—A penalty under this subsection for any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations under this title shall be in addition to any such amounts recovered by the Secretary.

(f) *SUBMISSION OF PREMIUM INFORMATION.*—

(1) *IN GENERAL.*—The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year.

(2) *ACCESS TO INFORMATION.*—To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

(3) *AVAILABILITY TO CONGRESS.*—The Secretary shall make information compiled under this subsection available to the Congress, upon request.

(g) *FUNDING.*—

(1) *FEDERAL PAYMENTS.*—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program to the extent such Federal share exceeds funds collected by the Secretary pursuant to section 103(e)(2).

(2) *ADMINISTRATIVE EXPENSES.*—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay reasonable costs of administering the Program.

SEC. 105. ESTABLISHMENT OF COMMISSION ON TERRORISM RISK INSURANCE.

(a) *IN GENERAL.*—There is hereby established the Commission on Terrorism Risk Insurance (in this section referred to as the “Commission”).

(b) *MEMBERSHIP.*—

(1) *The Commission shall consist of 11 members, as follows:*

(A) *The Secretary of the Treasury or his designee.*

(B) *One State insurance commissioner designated by the members of the NAIC.*

(C) *Nine members appointed by the President, who shall be—*

(i) *a representative of group life insurers;*
 (ii) *a representative of property and casualty insurers with direct written premium of \$1,000,000,000 or less;*
 (iii) *a representative of property and casualty insurers with direct written premium of more than \$1,000,000,000;*

(iv) *a representative of multiline insurers;*
 (v) *a representative of independent insurance agents;*
 (vi) *a representative of insurance brokers;*
 (vii) *a policyholder representative;*
 (viii) *a representative of the survivors of the victims of the attacks of September 11, 2001; and*
 (ix) *a representative of the reinsurance industry.*

(2) *SECRETARY.*—The Program Director of the Terrorism Risk Insurance Act shall serve as Secretary of the Commission. The Secretary of the Commission shall determine the manner in which the Commission shall operate, including funding and staffing.

(c) *DUTIES.*—

(1) *IN GENERAL.*—The Commission shall identify and make recommendations regarding—

(A) possible actions to encourage, facilitate, and sustain provision by the private insurance industry in the United States of affordable coverage for losses due to an act or acts of terrorism;

(B) possible actions or mechanisms to sustain or supplement the ability of the insurance industry in the United States to cover losses resulting from acts of terrorism in the event that—

(i) such losses jeopardize the capital and surplus of the insurance industry in the United States as a whole;

or

(ii) other consequences from such acts occur, as determined by the Commission, that may significantly affect the ability of the insurance industry in the United States to independently cover such losses; and

(C) significantly reducing the expected Federal role over time in any continuing Federal terrorism risk insurance program.

(2) *EVALUATIONS.*—In identifying and making the recommendations required under paragraph (1), the Commission shall specifically evaluate the utility and viability of TRIA Capital Reserve Funds made available under section 103(e)(2), any risk sharing mechanism created or made available under section 103(e)(3), a Federally created or mandated reinsurance facility, empowering such a facility to issue pre-event financing bonds, post-event financing bonds, assessments, single or multiple pooling arrangements, and other risk sharing arrangements to accomplish, in whole or in part, the specified objectives, taking into consideration the studies and reports to the Congress pursuant to subsections (h) and (i) of section 103.

(3) *REPORT.*—Not later than December 31, 2006, the Commission shall submit a report to Congress evaluating and making recommendations regarding whether there is a need for a Federal terrorism risk insurance program and, if so, shall make a specific, detailed recommendation for the replacement of the Program, including specific, detailed recommendations for the creation of a terrorism reinsurance facility or facilities or single or multiple pooling arrangements, or both.

(d) *EFFECT ON EXISTING PROGRAM.*—For purposes of section 108(a), the Secretary shall make a determination not later than January 31, 2007, of whether the Commission has satisfied its obligations under subsection (c)(3).

SEC. 106. PRESERVATION PROVISIONS.

(a) *STATE LAW.*—Nothing in this title shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person—

(1) *except as specifically provided in this title; and*

(2) *except that—*

(A) *the definition of the term “act of terrorism” in section 102 shall be the exclusive definition of that term for purposes of compensation for insured losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title; and*

(B) *during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 108, including authority in subsection 108(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access; and*

(3) *except that with respect to coverage required to be made available under section 103(c)—*

(A) *no laws or regulations of a State imposing a diligent search requirement for the placement of a surplus lines policy shall apply in connection with the purchase of such insurance by an exempt commercial policyholder; and*

(B) *no laws or regulations of a State, except of the home State, imposing a diligent search requirement for the placement of a surplus lines policy shall apply with respect to the placement of a multi-State surplus lines commercial insurance policy, provided the contract of insurance insures risks in the home State.*

(b) *STREAMLINED RATE AND FORM FILING.—The Congress intends that, by December 31, 2007, all States, with respect to submission of a commercial property insurance policy or commercial casualty insurance policy that includes coverage for acts of terrorism—*

(1) *implement and fully utilize the System for Electronic Rate and Form Filing (in this section referred to as “SERFF”), developed by the NAIC, without deviation to provide a single point for electronic filing of property insurance and casualty insurance forms for review;*

(2) *update SERFF to provide a single coordinated checklist for inputting the required information used by various States for filing reviews and designating to which States the information will be submitted;*

(3) *allow the option of filing of self-certified commercial property insurance and commercial casualty insurance forms through a substantially nationwide coordinated electronic filing system that—*

(A) *includes a review checklist with uniform nomenclature clearly establishing what is required under the laws of such State for a compliant filing of such forms;*

(B) *uses a single input system and transmittal document that allows the filer to submit such form for review without required format deviations to any combination of the States participating in the system;*

(C) *does not require prior approval for such self-certified form filing;*

(D) keeps such filings confidential until they are implemented, deemed implemented, or disapproved; and

(E) only allows disapproval of such filings in writing based on specific standards that are published in statute, rule, or regulation.

(c) STREAMLINED SURPLUS LINES PLACEMENT.—The Congress intends that, by December 31, 2007, all States streamline their surplus lines diligent search rules with respect to the placement of surplus lines policies in any covered line of insurance that includes coverage for acts of terrorism by providing for—

(1) automatic export for exempt commercial purchasers, under which a surplus lines broker seeking to obtain, provide, or place insurance in a State for an insured that qualifies as an exempt commercial purchaser may procure surplus lines insurance from or place surplus lines insurance with any nonadmitted insurer without making a diligent search to determine whether the full amount or type of insurance sought by the exempt commercial purchaser can be obtained from admitted insurers in such State.

(2) home State regulation of diligent search requirements, that provides that, except as provided in paragraph (1), only the home State may impose a diligent search requirement for the placement of a multi-State surplus lines commercial insurance policy, provided the contract of insurance insures risks in the Home State.

(d) EXISTING REINSURANCE AGREEMENTS.—Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act. The terms and conditions of such an agreement shall be determined by the language of that agreement.

* * * * *

SEC. 108. TERMINATION OF PROGRAM.

[(a) TERMINATION OF PROGRAM.—The Program shall terminate on December 31, 2005.]

(a) TERMINATION OF PROGRAM.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Program shall terminate on December 31, 2008.

(2) FAILURE OF COMMISSION TO SUBMIT REPORT.—If the Secretary determines pursuant to section 105(d) that the Commission on Terrorism Risk Insurance established under section 105 has not satisfied its obligations under section 105(c)(3), the Program shall terminate on December 31, 2007.

* * * * *

(c) REPEAL; SAVINGS CLAUSE.—This title is repealed on the final termination date of the Program under subsection (a), except that such repeal shall not be construed—

(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (b) of this section, [paragraph (4), (5), (6), (7), or (8) of] section 103(e), or subsection (a)(1), (c), (d), or (e) of section 104, as in effect on the day before the date of such repeal, or applicable regulations promulgated thereunder, during any period in which the authority of

the Secretary under subsection (b) of this section is in effect;
or

* * * * *

ADDITIONAL VIEWS

We believe that since the United States as a whole is the target of terrorists, it is appropriate that the cost of protecting against the economic effects of terrorism be shared by the United States, not just be borne by individual victims of these attacks. While we support H.R. 4314, we would have resolved several issues somewhat differently had we been the drafters of the legislation.

We believe the deductible levels in the bill are too high, especially for workers' compensation. A flat deductible of 15 percent of premiums for workers' compensation is more appropriate than the bill's deductible of 16 percent in 2006 followed by 2 percentage point increases per year. We recognize that the manager's amendment partially took our concerns into account by decreasing the deductible from the introduced bill's amount of 17.5 percent with 2.5 percentage point annual increases. However, workers' compensation is mandatory coverage, and residual market entities and State funds and insurers that provide coverage to businesses that cannot otherwise get coverage have no way of limiting their exposure. As such, lower deductibles are appropriate.

We are also concerned that the size of the triggering event is too high. The bill raises the triggering amount from the current \$5 million to \$50 million in 2006, \$100 million in 2007 and to \$150 million in 2008. While these amounts are a significant improvement from the Administration's proposal to raise the trigger to \$500 million, the triggers are still too high. As in the case of the deductible amounts, we recognize that the manager's amendment is an improvement over the introduced bill, but only in reducing the size of the triggering event in 2008 from \$200 million in the introduced bill to \$150 million. We believe that lower levels are necessary to protect our economy, particularly in smaller or rural communities. We also fear that the higher trigger levels will have a disproportionate effect on smaller local and regional insurers who have less capacity to bear the entire loss of a terrorist event below the trigger amount. At the very least, year-to-year increases for 2007 and 2008 should not exceed \$25 million per year.

BARNEY FRANK.
JOSEPH CROWLEY.
MELISSA BEAN.
LUIS V. GUTIERREZ.
STEVE ISRAEL.
PAUL E. KANJORSKI.
MICHAEL E. CAPUANO.
CAROLYN B. MALONEY.

DISSENTING VIEWS OF RON PAUL

Four years ago, when the Committee on Financial Services considered the bill creating the terrorism insurance program, I urged my colleagues to reject it. One of the reasons I opposed the bill was my concern that, contrary to the claims of the bill's supporters, terrorism insurance would not be allowed to sunset after three years. As I said then:

The drafters of H.R. 3210 claim that this creates a "temporary" government program. However, Mr. Speaker, what happens in three years if industry lobbyists come to Capitol Hill to explain that there is still a need for this program because of the continuing threat of terrorist attacks. Does anyone seriously believe that Congress will refuse to reauthorize this "temporary" insurance program or provide some other form of taxpayer help to the insurance industry? I would like to remind my colleagues that the federal budget is full of expenditures for long-lasting programs that were originally intended to be "temporary."

I am disappointed to see that the Committee on Financial Services prove that I was correct. I am also skeptical that, having renewed the program once, Congress will ever allow it to expire, regardless of the recommendations the commission establishes.

As the committee considers extending this program, I renew my opposition to it for substantially the same reasons I stated three years ago. However, I do have a suggestion on how to improve the program. Since one claimed problem with allowing the private market to provide terrorism insurance is the difficulty of quantifying the risk of an attack, the taxpayers' liability under the terrorism reinsurance program should be reduced for an attack occurring when the country is under orange or red alert. After all, because the point of the alert system is to let Americans know when there is an increased likelihood of an attack it is reasonable to expect insurance companies to demand that their clients take extra precautionary measures during periods of high alert. Reducing taxpayer subsidies will provide an incentive to ensure private parties take every possible precaution to minimize the potential damage from possible terrorist attacks.

While this bill does contain some provisions making it more favorable to taxpayers than the original program, my fundamental objections to the program remain the same as four years ago. Therefore, I am attaching my statement regarding H.R. 3210, which created the terrorist insurance program in the 107th Congress:

Mr. Speaker, no one doubts that the government has a role to play in compensating American citizens who are victimized by terrorist attacks. However, Congress should not lose sight of funda-

mental economic and constitutional principles when considering how best to provide the victims of terrorist attacks just compensation. I am afraid that H.R. 3210, the Terrorism Risk Protection Act, violates several of those principles and therefore passage of this bill is not in the best interests of the American people.

Under H.R. 3210, taxpayers are responsible for paying 90% of the costs of a terrorist incident when the total cost of that incident exceeds a certain threshold. While insurance companies technically are responsible under the bill for paying back monies received from the Treasury, the administrator of this program may defer repayment of the majority of the subsidy in order to “avoid the likely insolvency of the commercial insurer,” or avoid “unreasonable economic disruption and market instability.” This language may cause administrators to defer indefinitely the repayment of the loans, thus causing taxpayers to permanently bear the loss. This scenario is especially likely when one considers that “avoid . . . likely insolvency, unreasonable economic disruption, and market instability” are highly subjective standards, and that any administrator who attempts to enforce a strict repayment schedule likely will come under heavy political pressure to be more “flexible” in collecting debts owed to the taxpayers.

The drafters of H.R. 3210 claim that this creates a “temporary” government program. However, Mr. Speaker, what happens in three years if industry lobbyists come to Capitol Hill to explain that there is still a need for this program because of the continuing threat of terrorist attacks. Does anyone seriously believe that Congress will refuse to reauthorize this “temporary” insurance program or provide some other form of taxpayer help to the insurance industry? I would like to remind my colleagues that the federal budget is full of expenditures for long-lasting programs that were originally intended to be “temporary.”

H.R. 3210 compounds the danger to taxpayers because of what economists call the “moral hazard” problem. A moral hazard is created when individuals have the costs incurred from a risky action subsidized by a third party. In such a case individuals may engage in unnecessary risks or fail to take steps to minimize their risks. After all, if a third party will bear the costs of negative consequences of risky behavior, why should individuals invest their resources in avoiding or minimizing risk?

While no one can plan for terrorist attacks, individuals and businesses can take steps to enhance security. For example, I think we would all agree that industrial plants in the United States enjoy reasonably good security. They are protected not by the local police, but by owners putting up barbed wire fences, hiring guards with guns, and requiring identification cards to enter. One reason private firms put these security measures in place is because insurance companies provide them with incentives, in the form of lower premiums, to adopt security measures. H.R. 3210 contains no incentives for this private activity. The bill does not even recognize the important role insurance plays in providing incentives to minimize risks. By removing an incentive for private parties to avoid or at least mitigate the damage from a future terrorist attack, the government inadvertently increases the damage that will be inflicted by future attacks!

Instead of forcing taxpayers to subsidize the costs of terrorism insurance, Congress should consider creating a tax credit or deduction for premiums paid for terrorism insurance, as well as a deduction for claims and other costs borne by the insurance industry connected with offering terrorism insurance. A tax credit approach reduces government's control over the insurance market. Furthermore, since a tax credit approach encourages people to devote more of their own resources to terrorism insurance, the moral hazard problems associated with federally funded insurance is avoided.

The version of H.R. 3210 passed by the Financial Services Committee took a good first step in this direction by repealing the tax penalty which prevents insurance companies from properly reserving funds for human-created catastrophes. I am disappointed that this sensible provision was removed from the final bill. Instead, H.R. 3210 instructs the Treasury Department to study the benefits of allowing insurers to establish tax-free reserves to cover losses from terrorist events. The perceived need to study the wisdom of cutting taxes while expanding the federal government without hesitation demonstrates much that is wrong with Washington.

In conclusion, Mr. Speaker, H.R. 3210 may reduce the risk to insurance companies from future losses, but it increases the costs incurred by American taxpayers. More significantly, by ignoring the moral hazard problem, this bill may have the unintended consequence of increasing the losses suffered in any future terrorist attacks. Therefore, passage of this bill is not in the long-term interests of the American people.

