

117TH CONGRESS
1ST SESSION

H. R. 5823

To establish a Pandemic Risk Reinsurance Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 2, 2021

Mrs. CAROLYN B. MALONEY of New York (for herself, Mr. DANNY K. DAVIS of Illinois, Mr. GREEN of Texas, Ms. JACKSON LEE, Mr. MEEKS, Ms. MENG, Mr. MORELLE, Ms. NORTON, Miss RICE of New York, and Ms. TITUS) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish a Pandemic Risk Reinsurance Program, 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.**

4 This Act may be cited as the “Pandemic Risk Insur-
5 ance Act of 2021”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to establish a Federal pro-
8 gram that provides for a transparent system of shared
9 public and private compensation for property and casualty

1 insurance losses resulting from a pandemic or outbreak
2 of communicable or infectious disease, in order to—

3 (1) protect consumers by addressing market
4 disruptions and ensure the continued widespread
5 availability and affordability of property and cas-
6 ualty insurance for losses resulting from a pandemic
7 or outbreak of communicable or infectious disease;
8 and

9 (2) allow for a transitional period for the pri-
10 vate markets to stabilize, resume pricing of such in-
11 surance, and build capacity to absorb any future
12 losses, while preserving State insurance regulation
13 and consumer protections.

14 **SEC. 3. DEFINITIONS.**

15 In this Act, the following definitions shall apply:

16 (1) COVERED PUBLIC HEALTH EMERGENCY.—

17 (A) IN GENERAL.—The term “covered
18 public health emergency” means any outbreak
19 of infectious disease or pandemic—

20 (i) for which the Secretary of Health
21 and Human Services determines, or renews
22 or extends a determination that, a public
23 health emergency exists under section 319
24 of the Public Health Service Act (42

1 U.S.C. 247d) due to a significant outbreak
2 of infectious disease; and

3 (ii) that is certified by the Secretary
4 as a covered public health emergency for
5 purposes of this Act.

6 (B) NONDELEGATION.—The Secretary
7 may not delegate or designate to any other offi-
8 cer, employee, or person, any certification under
9 subparagraph (A)(ii) of whether, during the ef-
10 fective period of the Program, a covered public
11 health emergency exists.

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

16 (3) BUSINESS INTERRUPTION INSURANCE.—
17 The term “business interruption insurance” means
18 commercial lines of property and casualty insurance
19 coverage, other non-property contingent business
20 interruption insurance, provided or made available
21 for losses resulting from periods of suspended busi-
22 ness operations, including losses resulting from a
23 covered public health emergency, or a civil order re-
24 lated to a covered public health emergency, whether

1 provided under broader coverage for property and
2 casualty losses or separately.

3 (4) COMMERCIAL PROPERTY INSURANCE.—The
4 term “commercial property insurance” means prop-
5 erty insurance which indemnifies an owner or user
6 of property at a fixed location or premises for loss
7 or damage or loss of income-producing ability of the
8 property, but the term does not include inland ma-
9 rine, transit, or personal lines insurance.

10 (5) CONTROL.—

11 (A) IN GENERAL.—An entity has “control”
12 over another entity, if—

13 (i) the entity directly or indirectly or
14 acting through 1 or more other persons
15 owns, controls, or has power to vote 25
16 percent or more of any class of voting se-
17 curities of the other entity;

18 (ii) the entity controls in any manner
19 the election of a majority of the directors
20 or trustees of the other entity; or

21 (iii) the Secretary determines, after
22 notice and opportunity for hearing, that
23 the entity directly or indirectly exercises a
24 controlling influence over the management
25 or policies of the other entity.

1 (B) RULE OF CONSTRUCTION.—An entity,
2 including any affiliate thereof, does not have
3 “control” over another entity, if, as of January
4 1, 2021, the entity is acting as an attorney-in-
5 fact, as defined by the Secretary, for the other
6 entity and such other entity is a reciprocal in-
7 surer, provided that the entity is not, for rea-
8 sons other than the attorney-in-fact relation-
9 ship, defined as having “control” under sub-
10 paragraph (A).

11 (6) DEPARTMENT.—The term “Department”
12 means the Department of the Treasury.

13 (7) ECONOMIC RECOVERY PERIOD.—

14 (A) IN GENERAL.—The term “economic
15 recovery period” means the period beginning
16 with the date of enactment of this Act and end-
17 ing on December 31 of the fifth year following
18 enactment.

19 (B) RESET.—If during the economic recov-
20 ery period, a covered public health emergency is
21 certified which applies to the whole of the coun-
22 try or to States comprising at least 40 percent
23 of the country’s population, the economic recov-
24 ery period will be extended until December 31
25 of the 5th year following such certification.

1 (8) EVENT.—The term “event” means a trade
2 show, consumer show, exhibition, fair, conference,
3 convention, meeting, seminar, charity event, auction,
4 gala dinner, competition, sporting event, film or tele-
5 vision production, award show, or other similar event
6 or production.

7 (9) EVENT CANCELLATION INSURANCE.—The
8 term “event cancellation insurance” means insur-
9 ance, including production package insurance, that
10 indemnifies an insured for losses that occur as a
11 consequence of—

12 (A) cancellation, abandonment, delay, or
13 rescheduling (whether full or partial) of an
14 event; or

15 (B) non-appearance at an event of a prin-
16 cipal speaker or performer or unavailability of
17 an essential element, including covered key tal-
18 ent or cast members, required for achievement
19 of the event’s purpose.

20 (10) INSURED LOSS.—The term insured loss
21 means any loss resulting from an outbreak of infec-
22 tious disease or pandemic for which a covered public
23 health emergency is certified that is covered by pri-
24 mary or excess property and casualty insurance
25 issued by an insurer if such loss occurs—

1 (A) within the United States; and

2 (B) during the period that the covered
3 public health emergency for such area is in ef-
4 fect.

5 (11) INSURER.—The term insurer means any
6 entity, including any affiliate thereof—

7 (A) that is—

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

11 (ii) not licensed or admitted as de-
12 scribed in clause (i), if it is an eligible sur-
13 plus line carrier listed on the Quarterly
14 Listing of Alien Insurers of the NAIC, or
15 any successor thereto;

16 (iii) approved for the purpose of offer-
17 ing property and casualty insurance by a
18 Federal agency in connection with mari-
19 time, energy, or aviation activity;

20 (iv) a State residual market insurance
21 entity or State workers' compensation
22 fund; or

23 (v) any other entity described in sec-
24 tion 4(f), to the extent provided in the

1 rules of the Secretary issued under section
2 4(f);

3 (B) that receives direct earned premiums
4 for any type of commercial property and cas-
5 ualty insurance coverage, other than in the case
6 of entities described in subsections (d) and (f)
7 of section 4; and

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

10 Such term includes captive insurers and other self-
11 insurance arrangements by municipalities and other
12 entities (such as workers' compensation self-insur-
13 ance programs and State workers' compensation re-
14 insurance pools).

15 (12) NAIC.—The term “NAIC” means the Na-
16 tional Association of Insurance Commissioners.

17 (13) PARAMETRIC INSURANCE FACILITY.—The
18 term “parametric insurance facility” means a non-
19 assessable joint underwriting association or pool
20 which has been approved by the Secretary to provide
21 parametric non-damage business interruption insur-
22 ance for purpose of Section 4(c)(2)(B).

23 (14) PARAMETRIC NON-DAMAGE BUSINESS
24 INTERRUPTION INSURANCE.—The term “parametric
25 non-damage business interruption insurance” means

1 insurance that compensates the insured for a portion
2 of 180 days' fixed costs and payroll, as more specifi-
3 cally provided by regulations issued by the Sec-
4 retary, which is triggered irrespective of physical
5 status or condition of the insured physical location
6 and without need for specific proof of loss upon the
7 following conditions—

8 (A) a certification of covered public health
9 emergency; and

10 (B) the State or local government in which
11 the insured operates has issued a closure order
12 applicable to organizations with the policy-
13 holder's NAICS code.

14 (15) PARTICIPATING INSURER.—The term
15 “participating insurer” means, with respect to a cal-
16 endar year, an insurer that has elected pursuant to
17 section 4(c)(2)(B) to participate in the parametric
18 insurance facility under this Act for such calendar
19 year.

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

1 (17) PROGRAM.—The term “Program” means
2 the Pandemic Risk Reinsurance Program established
3 by this Act.

4 (18) PROPERTY AND CASUALTY INSURANCE.—
5 The term “property and casualty insurance”—

6 (A) means commercial lines of property
7 and casualty insurance, including excess insur-
8 ance, workers’ compensation insurance, busi-
9 ness interruption insurance, commercial general
10 liability insurance, directors and officers liabil-
11 ity insurance, and event cancellation insurance;
12 and

13 (B) does not include—

14 (i) Federal crop insurance issued or
15 reinsured under the Federal Crop Insur-
16 ance Act (7 U.S.C. 1501 et seq.), or any
17 other type of crop or livestock insurance
18 that is privately issued or reinsured;

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

23 (iii) financial guaranty insurance
24 issued by monoline financial guaranty in-
25 surance corporations;

1 (iv) health or life insurance, including
2 group life insurance;

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

6 (vi) reinsurance or retrocessional rein-
7 surance;

8 (vii) commercial automobile insurance;

9 (viii) burglary and theft insurance; or

10 (ix) surety insurance.

11 (19) SECRETARY.—The term “Secretary”
12 means the Secretary of the Treasury.

13 (20) STATE.—The term “State” means any
14 State of the United States, the District of Columbia,
15 the Commonwealth of Puerto Rico, the Common-
16 wealth of the Northern Mariana Islands, American
17 Samoa, Guam, each of the United States Virgin Is-
18 lands, and any territory or possession of the United
19 States.

20 (21) UNITED STATES.—The term “United
21 States” means the several States.

22 (22) RULE OF CONSTRUCTION FOR DATES.—
23 With respect to any reference to a date in this Act,
24 such day shall be construed—

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

2 and

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

4 **SEC. 4. PANDEMIC RISK REINSURANCE PROGRAM.**

5 (a) ESTABLISHMENT OF PROGRAM.—

6 (1) IN GENERAL.—There is established in the
7 Department of the Treasury the Pandemic Risk Re-
8 insurance Program.

9 (2) AUTHORITY OF THE SECRETARY.—Notwith-
10 standing any other provision of State or Federal
11 law, the Secretary shall administer the Program,
12 and shall pay the Federal share of compensation for
13 insured losses in accordance with subsection (e).

14 (3) MANDATORY PARTICIPATION.—Each entity
15 that meets the definition of an insurer under this
16 Act shall participate in the Program.

17 (4) TREATMENT OF EXISTING POLICIES.—Ex-
18 cept as provided under section 6, this Act may not
19 be construed to affect any policy for property and
20 casualty insurance in force on the date of the enact-
21 ment of this Act.

22 (b) CONDITIONS FOR FEDERAL PAYMENTS.—No
23 payment may be made by the Secretary under this section
24 with respect to an insured loss that is covered by an in-
25 surer, unless—

1 (1) except in the case of a parametric non-dam-
2 age business interruption insured loss, the person
3 that suffers the insured loss, or a person acting on
4 behalf of that person, files a claim with the insurer;

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

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

13 (B) in the case of any policy that is issued
14 within 90 days of the date of enactment of this
15 Act, at the time of offer and renewal of the pol-
16 icy; and

17 (C) in the case of any policy that is issued
18 more than 90 days after the date of enactment
19 of this Act, on a separate line item in the pol-
20 icy, at the time of offer and renewal of the pol-
21 icy;

22 (3) the insurer processes the claim for the in-
23 sured loss in accordance with appropriate business
24 practices, and any reasonable procedures that the
25 Secretary may prescribe; and

1 (4) the insurer submits to the Secretary, in ac-
2 cordance with such reasonable procedures as the
3 Secretary may establish—

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

7 (B) written certification—

8 (i) of the underlying claim; and

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

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

13 (c) MANDATORY AVAILABILITY OF COVERAGE FOR
14 COVERED PUBLIC HEALTH EMERGENCIES.—

15 (1) IN GENERAL.—During each calendar year,
16 each entity that meets the definition of an insurer
17 under this Act—

18 (A) shall make available, in all of its prop-
19 erty and casualty insurance policies, coverage
20 for insured losses; and

21 (B) shall make available property and cas-
22 ualty insurance coverage for insured losses that
23 does not differ materially from the terms, con-
24 ditions, amounts, limits, deductibles, or self-in-
25 sured retentions and other coverage limitations

1 applicable to losses arising from events other
2 than public health emergencies.

3 (2) PARAMETRIC NON-DAMAGE BUSINESS
4 INTERRUPTION INSURANCE COVERAGE.—

5 (A) IN GENERAL.—During each calendar
6 year, each entity that meets the definition of an
7 insurer under this Act shall in addition make
8 available, in all its commercial property insur-
9 ance policies, parametric non-damage business
10 interruption insurance coverage for insured
11 losses.

12 (B) ALTERNATIVES.—An insurer subject
13 to the requirement in subparagraph (A) may
14 satisfy the requirement by arranging for the
15 parametric non-damage business interruption
16 insurance coverage to be made available to the
17 insured by either—

18 (i) an affiliate of the insurer; or
19 (ii) a parametric insurance facility in
20 which the insurer participates.

21 (C) CRITERIA.—The Secretary shall issue
22 regulations, as soon as practicable after the
23 date of enactment of this Act, that establish eli-
24 gibility criteria and other standards for para-
25 metric insurance facilities. In general—

1 (i) such facilities may be established
2 and governed subject to supervision by the
3 insurance commissioner of the domiciliary
4 State and if qualified by the Secretary will
5 be permitted to provided coverage in all
6 States;

7 (ii) insurer capital contribution to a
8 facility may be in the form of surplus note
9 or similar instrument which may bear a
10 coupon but subject to all policyholder
11 claims; and

12 (iii) a facility may, subject to regu-
13 latory approval and any limitations in the
14 Secretary's regulations, distribute profits
15 beginning after the expiration of the eco-
16 nomic recovery period.

17 (3) SUPPLEMENTAL BUSINESS INTERRUPTION
18 COVERAGE.—Nothing in this section shall be con-
19 strued to prohibit or limit the ability of an insurer
20 to provide supplemental business interruption insur-
21 ance coverage in addition to the coverage made
22 available under paragraph (2).

23 (d) STATE RESIDUAL MARKET INSURANCE ENTI-
24 TIES.—

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

6 (2) TREATMENT OF CERTAIN ENTITIES.—For
7 purposes of the regulations issued pursuant to para-
8 graph (1)—

9 (A) a State residual market insurance enti-
10 ty that does not share its profits and losses
11 with private sector insurers shall be treated as
12 a separate insurer; and

13 (B) a State residual market insurance enti-
14 ty that shares its profits and losses with private
15 sector insurers shall not be treated as a sepa-
16 rate insurer, and shall report to each private
17 sector insurance participant its share of the in-
18 sured losses of the entity, which shall be in-
19 cluded in each private sector participating in-
20 surer's insured losses.

21 (3) TREATMENT OF PARTICIPATION IN CERTAIN
22 ENTITIES.—Any insurer that participates in sharing
23 profits and losses of a State residual market insur-
24 ance entity shall include in its calculations of pre-

1 miums any premiums distributed to the insurer by
2 the State residual market insurance entity.

3 (e) REINSURANCE FOR INSURED LOSSES.—

4 (1) FEDERAL SHARE OF COMPENSATION.—

5 (A) QUOTA SHARE PROTECTION.—In gen-
6 eral, the Federal share of compensation under
7 the Program to be paid by the Secretary for in-
8 sured losses of an insurer or a parametric in-
9 surance facility during each calendar year shall,
10 on a quota share basis, be equal to 95 percent
11 of such insured losses.

12 (B) STOP-LOSS PROTECTION.—In addition
13 to the quota share reinsurance provided under
14 subparagraph (A), the Secretary may, upon ap-
15 plication by an insurer or parametric insurance
16 facility, provide such insurer or facility with
17 stop-loss protection for insured losses, for such
18 price and on such other terms and conditions as
19 the Secretary deems consistent with the pur-
20 poses of the Act. In general, such stop loss pro-
21 tection shall not have an attachment point
22 lower than provided in any catastrophe excess
23 of loss reinsurance program which the insurer
24 or facility has in effect for the same period.

1 (f) CAPTIVE INSURERS AND OTHER SELF-INSUR-
2 ANCE ARRANGEMENTS.—The Secretary may, in consulta-
3 tion with the NAIC or the appropriate State regulatory
4 authority, apply the provisions of this Act, as appropriate,
5 to other classes or types of captive insurers and other self-
6 insurance arrangements by municipalities and other enti-
7 ties (such as workers “compensation self-insurance pro-
8 grams and State workers” compensation reinsurance
9 pools), but only if such application is determined before
10 the commencement of a covered public health emergency
11 in which such an entity incurs an insured loss and all of
12 the provisions of this Act are applied comparably to such
13 entities.

14 (g) REINSURANCE TO COVER EXPOSURE.—

15 (1) OBTAINING COVERAGE.—This Act may not
16 be construed to limit or prevent insurers or facilities
17 from obtaining reinsurance coverage for insured
18 losses retained by insurers or facilities pursuant to
19 this section, nor shall the obtaining of such coverage
20 affect the calculation of such deductibles.

21 (2) LIMITATION ON FINANCIAL ASSISTANCE.—

22 The amount of financial assistance provided pursu-
23 ant to this section shall not be reduced by reinsur-
24 ance paid or payable to an insurer from other
25 sources, except that recoveries from such other

1 sources, taken together with financial assistance for
2 the calendar year provided pursuant to this section,
3 may not exceed the aggregate amount of the insurer's
4 insured losses for the calendar year. If such recoveries
5 and financial assistance for the calendar year exceed such
6 aggregate amount of insured losses for the calendar year
7 and there is no agreement between the insurer and any
8 reinsurer to the contrary, an amount in excess of such
9 aggregate insured losses shall be returned to the Secretary.

11 (h) PREMIUMS FOR QUOTA SHARE REINSURANCE
12 PROTECTION.—

13 (1) ECONOMIC RECOVERY PERIOD.—During the
14 economic recovery period, including any reset extension,
15 no premium will be charged to insurers or parametric
16 insurance facilities for the Federal quota share reinsurance
17 protection provided by the Program under subsection (e)(1)(A).

19 (2) THEREAFTER.—Commencing with the expiration
20 of the economic recovery period, the Secretary shall be
21 authorized to prescribe a rating plan for the quota share
22 reinsurance provided by the Program under subsection (e)(1)(A)
23 for both the parametric non-damage business interruption
24 insurance and for other lines of property and casualty insurance.
25 The

1 rating plan shall be designed to encourage broad
2 participation in the coverage made available under
3 the Program, and in particular shall be designed to
4 recover the cost of the reinsurance program over a
5 period of not less than 5 years.

6 **SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF**
7 **CLAIMS.**

8 (a) GENERAL AUTHORITY.—The Secretary shall have
9 the powers and authorities necessary to carry out the Pro-
10 gram, including authority—

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

13 (2) to prescribe regulations and procedures to
14 effectively administer and implement the Program,
15 and to ensure that all participating insurers and
16 self-insured entities are treated comparably under
17 the Program.

18 (b) INTERIM RULES AND PROCEDURES.—The Sec-
19 retary may issue interim final rules or procedures speci-
20 fying the manner in which—

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

23 (2) the Federal share of compensation for in-
24 sured losses will be paid under the Program, includ-

1 ing payments based on estimates of or actual in-
2 sured losses;

3 (3) the Secretary may, at any time, seek repay-
4 ment from or reimburse any insurer, based on esti-
5 mates of insured losses under the Program, to effec-
6 tuate the insured loss sharing provisions in section
7 4; and

8 (4) the Secretary will determine any final net-
9 ting of payments under the Program, including pay-
10 ments owed to the Federal Government from any in-
11 surer and any Federal share of compensation for in-
12 sured losses owed to any insurer, to effectuate the
13 insured loss sharing provisions in section 4.

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

17 (d) CONTRACTS FOR SERVICES.—The Secretary may
18 employ persons or contract for services as may be nec-
19 essary to implement the Program.

20 (e) SUBMISSION OF PREMIUM INFORMATION.—

21 (1) IN GENERAL.—The Secretary shall annually
22 compile information on the property and casualty in-
23 surance premium rates of insurers for the preceding
24 year.

1 (2) ACCESS TO INFORMATION.—To the extent
2 that such information is not otherwise available to
3 the Secretary, the Secretary may require each in-
4 surer to submit to the NAIC property and casualty
5 insurance premium rates, as necessary to carry out
6 paragraph (1), and the NAIC shall make such infor-
7 mation available to the Secretary.

8 (3) AVAILABILITY TO CONGRESS.—The Sec-
9 retary shall make information compiled under this
10 subsection available to the Congress, upon request.

11 (f) REPORTING OF PROPERTY AND CASUALTY IN-
12 SURANCE DATA.—

13 (1) AUTHORITY.—Beginning upon the date of
14 the enactment of this Act, in each calendar year, the
15 Secretary shall require insurers to submit to the
16 Secretary such information regarding losses of such
17 insurers resulting from covered public health emer-
18 gencies as the Secretary considers appropriate to
19 analyze the effectiveness of the Program, which shall
20 include information 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 losses resulting from covered public health
4 emergencies purchased; and

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

7 (2) REPORTS.—Not later than one year after
8 the date of the enactment of this Act and annually
9 thereafter, the Secretary shall submit a report to the
10 Committee on Financial Services of the House of
11 Representatives and the Committee on Banking,
12 Housing, and Urban Affairs of the Senate that in-
13 cludes—

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

16 (B) an evaluation of the availability and
17 affordability of property and casualty insurance
18 for losses resulting from public health emer-
19 gencies;

20 (C) an evaluation of any changes or trends
21 in the data collected under paragraph (1);

22 (D) an evaluation of whether any aspects
23 of the Program have the effect of discouraging
24 or impeding insurers from providing property

1 and casualty insurance coverage or coverage for
2 public health emergencies;

3 (E) an evaluation of the impact of the Pro-
4 gram on workers' compensation insurers; and

5 (F) in the case of the data reported in
6 paragraph (1)(B), an updated estimate of the
7 total amount earned since the first January 1
8 occurring after the date of the enactment of
9 this Act.

10 (3) PROTECTION OF DATA.—To the extent pos-
11 sible, the Secretary shall contract with an insurance
12 statistical aggregator to collect the information de-
13 scribed in paragraph (1), which shall keep any non-
14 public information confidential and provide it to the
15 Secretary in an aggregate form or in such other
16 form or manner that does not permit identification
17 of the insurer submitting such information.

18 (4) ADVANCE COORDINATION.—Before col-
19 lecting any data or information under paragraph (1)
20 from an insurer, or affiliate of an insurer, the Sec-
21 retary shall coordinate with the appropriate State in-
22 surance regulatory authorities and any relevant gov-
23 ernment agency or publicly available sources to de-
24 termine if the information to be collected is available
25 from, and may be obtained in a timely manner by,

1 individually or collectively, such entities. If the Sec-
2 retary determines that such data or information is
3 available, and may be obtained in a timely matter,
4 from such entities, the Secretary shall obtain the
5 data or information from such entities. If the Sec-
6 retary determines that such data or information is
7 not so available, the Secretary may collect such data
8 or information from an insurer and affiliates.

9 (5) CONFIDENTIALITY.—

10 (A) RETENTION OF PRIVILEGE.—The sub-
11 mission of any non-publicly available data and
12 information to the Secretary and the sharing of
13 any non-publicly available data with or by the
14 Secretary among other Federal agencies, the
15 State insurance regulatory authorities, or any
16 other entities under this subsection shall not
17 constitute a waiver of, or otherwise affect, any
18 privilege arising under Federal or State law (in-
19 cluding the rules of any Federal or State court)
20 to which the data or information is otherwise
21 subject.

22 (B) CONTINUED APPLICATION OF PRIOR
23 CONFIDENTIALITY AGREEMENTS.—Any require-
24 ment under Federal or State law to the extent
25 otherwise applicable, or any requirement pursu-

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

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

16 (i) shall comply with applicable Fed-
17 eral law; and

18 (ii) shall not constitute a waiver of, or
19 otherwise affect, any privilege under Fed-
20 eral or State law (including any privilege
21 referred to in subparagraph (A) and the
22 rules of any Federal or State court) to
23 which the data or information is otherwise
24 subject.

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

7 (g) FUNDING.—

8 (1) FEDERAL PAYMENTS.—There are hereby
9 appropriated, out of funds in the Treasury not oth-
10 erwise appropriated, such sums as may be necessary
11 to pay the Federal share of compensation for in-
12 sured losses under the Program.

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

18 **SEC. 6. PREEMPTION AND NULLIFICATION OF PRE-EXIST-**
19 **ING EXCLUSIONS.**

20 (a) GENERAL NULLIFICATION.—Any exclusion in a
21 contract of an insurer for property and casualty insurance
22 that is in force on the date of enactment of this Act shall
23 be void to the extent that it excludes losses that would
24 otherwise be insured losses under the Program.

1 (b) GENERAL PREEMPTION.—Any State approval of
2 any exclusion from a contract of an insurer for property
3 and casualty insurance that is in force on the date of en-
4 actment of this Act, shall be void to the extent that it
5 excludes losses that would otherwise be insured losses
6 under the Program.

7 (c) REINSTATEMENT OF EXCLUSIONS.—Notwith-
8 standing subsections (a) and (b) or any provision of State
9 law, an insurer may reinstate a preexisting provision in
10 a contract for property and casualty insurance that is in
11 force on the date of enactment of this Act and that ex-
12 cludes coverage for loss resulting from a covered public
13 health emergency only—

14 (1) if the insurer has received a written state-
15 ment from the insured that affirmatively authorizes
16 such reinstatement; or

17 (2) for contracts in effect for less than 5
18 months—

19 (A) the insured fails to pay any increased
20 premium charged by the insurer for providing
21 such coverage for covered public health emer-
22 gencies, but only if such premium does not in-
23 crease by more than 15 percent; and

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

1 (i) the increased premium for such
2 covered public health emergency coverage;
3 and

4 (ii) the rights of the insured with re-
5 spect to such coverage, including any date
6 upon which the exclusion would be rein-
7 stated if no payment is received.

8 **SEC. 7. PRESERVATION PROVISIONS.**

9 (a) STATE LAW.—Nothing in this Act shall affect the
10 jurisdiction or regulatory authority of the insurance com-
11 missioner (or any agency or office performing like func-
12 tions) of any State over any insurer or other person—

13 (1) except as specifically provided in this Act;
14 and

15 (2) except that—

16 (A) the definition of the term covered pub-
17 lic health emergency in section 3 shall be the
18 exclusive definition of that term for purposes of
19 compensation for insured losses under this Act,
20 and shall preempt any provision of State law
21 that is inconsistent with that definition, to the
22 extent that such provision of law would other-
23 wise apply to any type of insurance covered by
24 this Act;

1 (B) during the period beginning on the
2 date of enactment of this Act and ending on
3 December 31, 2021, rates and forms for prop-
4 erty and casualty insurance covered by this Act
5 and filed with any State shall not be subject to
6 prior approval or a waiting period under any
7 law of a State that would otherwise be applica-
8 ble, except that nothing in this Act affects the
9 ability of any State to invalidate a rate as ex-
10 cessive, inadequate, or unfairly discriminatory,
11 and, with respect to forms, where a State has
12 prior approval authority, it shall apply to allow
13 subsequent review of such forms; and

14 (C) during the period beginning on the
15 date of enactment of this Act and for so long
16 as the Program is in effect, as provided in sec-
17 tion 9, books and records of any insurer that
18 are relevant to the Program shall be provided,
19 or caused to be provided, to the Secretary, upon
20 request by the Secretary, notwithstanding any
21 provision of the laws of any State prohibiting or
22 limiting such access.

23 (b) **EXISTING REINSURANCE AGREEMENTS.**—Noth-
24 ing in this Act shall be construed to alter, amend, or ex-
25 pand the terms of coverage under any reinsurance agree-

1 ment in effect on the date of enactment of this Act. The
2 terms and conditions of such an agreement shall be deter-
3 mined by the language of that agreement.

4 **SEC. 8. STUDY AND ANALYSES.**

5 (a) **STUDY AND REPORT ON THE PROGRAM.—**

6 (1) **STUDY.**—The Secretary, in consultation
7 with the NAIC, representatives of the insurance in-
8 dustry and of policy holders, other experts in the in-
9 surance field, and other experts as needed, shall as-
10 sess the effectiveness of the Program and the likely
11 capacity of the property and casualty insurance in-
12 dustry to offer insurance for risk of public health
13 emergencies after termination of the Program, and
14 the availability and affordability of such insurance
15 for various policyholders.

16 (2) **REPORT.**—The Secretary shall submit a re-
17 port to the Congress on the results of the study con-
18 ducted under paragraph (1) not later than the expi-
19 ration of the 12-month period beginning on the date
20 of the enactment of this Act.

21 (b) **ANALYSIS OF MARKET CONDITIONS FOR PUBLIC**
22 **HEALTH EMERGENCY RISK INSURANCE.—**

23 (1) **IN GENERAL.**—The President’s Working
24 Group on Financial Markets, in consultation with
25 the National Association of Insurance Commis-

1 sioners, representatives of the insurance industry,
2 representatives of the securities industry, and rep-
3 resentatives of policy holders, shall perform an ongo-
4 ing analysis regarding the long-term availability and
5 affordability of insurance for risk of public health
6 emergencies.

7 (2) REPORT.—Not later than the expiration of
8 the 12-month period beginning on the date of the
9 enactment of this Act and every two years there-
10 after, the President’s Working Group on Financial
11 Markets shall submit a report to the Committee on
12 Banking, Housing, and Urban Affairs of the Senate
13 and the Committee on Financial Services of the
14 House of Representatives on its findings pursuant to
15 the analysis conducted under paragraph (1).

16 (c) AVAILABILITY AND AFFORDABILITY OF PROP-
17 ERTY AND CASUALTY INSURANCE IN SPECIFIC MAR-
18 KETS.—

19 (1) STUDY.—The Comptroller General of the
20 United States shall conduct a study to determine
21 whether there are specific markets in the United
22 States where there are unique capacity constraints
23 on the amount of property and casualty insurance
24 available.

1 (2) ELEMENTS OF STUDY.—The study required
2 by paragraph (1) shall contain—

3 (A) an analysis of both insurance and rein-
4 surance capacity in specific markets, including
5 pricing and coverage limits in existing policies;

6 (B) an assessment of the factors contrib-
7 uting to any capacity constraints that are iden-
8 tified; and

9 (C) recommendations for addressing those
10 capacity constraints.

11 (3) REPORT.—Not later than 180 days after
12 the date of enactment of this Act, the Comptroller
13 General shall submit a report on the study required
14 by paragraph (1) to the Committee on Banking,
15 Housing, and Urban Affairs of the Senate and the
16 Committee on Financial Services of the House of
17 Representatives.

18 (d) STUDY OF SMALL INSURER MARKET COMPETI-
19 TIVENESS.—

20 (1) IN GENERAL.—Not later than the expira-
21 tion of the 12-month period beginning on the date
22 of the enactment of this Act and every two years
23 thereafter, the Secretary shall conduct a study of
24 small insurers (as such term is defined by regulation
25 by the Secretary) participating in the Program, and

1 identify any competitive challenges small insurers
2 face in the property and casualty insurance market-
3 place, including—

4 (A) changes to the market share, premium
5 volume, and policyholder surplus of small insur-
6 ers relative to large insurers;

7 (B) how the property and casualty insur-
8 ance market for risk of public health emer-
9 gencies differs between small and large insur-
10 ers, and whether such a difference exists within
11 other perils;

12 (C) the impact of the Program's avail-
13 ability on small insurers;

14 (D) the availability and cost of private re-
15 insurance for small insurers; and

16 (E) the impact that State workers com-
17 pensation laws have on small insurers and
18 workers compensation carriers in the property
19 and casualty insurance marketplace.

20 (2) REPORT.—The Secretary shall submit a re-
21 port to the Congress setting forth the findings and
22 conclusions of each study required under paragraph
23 (1).

1 **SEC. 9. TERMINATION OF PROGRAM.**

2 (a) TERMINATION.—The Program shall terminate on
3 December 31, 2031.

4 (b) CONTINUING AUTHORITY.—To pay or adjust
5 compensation following the termination of the Program,
6 the Secretary may take such actions as may be necessary
7 to ensure payment, recoupment, reimbursement, or ad-
8 justment of compensation for insured losses arising out
9 of any covered public health emergency occurring during
10 the period in which the Program was in effect under this
11 Act, in accordance with the provisions of section 4 and
12 regulations promulgated thereunder.

13 (c) REPEAL.—This Act is repealed on the final termi-
14 nation date of the Program under subsection (a), except
15 that such repeal shall not be construed—

16 (1) to prevent the Secretary from taking, or
17 causing to be taken, such actions under subsection
18 (b) of this section, paragraph (4) or (5) of section
19 4(e), or subsection (a)(1), (c), (d), or (e) of section
20 5, as in effect on the day before the date of such re-
21 peal, or applicable regulations promulgated there-
22 under, during any period in which the authority of
23 the Secretary under subsection (b) of this section is
24 in effect; or

25 (2) to prevent the availability of funding under
26 section 5(g) during any period in which the author-

1 ity of the Secretary under subsection (b) of this sec-
2 tion is in effect.

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