

113TH CONGRESS
2D SESSION

H. R. 4871

To reauthorize the Terrorism Risk Insurance Act of 2002, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2014

Mr. NEUGEBAUER (for himself and Mr. WESTMORELAND) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To reauthorize the Terrorism Risk Insurance Act of 2002,
and for other purposes.

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

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “TRIA Reform Act of 2014”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. References.
- Sec. 3. Extension of program.
- Sec. 4. Certification of acts of terrorism.
- Sec. 5. Separate treatment of conventional terrorism from NBCR terrorism.
- Sec. 6. Availability of coverage.
- Sec. 7. Terrorism loss risk-spreading premiums amount.

- Sec. 8. Increase of aggregate retention amount; mandatory recoupment.
 Sec. 9. Terrorism loss risk-spreading premium.
 Sec. 10. Risk-sharing mechanisms.
 Sec. 11. Reporting of terrorism insurance data.
 Sec. 12. Delivery of notices to policyholders.
 Sec. 13. Definition of control.
 Sec. 14. Annual study of small insurer market competitiveness.
 Sec. 15. CBO and OMB studies regarding budgeting for costs of Federal insurance programs.
 Sec. 16. GAO study on upfront premiums and capital reserve fund.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise expressly provided, wherever in
 3 this Act an amendment or repeal is expressed in terms
 4 of an amendment to, or repeal of, a section or other provi-
 5 sion, the reference shall be considered to be made to a
 6 section or other provision of the Terrorism Risk Insurance
 7 Act of 2002 (15 U.S.C. 6701 note).

8 **SEC. 3. EXTENSION OF PROGRAM.**

9 (a) IN GENERAL.—Subsection (a) of section 108 (15
 10 U.S.C. 6701 note) is amended by striking “December 31,
 11 2014” and inserting “December 31, 2019”.

12 (b) PROGRAM YEARS.—Subparagraph (G) of section
 13 102(11) (15 U.S.C. 6701 note) is amended by striking
 14 “2014” and inserting “2019”.

15 **SEC. 4. CERTIFICATION OF ACTS OF TERRORISM.**

16 (a) IN GENERAL.—Paragraph (1) of section 102 (15
 17 U.S.C. 6701 note) is amended—

18 (1) in subparagraph (A), in the matter pre-
 19 ceding clause (I), by striking “concurrence with the

1 Secretary of State” and inserting “consultation with
2 the Secretary of Homeland Security”;

3 (2) in subparagraph (B)—

4 (A) in clause (I), by striking “; or” and in-
5 serting a period;

6 (B) by striking clause (ii); and

7 (C) by striking “terrorism if—” and all
8 that follows through “(I) the act” and inserting
9 “terrorism if the act”;

10 (3) by redesignating subparagraphs (C) and
11 (D) as subparagraphs (E) and (G), respectively;

12 (4) by inserting after subparagraph (B) the fol-
13 lowing new subparagraph:

14 “(C) TIMING OF CERTIFICATION.—

15 “(I) PRELIMINARY CERTIFICATION
16 NOTICE.—The Secretary shall issue a pre-
17 liminary certification notice indicating
18 whether an act is expected to be a certified
19 act of terrorism not later than 15 days
20 after—

21 “(I) the date of the occurrence of
22 a potential act of terrorism; or

23 “(II) the receipt of a petition
24 seeking a preliminary certification de-
25 cision submitted by an insurer having

1 an in-force policy or policies that
2 could be affected by a certification de-
3 cision.

4 “(ii) FINAL CERTIFICATION NO-
5 TICE.—Not later than 90 days after the
6 date of the occurrence of a potential act of
7 terrorism or the receipt of a petition sub-
8 mitted to the Secretary pursuant to clause
9 (I)(II), the Secretary shall issue a final
10 certification notice indicating whether an
11 act is a certified act of terrorism for pur-
12 poses of this Act.

13 “(iii) RULE OF CONSTRUCTION.—
14 Failure to issue a preliminary certification
15 notice under clause (I) shall not prevent
16 the Secretary from issuing a final certifi-
17 cation notice under clause (ii).”; and

18 (5) by inserting before subparagraph (G), as so
19 redesignated by paragraph (3) of this subsection, the
20 following new subparagraph:

21 “(F) FAILURE TO MAKE DETERMINA-
22 TION.—If the Secretary does not certify, or
23 make a determination not to certify, an act as
24 an act of terrorism before the expiration of the
25 90-day period beginning on the occurrence of

1 such act, such act shall be treated for purposes
2 of this Act as having been determined by the
3 Secretary not to be an act of terrorism and
4 such determination shall be final and shall not
5 be subject to judicial review.”.

6 (b) APPLICABILITY.—The amendments made by sub-
7 section (a) shall apply to the Program Year for the Ter-
8 rorism Insurance Program established by title I of the
9 Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701
10 note) that begins on January 1, 2015, and Program Years
11 thereafter.

12 **SEC. 5. SEPARATE TREATMENT OF CONVENTIONAL TER-**
13 **RORISM FROM NBCR TERRORISM.**

14 (a) DEFINITION.—

15 (1) IN GENERAL.—Section 102 (15 U.S.C.
16 6701 note) is amended—

17 (A) in paragraph (1), by inserting after
18 subparagraph (C), as added by section 4(a)(4)
19 of this Act, the following new subparagraph:

20 “(D) ACT OF NBCR TERRORISM.—Each
21 certification of an act of terrorism under sub-
22 paragraph (A) shall include a determination of
23 whether such act involves NBCR terrorism.”;

1 (B) by redesignating paragraphs (9)
2 through (16) as paragraphs (10) through (17),
3 respectively; and

4 (C) by inserting after paragraph (8) the
5 following new paragraph:

6 “(9) NBCR TERRORISM.—Notwithstanding
7 paragraph (1), the term ‘NBCR terrorism’ means an
8 act of terrorism to the extent that the insured losses
9 involve, regardless of any other cause or event that
10 contributes concurrently or in any sequence to such
11 insurance loss—

12 “(A) an act of terrorism that is carried out
13 by means of the dispersal or application of ra-
14 dioactive material, or through the use of a nu-
15 clear weapon or device that involves or produces
16 a nuclear reaction, nuclear radiation, or radio-
17 active contamination;

18 “(B) the release of radioactive material,
19 and it appears that one purpose of the act of
20 terrorism was to release such material;

21 “(C) an act of terrorism that is carried out
22 by means of the dispersal or application of
23 pathogenic or poisonous biological or chemical
24 material; or

1 “(D) the release of pathogenic or poi-
2 sonous biological or chemical material, and it
3 appears that one purpose of the act of ter-
4 rorism was to release such material.”.

5 (2) APPLICABILITY.—The amendments made
6 by paragraph (1) shall apply to the Program Year
7 for the Terrorism Insurance Program established by
8 title I of the Terrorism Risk Insurance Act of 2002
9 (15 U.S.C. 6701 note) that begins on January 1,
10 2016, and Program Years thereafter.

11 (b) FEDERAL SHARE OF INSURED LOSS COMPENSA-
12 TION.—Subparagraph (A) of section 103(e)(1) (15 U.S.C.
13 6701 note) is amended—

14 (1) by striking “The Federal share” and insert-
15 ing “Subject to subparagraphs (B) and (C), the
16 Federal share”;

17 (2) by striking “an insurer during the Transi-
18 tion period” and inserting the following: “an in-
19 surer—

20 “(I) during the Transition period,”;

21 (3) by inserting “through the Program Year
22 ending on December 31, 2015,” after “each Pro-
23 gram Year thereafter”;

24 (4) by striking the period at the end and insert-
25 ing “; and”; and

1 (5) by adding at the end the following new
2 clause:

3 “(ii) shall be equal to—

4 “(I) except as provided in sub-
5 clause (II)—

6 “(aa) during the Program
7 Year beginning on January 1,
8 2016, 84 percent of that portion
9 of the amount of such insured
10 losses that exceeds the applicable
11 insurer deductible required to be
12 paid during such Program Year;

13 “(bb) during the Program
14 Year beginning on January 1,
15 2017, 83 percent of that portion
16 of the amount of such insured
17 losses that exceeds the applicable
18 insurer deductible required to be
19 paid during such Program Year;

20 “(cc) during the Program
21 Year beginning on January 1,
22 2018, 82 percent of that portion
23 of the amount of such insured
24 losses that exceeds the applicable
25 insurer deductible required to be

1 paid during such Program Year;
2 and

3 “(dd) during the Program
4 Year beginning on January 1,
5 2019, 80 percent of that portion
6 of the amount of such insured
7 losses that exceeds the applicable
8 insurer deductible required to be
9 paid during such Program Year;
10 and

11 “(II) in the case of insured losses
12 resulting from acts of NBCR ter-
13 rorism, during the Program Year be-
14 ginning on January 1, 2016, and each
15 Program Year thereafter, 85 percent
16 of that portion of the amount of such
17 insured losses that exceeds the appli-
18 cable insurer deductible required to be
19 paid during such Program Year.”.

20 (c) PROGRAM TRIGGER.—Subparagraph (B) of sec-
21 tion 103(e)(1) (15 U.S.C. 6701 note) is amended—

22 (1) in the matter preceding clause (I)—

23 (A) by striking “a certified act” and in-
24 serting “certified acts”; and

1 (B) by striking “such certified act” and in-
2 serting “such certified acts”;

3 (2) in clause (I) by striking “or” at the end;

4 (3) in clause (ii), by striking the period at the
5 end and inserting the following “through the Pro-
6 gram Year ending on December 31, 2015; or”;

7 (4) by adding at the end the following:

8 “(iii)(I) except as provided in sub-
9 clause (II)—

10 “(aa) \$200,000,000, with respect
11 to such insured losses occurring in the
12 Program Year beginning on January
13 1, 2016;

14 “(bb) \$300,000,000, with respect
15 to such insured losses occurring in the
16 Program Year beginning on January
17 1, 2017;

18 “(cc) \$400,000,000, with respect
19 to such insured losses occurring in the
20 Program Year beginning on January
21 1, 2018; and

22 “(dd) \$500,000,000, with respect
23 to such insured losses occurring in the
24 Program Year beginning on January
25 1, 2019; and

1 “(II) in the case of an act of NBCR
2 terrorism, \$100,000,000, with respect to
3 such insured losses occurring in the Pro-
4 gram Year beginning on January 1, 2016,
5 or any Program Year thereafter.”; and

6 (5) by adding after and below clause (iii), as
7 added by paragraph (4) of this subsection, the fol-
8 lowing:

9 “‘In determining the aggregate industry insured
10 losses resulting from certified acts of terrorism
11 for purposes of this subparagraph, the Sec-
12 retary shall not consider any act of terrorism
13 resulting, in the aggregate, in less than
14 \$50,000,000 in insured losses.’”.

15 **SEC. 6. AVAILABILITY OF COVERAGE.**

16 Subsection (c) of section 103 (15 U.S.C. 6701 note)
17 is amended to read as follows:

18 “(c) MANDATORY AVAILABILITY.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), during each Program Year, each entity
21 that meets the definition of an insurer under section
22 102 shall make available—

23 “(A) in all of its property and casualty in-
24 surance policies, coverage for insured losses;
25 and

1 “(B) property and casualty insurance cov-
2 erage for insured losses that does not differ ma-
3 terially from the terms, amounts, and other cov-
4 erage limitations applicable to losses arising
5 from events other than acts of terrorism.

6 “(2) NO MANDATORY AVAILABILITY FOR SMALL
7 INSURERS.—The Secretary shall provide, by regula-
8 tion and in consultation with State insurance regu-
9 latory authorities, that paragraph (1) shall not apply
10 for a Program Year with respect to any small in-
11 surer (as such term is defined in such regulations by
12 the Secretary) that, at the option of the insurer,
13 makes a request for such inapplicability for such
14 Program Year to the appropriate State insurance
15 regulatory authority for the State in which such in-
16 surer is domiciled and is determined by such State
17 insurance regulatory authority to meet such require-
18 ments for financial hardship or financial infeasibility
19 of providing coverage for insured losses as the Sec-
20 retary shall establish in such regulations. The in-
21 surer shall provide notice, in a manner satisfactory
22 to the State insurance regulatory authority, inform-
23 ing affected prospective and current policyholders
24 whether such coverage is not provided by the in-
25 surer. This paragraph may not be construed to re-

1 quire any State insurance regulatory authority to
2 undertake making determinations under this para-
3 graph.”.

4 **SEC. 7. TERRORISM LOSS RISK-SPREADING PREMIUMS**
5 **AMOUNT.**

6 (a) IN GENERAL.—Subparagraph (C) of section
7 103(e)(7) (15 U.S.C. 6701 note) is amended—

8 (1) by striking “subparagraphs (A) through
9 (E)” and inserting “subparagraphs (A) through
10 (F)”;

11 (2) by striking “133 percent” and inserting
12 “150 percent”.

13 (b) APPLICABILITY.—The amendment made by sub-
14 section (a) shall apply to the Program Year for the Ter-
15 rorism Insurance Program established by title I of the
16 Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701
17 note) that begins on January 1, 2016, and Program Years
18 thereafter.

19 **SEC. 8. INCREASE OF AGGREGATE RETENTION AMOUNT;**
20 **MANDATORY RECOUPMENT.**

21 (a) IN GENERAL.—Paragraph (6) of section 103(e)
22 (15 U.S.C. 6701 note) is amended—

23 (1) in subparagraph (D)(ii), by striking “and”
24 at the end;

25 (2) in subparagraph (E)—

1 (A) in the matter preceding clause (I), by
2 inserting “through the Program Year ending on
3 December 31, 2015” before the comma; and

4 (B) in clause (ii), by striking the period at
5 the end and inserting “; and”; and

6 (3) by adding at the end the following new sub-
7 paragraph:

8 “(F) for the Program Year beginning Jan-
9 uary 1, 2016, and each Program Year there-
10 after, the lesser of—

11 “(I) the amount that is equal to the
12 sum of the insurer deductibles for the Pro-
13 gram Year for all insurers participating in
14 the Program; and

15 “(ii) the aggregate amount, for all in-
16 surers, of insured losses during such Pro-
17 gram Year.”.

18 (b) MANDATORY RECOUPMENT.—

19 (1) AMOUNT; TIMING.—Paragraph (7) of sec-
20 tion 103(e) (15 U.S.C. 6701 note) is amended—

21 (A) by striking subparagraphs (A) and (B)
22 and inserting the following new subparagraph:

23 “(A) MANDATORY RECOUPMENT
24 AMOUNT.—For purposes of this paragraph, the
25 mandatory recoupment amount for each of the

1 periods referred to in subparagraphs (A)
2 through (F) of paragraph (6) shall be equal to
3 the lesser of—

4 “(I) the aggregate amount, for all in-
5 surers, of insured losses during such period
6 that are compensated by the Federal Gov-
7 ernment pursuant to paragraph (1); or

8 “(ii) the insurance marketplace aggre-
9 gate retention amount under paragraph
10 (6) for such period.”;

11 (B) in subparagraph (E)(I)(III), by strik-
12 ing “after January 1, 2012” and inserting “be-
13 fore December 31, 2014”; and

14 (C) by redesignating subparagraphs (C),
15 (D), (E) (as so amended), and (F) as subpara-
16 graphs (B), (C), (D), and (E), respectively.

17 (2) CONFORMING AMENDMENTS.—Section
18 103(e) (15 U.S.C. 6701 note) is amended—

19 (A) in paragraph (7)(D)(I), as so redesign-
20 ated by paragraph (1)(B) of this subsection,
21 by striking “subparagraph (C)” and inserting
22 “subparagraph (B)”; and

23 (B) in paragraph (8)—

1 (I) in subparagraph (C), by striking
2 “paragraph (7)(D)” and inserting “para-
3 graph (7)(C)”;

4 (ii) in subparagraph (D)(ii), by strik-
5 ing “paragraph (7)(E)” and inserting
6 “paragraph (7)(D)”.

7 **SEC. 9. TERRORISM LOSS RISK-SPREADING PREMIUM.**

8 (a) IN GENERAL.—Section 103(e) (15 U.S.C. 6701
9 note) is amended by striking paragraph (8) and inserting
10 the following new paragraph:

11 “(8) TERRORISM LOSS RISK-SPREADING PRE-
12 MIUMS.—

13 “(A) ESTABLISHMENT.—After an act of
14 terrorism, the Secretary shall, to the extent pro-
15 vided in subparagraph (7)(C), and may, to the
16 extent provided in subparagraph (7)(D), estab-
17 lish terrorism loss risk-spreading premiums,
18 which shall be imposed as a policyholder pre-
19 mium surcharge on property and casualty in-
20 surance policies for all participating insurers in
21 force after the date of such establishment.

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

1 “(C) DETERMINATION OF PREMIUMS.—In
2 determining the method and manner of impos-
3 ing terrorism loss risk-spreading premiums, in-
4 cluding the amount of such premiums, the Sec-
5 retary shall—

6 “(I) impose such terrorism loss risk-
7 spreading premiums beginning with such
8 period of coverage during the year as the
9 Secretary determines appropriate, but shall
10 commence imposition of such premiums
11 not later than 18 months after the occur-
12 rence of the act of terrorism for which
13 such premiums are imposed;

14 “(ii) base any terrorism loss risk-
15 spreading premium on a percentage of the
16 premium amount charged for property and
17 casualty insurance coverage under the pol-
18 icy; and

19 “(iii) take into consideration—

20 “(I) the economic impact on com-
21 mercial centers of urban areas, includ-
22 ing the effect on commercial rents and
23 commercial insurance premiums, par-
24 ticularly rents and premiums charged
25 to small businesses, and the avail-

1 ability of lease space and commercial
2 insurance within urban areas;

3 “(II) the risk factors related to
4 rural areas and smaller commercial
5 centers, including the potential expo-
6 sure to loss and the likely magnitude
7 of such loss, as well as any resulting
8 cross-subsidization that might result;
9 and

10 “(III) the various exposures to
11 terrorism risk for different lines of in-
12 surance.

13 “(D) PERCENTAGE LIMITATION.—A ter-
14 rorism loss risk-spreading premium collected on
15 a discretionary basis pursuant to paragraph
16 (7)(D) shall not be less than, on an annual
17 basis, the amount equal to 3 percent of the pre-
18 mium charged for property and casualty insur-
19 ance coverage under the policy.

20 “(E) TIMING OF PREMIUMS.—The Sec-
21 retary may adjust the timing of terrorism loss
22 risk-spreading premiums to provide for equiva-
23 lent application of the provisions of this title to
24 policies that are not based on a calendar year,

1 or to apply such provisions on a daily, monthly,
2 or quarterly basis, as appropriate.”.

3 (b) **APPLICABILITY.**—The amendment made by sub-
4 section (a) shall apply to the Program Year for the Ter-
5 rorism Insurance Program established by title I of the
6 Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701
7 note) that begins on January 1, 2016, and Program Years
8 thereafter.

9 **SEC. 10. RISK-SHARING MECHANISMS.**

10 (a) **IN GENERAL.**—Section 103(e) (15 U.S.C. 6701
11 note) is amended by adding at the end the following new
12 paragraph:

13 “(9) **RISK-SHARING MECHANISMS.**—

14 “(A) **FINDING; RULE OF CONSTRUC-**
15 **TION.**—The Congress finds that it is desirable
16 to encourage the growth of nongovernmental,
17 private market reinsurance capacity for protec-
18 tion against losses arising from acts of ter-
19 rorism. Therefore, nothing in this title shall
20 prohibit insurers from developing risk-sharing
21 mechanisms (including mutual reinsurance fa-
22 cilities and agreements, use of the capital mar-
23 kets, and insurance-linked securities) to volun-
24 tarily reinsure terrorism losses between and

1 among themselves that are not subject to reim-
2 bursement under this section.

3 “(B) ESTABLISHMENT OF ADVISORY COM-
4 MITTEE.—The Secretary shall appoint an Advi-
5 sory Committee to—

6 “(I) encourage the creation and devel-
7 opment of such risk-sharing mechanisms;

8 “(ii) assist the Secretary and be avail-
9 able to administer such risk-sharing mech-
10 anisms; and

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

15 “(C) MEMBERSHIP.—The Advisory Com-
16 mittee shall be composed of nine members who
17 are directors, officers, or other employees of in-
18 surers, reinsurers, or capital market partici-
19 pants that are participating or that desire to
20 participate in such mechanisms, and who are
21 representative of the affected sectors of the in-
22 surance industry, including commercial property
23 insurance, commercial casualty insurance, rein-
24 surance, and alternative risk transfer indus-
25 tries.”.

1 (b) APPLICABILITY.—The amendment made by sub-
2 section (a) shall apply to the Program Year for the Ter-
3 rorism Insurance Program established by title I of the
4 Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701
5 note) that begins on January 1, 2015, and Program Years
6 thereafter.

7 **SEC. 11. REPORTING OF TERRORISM INSURANCE DATA.**

8 Section 104 (15 U.S.C. 6701 note) is amended by
9 adding at the end the following new subsection:

10 “(h) REPORTING OF TERRORISM INSURANCE
11 DATA.—

12 “(1) AUTHORITY.—During the Program Year
13 beginning on January 1, 2016, and in each Program
14 Year thereafter, the Secretary shall require insurers
15 participating in the Program to submit to the Sec-
16 retary such information regarding insurance cov-
17 erage for terrorism losses of such insurers as the
18 Secretary considers appropriate to analyze the effec-
19 tiveness of the Program, which shall include infor-
20 mation regarding—

21 “(A) lines of insurance with exposure to
22 such losses;

23 “(B) premiums earned on such coverage;

24 “(C) geographical location of exposures;

25 “(D) pricing of such coverage;

1 “(E) the take-up rate for such coverage;

2 “(F) the amount of private reinsurance for
3 acts of terrorism purchased; and

4 “(G) such other matters as the Secretary
5 considers appropriate.

6 “(2) REPORTS.—Not later than 6 months after
7 the termination of the Program Year beginning on
8 January 1, 2016, and not later than 6 months after
9 the termination of each Program Year thereafter,
10 the Secretary shall submit a report to the Com-
11 mittee on Financial Services of the House of Rep-
12 resentatives and the Committee on Banking, Hous-
13 ing, and Urban Affairs of the Senate that includes—

14 “(A) an analysis of the overall effectiveness
15 of the Program;

16 “(B) an evaluation of any changes or
17 trends in the data collected under paragraph
18 (1);

19 “(C) an evaluation of whether any aspects
20 of the Program have the effect of discouraging
21 or impeding insurers from providing commercial
22 property casualty insurance coverage or cov-
23 erage for acts of terrorism;

24 “(D) an evaluation of the impact of the
25 Program on workers’ compensation insurers;

1 “(E) an evaluation of the impact on avail-
2 ability and affordability of terrorism insurance
3 coverage and fiscal protection of the taxpayers
4 of separate Federal treatment under the Pro-
5 gram for nuclear, biological, chemical, and radi-
6 ological terrorism; and

7 “(F) in the case of the data reported in
8 paragraph (1)(B), an updated estimate of the
9 total amount earned since the commencement
10 of Program Year 1.

11 “(3) PROTECTION OF DATA.—To the extent
12 possible, the Secretary shall contract with an insur-
13 ance statistical aggregator to collect the information
14 described in paragraph (1), which shall keep any
15 nonpublic information confidential and provide it to
16 the Secretary in an aggregate form or in such other
17 form or manner that does not permit identification
18 of the insurer submitting such information.

19 “(4) ADVANCE COORDINATION.—Before col-
20 lecting any data or information under paragraph (1)
21 from an insurer, or affiliate of an insurer, the Sec-
22 retary shall coordinate with the appropriate State in-
23 surance regulatory authorities or their representa-
24 tives and any relevant government agency or publicly
25 available sources to determine if the information to

1 be collected is available from, and may be obtained
2 in a timely manner by, individually or collectively,
3 such entities. If the Secretary determines that such
4 data or information is available, and may be ob-
5 tained in a timely matter, from such entities, the
6 Secretary shall obtain the data or information from
7 such entities. If the Secretary determines that such
8 data or information is not so available, the Secretary
9 may collect such data or information from an in-
10 surer and affiliates.

11 “(5) CONFIDENTIALITY.—

12 “(A) RETENTION OF PRIVILEGE.—The
13 submission of any non-publicly available data
14 and information to the Secretary and the shar-
15 ing of any non-publicly available data with or
16 by the Secretary among other Federal agencies,
17 the State insurance regulatory authorities and
18 their collective agents, or any other entities
19 under this subsection shall not constitute a
20 waiver of, or otherwise affect, any privilege aris-
21 ing under Federal or State law (including the
22 rules of any Federal or State court) to which
23 the data or information is otherwise subject.

24 “(B) CONTINUED APPLICATION OF PRIOR
25 CONFIDENTIALITY AGREEMENTS.—Any require-

1 ment under Federal or State law to the extent
2 otherwise applicable, or any requirement pursu-
3 ant to a written agreement in effect between
4 the original source of any non-publicly available
5 data or information and the source of such data
6 or information to the Secretary, regarding the
7 privacy or confidentiality of any data or infor-
8 mation in the possession of the source to the
9 Secretary, shall continue to apply to such data
10 or information after the data or information
11 has been provided pursuant to this subsection.

12 “(C) INFORMATION-SHARING AGREE-
13 MENT.—Any data or information obtained by
14 the Secretary under this subsection may be
15 made available to State insurance regulatory
16 authorities, individually or collectively through
17 an information-sharing agreement that—

18 “(I) shall comply with applicable Fed-
19 eral law; and

20 “(ii) shall not constitute a waiver of,
21 or otherwise affect, any privilege under
22 Federal or State law (including any privi-
23 lege referred to in subparagraph (A) and
24 the rules of any Federal or State court) to

1 which the data or information is otherwise
2 subject.

3 “(D) AGENCY DISCLOSURE REQUIRE-
4 MENTS.—Section 552 of title 5, United States
5 Code, including any exceptions thereunder, shall
6 apply to any data or information submitted
7 under this subsection to the Secretary by an in-
8 surer or affiliate of an insurer.”.

9 **SEC. 12. DELIVERY OF NOTICES TO POLICYHOLDERS.**

10 Section 103(b)(2) (15 U.S.C. 6701 note) is amend-
11 ed—

12 (1) in subparagraph (B), by striking “, pur-
13 chase,”; and

14 (2) in subparagraph (C), by striking “, pur-
15 chase,”.

16 **SEC. 13. DEFINITION OF CONTROL.**

17 Paragraph (3) of section 102 (15 U.S.C. 6701 note)
18 is amended—

19 (1) by redesignating subparagraphs (A), (B),
20 and (C) as clauses (I), (ii), and (iii), respectively and
21 realigning such clauses, as so redesignated, so as to
22 be indented six ems from the left margin;

23 (2) in the matter preceding clause (I) (as so re-
24 designated), by striking “An entity has” and insert-
25 ing the following:

1 “(A) IN GENERAL.—An entity has”; and
2 (3) by adding at the end the following new sub-
3 paragraph:

4 “(B) RULE OF CONSTRUCTION.—An enti-
5 ty, including any affiliate thereof, does not have
6 control over another entity if, as of the date of
7 the enactment of the TRIA Reform Act of
8 2014, the entity is acting as an attorney-in-fact,
9 as defined by the Secretary, for the other entity
10 and such other entity is a reciprocal insurer,
11 provided that the entity is not, for reasons
12 other than the attorney-in-fact relationship, de-
13 fined as having control under subparagraph
14 (A).”.

15 **SEC. 14. ANNUAL STUDY OF SMALL INSURER MARKET COM-**
16 **PETITIVENESS.**

17 Section 108 (15 U.S.C. 6701 note) is amended by
18 adding at the end the following new subsection:

19 “(h) STUDY OF SMALL INSURER MARKET COMPETI-
20 TIVENESS.—

21 “(1) IN GENERAL.—The Secretary shall con-
22 duct an annual study of small insurers participating
23 in the Program, and identify any competitive chal-
24 lenges small insurers face in the terrorism risk in-
25 surance marketplace, including—

1 “(A) changes to the market share, pre-
2 mium volume, and policyholder surplus of small
3 insurers relative to large insurers;

4 “(B) how the property and casualty insur-
5 ance market for terrorism risk differs between
6 small and large insurers, and whether such a
7 difference exists within other perils;

8 “(C) the impact of the Program’s manda-
9 tory availability requirement under section
10 103(c) and the voluntary opt-out for small in-
11 surers;

12 “(D) the effect of increasing the trigger
13 amount for the Program under section
14 103(e)(1)(B)(iii)(I) on small insurers;

15 “(E) the availability and cost of private re-
16 insurance for small insurers; and

17 “(F) the impact that State workers com-
18 pensation laws have on small insurers, particu-
19 larly the impact of mandatory, non-excludable
20 participation and unlimited financial liability.

21 “(2) TIMING AND REPORT.—The Secretary
22 shall complete the first study under paragraph (1)
23 and submit a report to the Congress setting forth
24 the findings and conclusions of the study not later
25 than June 30, 2016, and shall complete an annual

1 study under paragraph (1) and submit a report re-
2 garding such study to the Congress by June 1 annu-
3 ally thereafter.”.

4 **SEC. 15. CBO AND OMB STUDIES REGARDING BUDGETING**
5 **FOR COSTS OF FEDERAL INSURANCE PRO-**
6 **GRAMS.**

7 Not later than the expiration of the 12-month period
8 beginning on the date of the enactment of this Act, the
9 Director of the Congressional Budget Office and the Di-
10 rector of the Office of Management and Budget shall
11 each—

12 (1) conduct a study to determine the feasibility
13 of applying accrual accounting concepts to budgeting
14 for the costs of the Terrorism Risk Insurance Pro-
15 gram and for the costs of the other Federal insur-
16 ance programs; and

17 (2) submit a report regarding such study to the
18 Committees on the Budget of the House of Rep-
19 resentatives and the Senate, which shall include a
20 recommendation specifically addressing the feasi-
21 bility of applying fair value concepts to budgeting
22 for the costs of Federal insurance programs, includ-
23 ing the Terrorism Risk Insurance Program.

1 **SEC. 16. GAO STUDY ON UPFRONT PREMIUMS AND CAPITAL**
2 **RESERVE FUND.**

3 (a) STUDY.—Not later than 2 years after the date
4 of the enactment of this Act, the Comptroller General of
5 the United States shall complete a study on the viability
6 of the Federal Government—

7 (1) assessing and collecting upfront premiums
8 on insurers that participate in the Terrorism Risk
9 Insurance Program established under the Terrorism
10 Risk Insurance Act of 2002 (15 U.S.C. 6701 note)
11 (in this section referred to as the “Program”), which
12 shall include a comparison of practices in inter-
13 national markets to assess and collect premiums ei-
14 ther before or after terrorism losses are incurred;
15 and

16 (2) creating a capital reserve fund under the
17 Program and requiring insurers participating in the
18 Program to dedicate capital specifically for terrorism
19 losses before such losses are incurred, which shall in-
20 clude a comparison of practices in international mar-
21 kets to establish reserve funds.

22 (b) REQUIRED CONTENT.—The study required under
23 subsection (a) shall examine, but shall not be limited to,
24 the following issues:

25 (1) UPFRONT PREMIUMS.—With respect to up-
26 front premiums described in subsection (a)(1)—

1 (A) how the Federal Government could de-
2 termine the price of such upfront premiums on
3 insurers that participate in the Program;

4 (B) how the Federal Government could col-
5 lect such upfront premiums;

6 (C) how the Federal Government could en-
7 sure that such upfront premiums are not spent
8 for purposes other than satisfying claims
9 through the Program;

10 (D) how the assessment and collection of
11 such upfront premiums could affect take-up
12 rates for terrorism risk coverage in different re-
13 gions and industries;

14 (E) the effect of collecting such upfront
15 premiums on the private market for terrorism
16 risk reinsurance; and

17 (F) the size of the Federal Government
18 subsidy insurers currently receive through their
19 participation in the Program.

20 (2) CAPITAL RESERVE FUND.—With respect to
21 the capital reserve fund described in subsection
22 (a)(2)—

23 (A) how the creation of a capital reserve
24 fund would affect the Federal Government's fis-
25 cal exposure under the Terrorism Risk Insur-

1 ance Program and the ability of the Program to
2 meet its statutory purposes;

3 (B) how a capital reserve fund would im-
4 pact insurers and reinsurers, including liquidity,
5 insurance pricing, and capacity to provide ter-
6 rorism risk coverage;

7 (C) the feasibility of segregating funds at-
8 tributable to terrorism risk from funds attrib-
9 utable to other insurance lines;

10 (D) how a capital reserve fund would be
11 viewed and treated under current Financial Ac-
12 counting Standards Board accounting rules and
13 the tax laws; and

14 (E) how a capital reserve fund would affect
15 the States' ability to regulate insurers partici-
16 pating in the Program.

17 (3) INTERNATIONAL PRACTICES.—With respect
18 to international markets referred to in paragraphs
19 (1) and (2) of subsection (A), how other countries,
20 if any—

21 (A) have established terrorism insurance
22 structures;

23 (B) charge premiums or otherwise collect
24 funds to pay for the costs of terrorism insur-

1 ance structures, including risk and administra-
2 tive costs; and

3 (C) have established capital reserve funds
4 to pay for the costs of terrorism insurance
5 structures.

6 (4) DURATION.—With respect to the capital re-
7 serve fund described in subsection (a)(2), how the
8 duration of the Program would affect the viability of
9 such capital reserve fund.

10 (c) REPORT.—Upon completion of the study required
11 under subsection (a), the Comptroller General shall sub-
12 mit a report on the results of such study to the Committee
13 on Banking, Housing, and Urban Affairs of the Senate
14 and the Committee on Financial Services of the House of
15 Representatives.

16 (d) PUBLIC AVAILABILITY.—The study and report
17 required under this section shall be made available to the
18 public in electronic form and shall be published on the
19 website of the Government Accountability Office.

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