INSURING AGAINST A PANDEMIC: CHALLENGES AND SOLUTIONS FOR POLICYHOLDERS AND INSURERS

VIRTUAL HEARING

BEFORE THE

SUBCOMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT, AND INSURANCE

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

NOVEMBER 19, 2020

Printed for the use of the Committee on Financial Services

Serial No. 116–114

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U.S. GOVERNMENT PUBLISHING OFFICE

43–528 PDF WASHINGTON : 2023

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INSURING AGAINST A PANDEMIC: CHALLENGES AND SOLUTIONS FOR POLICYHOLDERS AND INSURERS

Thursday, November 19, 2020

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING,
COMMUNITY DEVELOPMENT,
AND INSURANCE,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., via Webex, Hon. Wm. Lacy Clay [chairman of the subcommittee], presiding.

Members present: Representatives Clay, Velazquez, Cleaver, Beatty, Green, Maloney, Heck, Vargas, Lawson, Axne; Stivers, Posey, Zeldin, Kustoff, Rose, Steil, and Gooden.

Ex officio present: Representatives Waters and McHenry.

Also present: Representatives Hollingsworth, Gonzalez of Ohio, and Timmons.

Chairman CLAY. The Subcommittee on Housing, Community Development, and Insurance will come to order.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

Members are reminded to keep their video function on at all times, even when they are not being recognized by the Chair. Members are also reminded that they are responsible for muting and unmuting themselves, and to mute themselves after they are finished speaking.

Consistent with the regulations accompanying House Res. 965, staff will only mute Members and witnesses as appropriate, when not being recognized by the Chair, to avoid inadvertent background noise. Members are reminded that all House rules relating to order and decorum apply to this remote hearing.

Today's hearing is entitled, "Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers." And I now recognize myself for 3 minutes to give an opening statement.

According to the Congressional Research Service (CRS), 110 million people worldwide could enter a state of extreme poverty due to the global economic contraction, and here in the United States, 67 million people have filed for unemployment insurance since March of this year.

The harmful effects of this pandemic on the stability of small businesses, like restaurants, cannot be overstated. There have been literally dozens of restaurants in my home district in St. Louis that have closed, many permanently, as a result of this pandemic. And with them, the vendors who sell them goods, the farmers who grow the food, the truck drivers, the storage facilities; entire supply chains are affected.

Though many businesses have insurance, most of the policies have exclusions for pandemics, which are likely to be upheld in the courts. I would add that for many small businesses around this country, the probability of even suing to enforce the policy is unlikely, given the high cost of litigation.

On the other hand, it is not realistic or practical to expect the insurance industry to shoulder the astronomical costs of a global pandemic. The American Property Casualty Insurance Association (APCIA) has estimated that paying all claims, regardless of exclusions, would amount to $1 trillion per month.

While I applaud the introduction of legislation by my colleagues, like Congressman Thompson and Congresswoman Maloney, and the input from industry, my bottom line is that any solution will need effective buy-in from industry, and will need to deal with the conundrum posed by the fact that many of the business interruption insurance cases being adjudicated have been dismissed, not only because of any virus exclusion, but also because of a lack of direct physical loss or damage. And for businesses, there is an expectation that you would have some skin in the game, particularly if you are going to petition or even accept government assistance.

Indeed, perhaps industry could work with business owners and consumer groups to devise a type of umbrella policy for which the business pays a suitable premium and is insured for everything, because the current system is rife with confusion and complexity, and because it is my firm belief that a small business owner should not need a battalion of lawyers to handle their insurance claim after faithfully paying their premium.

And I look forward to the testimony of our witnesses as we roll up our sleeves and try to find a viable solution.

The Chair now recognizes the ranking member of the subcommittee, Mr. Stivers, for 4 minutes for an opening statement.

Mr. STIVERS. Thank you, Chairman Clay. I want to thank you for convening this hearing.

First, I would like to take a moment to thank our colleague from New York, Congresswoman Maloney, for her efforts to put forward an idea as early as May of this year. Her work should be applauded as a symbolic first step.

But I would like to take a step backward and put this hearing in perspective. The problems and solutions that we are going to discuss today are about creating a plan for the next pandemic. For that reason, it is so much more important that we get this right, than that we do it fast.

Congresswoman Maloney has reached out to me and asked for bipartisan collaboration. I feel very strongly, as you do, too, Mr. Chairman, that any product that we put forward must have meaningful support from both parties. And ultimately, if we are going to have any impact on Senate deliberations, we need a really big vote, so we need a bipartisan agreement.

And as the ranking member of this subcommittee, I can tell you that Republicans are committed to working in a bipartisan way, but we need to make sure that as we do that, I think, again, we take a step back and don't start with a preconceived outcome. When we take a step back, maybe we will end up using an insurance industry model or maybe we will end up with a noninsurance approach like a parametric PPP grant. But whatever we do, we must first make sure that it solves the problems of businesses that are shut down during the next pandemic.

Some of my colleagues today may focus on the existing framework in place for the terrorism risk insurance, but I want to be really clear: The scale and scope of a pandemic is orders of magnitude bigger than a terrorist attack. You illustrated that, too, Mr. Chairman.

I think we should spend our time today trying to understand the nature of the problem and the issues around those four people who will be testifying today, people who are experiencing the problem day to day.

Furthermore, as we have seen, the pandemic has proved disastrous for one-time large events as well. Any solution that we address must look at event cancellation as well. That is something that is not in this proposed legislation at all.

I would now like to yield some time to the ranking member of the full Financial Services Committee, Ranking Member McHenry, but before I do, while I am not advocating for any one proposal, I would ask unanimous consent to enter a Business Community Coalition statement into the record. They did not have a witness that was allowed for this hearing. So, Mr. Chairman, I would like to ask unanimous consent to enter their statement into the record.

Chairman CLAY. Without objection, it is so ordered.

Now, Mr. Stivers, I am going to recognize the Chair of the Full Committee, Chairwoman Waters, and then I will recognize Ranking Member McHenry.

Mr. STIVERS. Yes. I just want to give him some of my time.

But thank you for holding this hearing, Mr. Chairman. I think this is a critical first step, and I look forward to working together to get things done.

I yield back.

Chairman CLAY. The gentleman yields back.

And now, I recognize the Chair of the Full Committee, the gentlewoman from California, Chairwoman Waters, for 1 minute.

Chairwoman WATERS. Thank you very much, Chairman Clay.

When the COVID-19 pandemic hit in March, small businesses were devastated, and have been largely unable to rely on their business interruption insurance policies to cover these losses. As we enter the winter months, economic forecasters are warning that small businesses, many of which have not recovered from the disruptions they have experienced already this year, may permanently close if policymakers don't act.

Congress has an important role to play. But with the election of President-elect Biden, I am hopeful the government will respond to this pandemic with effective leadership, which has been and continues to be absent under the current President.

So, I am looking forward to today's discussion of the various paths forward, and I thank the witnesses that we will have here today.

I yield back. Thank you very much, Mr. Chairman.

Chairman CLAY. I thank the chairwoman.

And I now recognize the ranking member of the Full Committee, the gentleman from North Carolina, Ranking Member McHenry, for 2 minutes.

Mr. MCHENRY. Thank you, Chairman Clay.

Chairman Clay, thank you for your leadership. You have been a strong advocate for your deeply held convictions during your time in Congress. And I want to commend you also for your bipartisan work in Congress, and it has been an honor to serve with you here on the Financial Services Committee.

Chairman CLAY. Thank you.

Mr. MCHENRY. And I appreciate the subcommittee holding this hearing. I know it has been delayed because of the nature of this election year, and what has happened across the last couple of months. It is an important issue to tens of millions of Americans and small business folks.

I also appreciate the work of the gentlelady from New York, Mrs. Maloney. What she has done on this issue is to put a marker down to show that Congress should get to work on a pandemic response for future pandemics. And while I have concerns about the construct of her legislation, the Pandemic Risk Insurance Act (PRIA), and I think there are a number of unsolved problems in it, it is a nice first step to start this conversation.

And there are some unworkable parts of what she has laid out. There are some unresolved parts. But I think we can work through it and come to a bipartisan agreement that would have lasting impacts on small businesses and folks across the country.

Instead, I think our businesses do deserve a bipartisan, consensus-based solution that builds on existing successful ideas that we have put in place over this last year. I think we need to look at solutions that incentivize participation. We need to look at solutions that are scalable, solutions that harness the power of our State-by-State regulatory environment, and look at existing programs like the Paycheck Protection Program (PPP), that have saved millions of small businesses.

So, thank you, Mr. Chairman. Thanks for your leadership. And I look forward to the testimony today.

Chairman CLAY. Thank you so much, Mr. McHenry.

I now recognize the gentlelady from New York, Mrs. Maloney, who is also the Chair of the House Committee on Oversight and Reform,

Mrs. MALONEY. Thank you, Chairman Clay, and Chairwoman Waters, for holding this important hearing.

After the terrorist attacks on 9/11, the economy in New York completely shut down. We couldn't build anything because insurance companies would not insure any property against terrorist attacks. So, we came together in a bipartisan way and passed the Terrorism Risk Insurance Act (TRIA). TRIA successfully unlocked the market, got the economy moving again, and put people back to work. And that is what we are trying to do with the Pandemic Risk Insurance Act (PRIA).

Tens of thousands of small businesses have closed their doors permanently. Entire industries, from travel, to film and television, have been upended, and they have no way to protect themselves from future pandemic-related losses.

Currently, business interruption insurance policies explicitly exclude pandemics. We can't continue to expose our economy and our small businesses to this level of risk and expect them to recover.

We know the Federal Government will step in during the next crisis. So, why not be proactive and develop a long-term solution?

PRIA is a starting point for a forward-looking, public-private, risk-sharing partnership that would provide a Federal backstop for business interruption policies that include coverage for pandemics. PRIA would create a totally voluntary program. Insurers could provide policies if they wanted to, and policyholders could purchase them if they wanted to. It is totally voluntary.

A broad consensus has emerged that pandemic risk is insurable with an appropriate Federal backstop, and this is supported by more than 50 stakeholder organizations.

At this point, we are simply debating the best way to structure such a program. And I am willing to collaborate with any of my colleagues, Democratic and Republican, as well as stakeholders, to improve this bill and do just that. We must be proactive.

Mr. Chairman, may I place in the record the list of the 50 organizations and insurance companies that are now supporting it?

Chairman CLAY. Without objection, it is so ordered.

And the gentlewoman's time has expired. Thank you.

Today, we welcome the testimony of our distinguished witnesses: Ann Cantrell, owner of Annie's Blue Ribbon General Store, on behalf of the National Retail Federation; John Doyle, president and CEO of Marsh & McLennan; Brian Kuhlmann, chief corporate counsel, Shelter Insurance, on behalf of APCIA and NAMIC; Michelle Menendez McLaughlin, chief underwriting officer of Chubb North America; and R.J. Lehmann, executive editor and senior fellow, International Center for Law and Economics.

Our witnesses are reminded that your oral testimony will be limited to 5 minutes. You should be able to see a timer on your screen that will indicate how much time you have left, and a chime will go off at the end of your time.

I would ask you to be mindful of the timer, and quickly wrap up your testimony if you hear the chime, so that we can be respectful of both the witnesses' and the committee members' time. And without objection, your written statements will be made a part of the record.

Ms. Cantrell, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF ANN CANTRELL, OWNER, ANNIE'S BLUE RIBBON GENERAL STORE, ON BEHALF OF THE NATIONAL RETAIL FEDERATION (NRF)

Ms. CANTRELL. Good morning, Chairman Clay and Ranking Member Stivers. It is an honor to appear before you today to discuss pandemic risk insurance from a policyholder's perspective.

I would like to give a special shout-out for women, and thanks to my Congresswoman, Nydia Velazquez, who has been a champion for women-owned businesses. We have been women-owned and operated since the get-go, and I am so proud that she chairs the House Small Business Committee. The fact that this hearing is being held shows that Members of Congress really do care about people on Main Street.

The National Retail Federation (NRF) has partnered with Congresswoman Carolyn Maloney, the sponsor of the Pandemic Risk Insurance Act, and we would like to thank her for her leadership on this issue. We look forward to bringing much-needed protection and relief to retailers across the country who have been suffering during this crisis.

Retail sales and jobs have been devastated by the pandemic. This is not only a health crisis, but a dire economic crisis.

It is an honor to appear today on behalf of the NRF. I am joining you from Brooklyn, New York, where I have had the pleasure and the honor of owning a thriving gift shop for the past 13 years. We are a community store, and people look to us as a pillar of light and hope in the neighborhood. Kids meet their friends at the shop to pick out a gift for their teacher. Parents bribe their kids with a treat from our store if they have to get a shot at the doctor or reward them if they get a good report card. Neighbors come in daily to see what is new.

However, all of this changed in March when the whole world started to cave in around us because of COVID-19. When my team and I discussed closing on Friday, March 13th—yes, Friday the 13th—I immediately called my insurance company. My broker has been with me since the beginning and has never steered me wrong. We have an honest relationship, and he knows my business well. I love that he and his wife even follow my shop on Instagram.

He taught me my favorite term in business, "a measured risk," and that is exactly what he called my move to a new location 7 years ago when we doubled our square footage and quadrupled our business. He has always been extremely helpful and straightforward.

I remember proudly showing him our new place as he explained in detail our comprehensive insurance policy that will cover 12 months of business income if something should happen to my business and I needed to shut down. I have all-risk special form insurance from the Hartford/Sentinel Insurance Company which costs $6,182.53 annually. This doesn't include workers comp or ERISA bond insurance, which I also carry.

This is a big expense for a small business, one I thought would help me in crisis situations. However, harsh reality soon set in. I quickly learned that viruses and pandemics were excluded from insurance policies like mine years ago. Even though we were ordered to close our business by the Governor, there would be no relief from our insurance company because it is not considered a business interruption, because it is not property damage.

Insurance companies should not be in the practice of denying policyholders coverage when they need it the most. What happened to, "You are in good hands," or "Like a good neighbor, so and so is there?"

As I read back through my email conversations with my broker, my heart just sinks at the desperation in my tone as I slowly realized what was happening. Even as I followed up after seeing posts on social media saying restaurants would be covered, and reached out for help and guidance, there was no relief in sight.

I made similar calls to my landlord as I tried desperately to figure out how I would keep covering other financial obligations and pay my team members. I kept trying to figure out our next moves.

The next few months were the darkest of my life. Navigating the uncertainty of a business I dedicated years of my life to has been so sad and stressful, compounded by the frustrating and traumatic experience of applying for and hoping to get a PPP loan.

Fortunately, we did receive a $58,000 PPP loan, and I would like to thank the Members of Congress who supported the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which really helped keep us afloat. All in all, we were closed for over 3 months, missing some really big holiday selling for us through Easter and Mother's Day. In the same timeframe for 2019, we made $300,000. This year, we made a little more than half, at $166,000.

I understand the Pandemic Risk Insurance Act is a solution that would only cover future pandemics, but it still needs to be passed as soon as possible because we never know when the next pandemic will come. We certainly didn't see this one coming. And in the meantime, I urge Members of Congress to provide some sort of relief to businesses that were forced to close by government mandate during COVID-19, even if it is not in the form of business interruption insurance as such.

I would also like to note that the National Retail Federation is a member of the Business Continuity Coalition (BCC). The BCC seeks not only widespread availability and affordability of nondamaged business interruption insurance coverage, but also restoration and expansion of pandemic coverage and other lines. This includes event cancellation, movie/TV production insurance, employment practices, liability, and other lines that have been hard hit by COVID-19.

The Pandemic Risk Insurance Act would establish a Federal program that would help businesses obtain insurance coverage for pandemics modeled on the program for terrorism insurance established following 9/11. When businesses could not obtain coverage for acts of terrorism after 9/11, Congress stepped in. It is time for Washington to do the same for pandemics.

The country needs a Pandemic Risk Insurance Act. Not every pandemic will have a worldwide impact, but when one occurs, it is likely to once again result in nearly total cessation of business. This legislation is the cornerstone of a proactive approach in managing the risk and impact of a pandemic in the future. It is time for a real solution to solve a real problem.

I would like to thank the committee for inviting me here, and I am ready for any questions you may have.

[The prepared statement of Ms. Cantrell can be found on page 46 of the appendix.]

Chairman CLAY. Thank you so much, Ms. Cantrell.

Mr. Doyle, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF JOHN Q. DOYLE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MARSH

Mr. DOYLE. Thank you. And good morning, members of the subcommittee.

My name is John Doyle, and I am the president and CEO of Marsh, the world's largest insurance broker, and a business of the Marsh & McLennan companies. I appreciate the opportunity to speak with you about the need for a public-private partnership to insure pandemic risk.

While the COVID-19 pandemic is first and foremost a human tragedy, we are deeply concerned about its impact on the economy and on our clients. Our primary role as an insurance broker and risk adviser is to be an advocate for our clients, which is why I am here with you all today.

At Marsh, we believe that a public-private partnership is the best option to pursue for a pandemic risk solution. For that reason, I want to recognize the leading role that Congresswoman Maloney has had in the debate, including introducing the legislation that has brought us here today.

Although some have suggested Congress should delay until the current pandemic is over, we feel there are compelling reasons to act now.

First, acting now on a public-private pandemic risk solution will accelerate the economic recovery by reducing uncertainty. Moving forward, capital markets will seek assurance that companies have protection against prospective pandemic risk. The pace of recovery will depend upon the nature and degree of confidence in the marketplace.

Second, taking action now will provide financial protection against future pandemics, in part by absorbing some of the pandemic's initial financial shock.

Third, if we start now, with time and the right solution, we can bend the risk curve for future pandemics. Insurance creates the right economic incentives to drive change in society. Moving quickly will help us to harness risk management and to build a more resilient U.S. economy.

By definition, pandemics are global, meaning that clients and insurers cannot diversify against them as they can with other catastrophes. And the stakes around pandemic risk for policyholders—and these include businesses and organizations of all sizes and from all sectors—are too high to defer action.

As we have thought about developing a workable solution, the following principles have guided us.

First, we look at risk mitigation and resilience. How should the solution be designed so that it embeds measures to encourage resilience in the community? For example, should it incentivize preventative measures on the part of insureds? Should it invest pool reserves in resilience initiatives or be linked to ongoing government commitments to build resilience in the system?

Next, is the funding model. A public-private partnership could facilitate increased private market participation over time with an appropriate level of industry commitment.

A third principle involves the scope of coverage. Should the coverage be compulsory for insurers to offer, and should it also be compulsory at some level to purchase?

Next, is the distribution and operating model. A solution must contemplate the infrastructure required to operate the scheme on a going-forward basis and the technology that is needed to meet its objectives.

Finally, a claims process solution must include a well-defined trigger that identifies relevant thresholds and specifies how and when claims are to be paid.

The credit and power of the U.S. Government is essential to creating a program that harnesses the financial and social benefits of insurance to mitigate pandemic-related economic losses, while also providing greater certainty about a sustained recovery.

At the same time, I believe the insurance industry has a role to play, to which you may be asking: Are pandemics insurable? The answer is complex. The last several months have demonstrated that traditional insurance solutions and the commercial insurance market do not fully provide businesses and others with the protection they need against the enormous costs of a pandemic.

Pandemic insurance has existed for a long time, but has rarely been purchased. Its cost and the low likelihood of an event makes policyholders reluctant to insure against it. At the same time, various insurance policies explicitly exclude pandemic risk. The main reason for that is that the payouts, while sporadic, could be so enormous that they exceed the insurers' capacity to bear them.

Despite that, many companies are now looking to existing policies for help with the ongoing financial loss from COVID-19. Even without specific pandemic insurance in place, insurers will undoubtedly pay out tens of billions of dollars in COVID-19-related losses. Nevertheless, some policyholders will be disappointed.

The complex nature of pandemic risk means that we need strong national pandemic risk management. This requires insurers, backed by the Federal Government, to write pandemic insurance policies and for brokers to contribute our risk knowledge and infrastructure. Widespread pandemic coverage would make the insurance sector the first line of economic response in future outbreaks.

A public-private partnership will help facilitate coverage, align the needs of insurance buyers and insurers to avoid losses, and incentivize pandemic risk preparedness and mitigation. Over time, a risk program can spur new technologies, insurance products, and processes to mitigate the enormous losses associated with pandemics.

Public-private partnerships have been proven to build resilience into the economy. While pandemic risk is very different than terrorism or crop-related risk, if we create the right economic incentives for insurers, policyholders, and the government, insurance can serve its traditional function of mitigating risk.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Doyle can be found on page 49 of the appendix.]

Chairman CLAY. Thank you, Mr. Doyle.

Ms. McLaughlin, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF MICHELLE MENENDEZ MCLAUGHLIN, CHIEF UNDERWRITING OFFICER, CHUBB NORTH AMERICA

Ms. MCLAUGHLIN. Good morning, Chairman Clay, Ranking Member Stivers, and subcommittee members. My name is Michelle Menendez McLaughlin. I am the chief underwriting officer for the Small Business and Commercial Middle Market at Chubb, which is one of the largest insurers of small, medium-sized, and large businesses around the world, with over 16,000 employees in 44 branches.

Thank you for inviting me to speak regarding pandemic risk and our ideas for creating a public-private partnership that includes risk sharing by the insurance industry.

My role gives me a unique insight into the economic effects of pandemics, especially for small business consumers, and I appreciate the opportunity to discuss our perspective with you.

As COVID-19 has shown, pandemics are not only tragic in their impact on people's health and lives, but also devastating in their impact on the economy and people's livelihoods.

We believe the insurance industry has an important role to play, alongside the Federal Government, in providing assistance to businesses to blunt the economic impact of future pandemics.

Some risks can create losses so great that they are not insurable in the private insurance market without substantial government support. Pandemics, unlike other catastrophes such as wildfires and hurricanes, are not limited to a specific geography, time period, or risk class, but instead can affect entire economies and almost every business.

The private insurance market cannot underwrite the shutdown of the U.S. economy, but with substantial government involvement, the insurance industry can and should have a meaningful role in providing coverage as part of a public-private partnership. Industry involvement will lead to greater understanding of pandemic risk, better preparedness, and improved mitigation.

Chubb has some ideas and created a framework to help Congress think about ways to do that. Our proposal has two components built around five key attributes.

We need a program that provides a meaningful role for the insurance industry to share pandemic risk with the government, a structure that recognizes the immediate needs of small business, provides affordability and choice for small businesses with strong incentives to purchase coverage, and timely claim payments in crisis. A program should provide incentives for broad participation by the insurance industry and be fiscally responsible.

The first component addresses the needs of small businesses, and the second focuses on medium-sized and large businesses. We have bifurcated the program because pandemics affect small and large businesses differently. They require a different approach.

The details are included in my written testimony, but, briefly, part one is for small businesses. It provides coverage for up to 3 months of payroll, plus other expenses such as rent and utilities. Claims are based on a predetermined amount and paid automatically when the program is triggered. This provides policyholders with the certainty that they will receive timely financial assistance after an event.

The industry share of the risk increases from $15 billion in the first year of the program to $30 billion over 20 years.

To address the concern that some insurers might not have the financial capacity to assume risk, each individual insurer's retention is based on its market share, so a smaller insurer with less market share would assume less liability under the program. Policyholders would only pay for private sector coverage, not the government-provided assistance which keeps premiums affordable.

Part two creates Pan Re, a Federal reinsurance facility for businesses with more than 500 employees. Private insurance companies that choose to sell coverage would write pandemic policies at market terms and retain some portion of the risk. The rest would be reinsured to Pan Re, which would be paid adequate rates for providing coverage.

Purchase would be voluntary, and insureds could elect 1 to 3 months of coverage with a maximum payout of $50 million per policy. We estimate Pan Re's exposure would be $400 billion, with private insurers absorbing $15 billion of that in year one, increasing to $30 billion in year 10 of the program.

Our proposal is one of several that has been suggested in recent months. The framework might not answer all of the questions, but we believe addressing the unique needs of small, medium-sized, and large businesses, and a significant risk-taking role for the industry, is critical to the success of any program.

We appreciate your interest in Chubb's perspective and look forward to working with you on this critical issue. Thank you.

[The prepared statement of Ms. McLaughlin can be found on page 115 of the appendix.]

Chairman CLAY. Thank you so much, Ms. McLaughlin.

Mr. Lehmann, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF R.J. LEHMANN, EXECUTIVE EDITOR AND SENIOR FELLOW, INTERNATIONAL CENTER FOR LAW AND ECONOMICS

Mr. LEHMANN. Thank you, Chairman Clay, Ranking Member Stivers, and members of the subcommittee. I am R.J. Lehmann, a senior fellow with the International Center for Law and Economics.

I concur with the other witnesses that the problem of pandemic risk is one the insurance industry cannot solve on its own. I would go further and raise the question of whether insurance is actually the best structure for this problem. Insurance is a system of risk transfer. It is not a system of economic assistance.

The committee has heard from me before on the dangers of moral hazard insurance, and I am going to be clear that I don't actually have those concerns about the proposals before you today. I would, if the plan were to backstop workers compensation or liability, that is where you really do need price signals to signal the businesses to invest in mitigation and protect their employees and their customers.

Business interruption is a different story. There is no moral hazard because there is nothing a business can do to avoid a pandemic. So, there may be a role for the Federal Government to support business interruption.

But understand the limits of that approach. Only about a third of businesses have business interruption, and less than a third would end up buying pandemic business interruption insurance. The Pandemic Risk Insurance Act (PRIA) would remove buyers exclusions from commercial property insurance policies, but that doesn't mean it would end claims disputes. Any property insurance claim, including for business interruption, needs to show damage to the property.

The legal theory in COVID claims that surface contamination is physical damage is a bit of a bank shot. Most business closures have nothing to do with contaminated surfaces. Businesses have been closed to avoid transmission between people. That is not covered by property insurance.

Also, does a pandemic claim require there to be a shutdown? Because business plummeted before any shutdowns, it plummeted in places where there were no shutdowns, and it stayed depressed long after the shutdowns were lifted. Business fell because consumers did not want to be infected. There is no insurance claim for that.

The best argument for a public-private partnership is that insurers can help policyholders to mitigate risk. But it is important to ask, mitigate the risk of what? It is not the risk that a business is unsafe. As I mentioned, that is on the liability side. The risk you would be trying to reduce is the risk that a business will shut down. But in a pandemic, we want businesses to shut down. We want them to have a safety net so that they can shut down and survive and not lobby to lift lockdown orders, because that is how you get the situation where schools are closed but bars and gyms are open.

So speaking as someone who had has long preached the gospel of risk-based insurance, I am telling you that you do not want this to be a risk-based program. A risk-based program would mean technology firms that can work remotely would pay the least, but restaurants, community theaters, and churches would pay the most. I don't think that is the outcome you want.

Also, just consider how much has changed since proposals like PRIA and the Business Continuity Protection Program (BCPP) were introduced. I consulted with the trades on the BCPP. I think the 3-month benefit cap was my idea. Back in April, that seemed generous, but it doesn't look like that now.

PRIA originally was a $500 billion program. It is now a $750 billion program. Not only is that clearly not enough, but given that it is structured as one pot of money, if it had been in place during COVID, it would all have been eaten up by New York before we got to the second wave or the third wave.

So we can try to draw some lessons, but let's be humble about how little we know even about the current pandemic. The lesson

I draw is that you want broad participation with a bias toward small businesses. Large businesses already have a lot of insurance options available to them, including captives, which I suspect we will discuss more today.

This shouldn't be just an insurance industry program; get the banks and the payroll processors to help market it. When it comes to distributing benefits, you don't want to go through the claims adjustor process. There aren't enough adjustors. The process takes forever. And as I mentioned earlier, some of those claims will end up in court.

The BCPP idea of a parametric trigger is much better. Get the money out the door as quickly as possible.

BCPP also specifies the benefits can only be used for items like payroll and rent. You can argue that either way, but lawmakers should understand that is not how business interruption usually works. A business can make an interruption claim, and at the same time, lay off all of its employees.

Another option is just to let the States create their own programs and have Treasury partially reimburse them. An upside to that is you wouldn't have the run-on-the-bank danger that PRIA poses.

Above all, my recommendation is to take your time. Ad hoc solutions might be as good as it gets. Get help to the businesses, workers, and communities who need it right now. Don't legislate for the next pandemic while we are in the midst of the current one.

Thank you, and I would be happy to answer any questions.

[The prepared statement of Mr. Lehmann can be found on page 109 of the appendix.]

Chairman CLAY. Thank you so much, Mr. Lehmann.

And Mr. Kuhlmann, you are now recognized for 5 minutes.

STATEMENT OF BRIAN KUHLMANN, CHIEF CORPORATE COUNSEL, SHELTER INSURANCE, ON BEHALF OF THE AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION (APCIA) AND THE NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES (NAMIC)

Mr. KUHLMANN. Thank you, Chairman Clay, Ranking Member Stivers, and members of the subcommittee. Thank you for the opportunity to be here today.

My name is Brian Kuhlmann, and I am the senior corporate counsel for Shelter Insurance Companies. Shelter is a mutual company that is headquartered in Columbia, Missouri. It was founded in 1946 primarily to serve the insurance needs of Missouri farmers. And our success has enabled us to grow into a company that now writes auto, property, business, and life insurance in 21 States and even conducts business internationally.

I am here today on behalf of the American Property Casualty Insurance Association, APCIA, and the National Association of Mutual Insurance Companies, NAMIC, which together represent more than 90 percent of home, auto, and business insurers in the country.

When the COVID-19 pandemic first hit earlier this year, Shelter took prompt and strong action to serve the needs of our policyholders. As a mutual company, we exist because of our policyholders who have put their faith in us and expect us to be there when they have a claim. Since March, we have provided premium relief, liberalized grace periods, and worked with policyholders on a case-by-case basis to help them through their current financial challenges.

Additionally, the Shelter Foundation is offering each of our 1,400 agents $1,000 to designate for a charity in their area working to respond to local COVID-19 needs.

Shelter is known for doing the right thing and we will continue to respond to this rapidly evolving situation. We will continue to do the right thing by our policyholders, our agents, and our employees.

Our business is to help provide consumers with peace of mind by developing risk solutions. As this committee and Congress go about the important work ahead of planning for future pandemics, however, it is imperative that we understand a core principle: Not every risk is insurable.

The reality is that insurers and insurance regulators across the country understand that the global pandemic risk is generally uninsurable in the private market. This was true before COVID-19, and it will be true after COVID-19, for a number of reasons, including that it is impossible to diversify pandemic risk and to spread losses across different groups, which is a fundamental tenet of insurance.

COVID-19 is affecting tens of millions of businesses simultaneously, and the number of businesses in need of protection greatly exceeds the capacity of the insurance industry to provide that protection.

Understanding that global pandemics are uninsurable, an alternative mechanism will be necessary to protect businesses from future pandemics. Whatever that mechanism looks like, it should be focused on providing real, efficient, and effective financial assistance to all American businesses and nonprofits.

Our industry believes that our risk expertise and infrastructure can help with pandemic solutions, even if we cannot shoulder the direct financial burden of the pandemic losses. To that end, we have studied relevant catastrophic protection models, met with many stakeholders and businesses, and put together a proposal called the Business Continuity Protection Program, or the BCPP.

Modeled loosely after the War Damages Insurance Corporation created by Congress during World War II, the BCPP would provide a straightforward revenue-replacement solution for businesses and nonprofits of all sizes. The BCPP would set up a program in the U.S. Treasury to administer a federally subsidized revenue replacement product available to any business or nonprofit in the United States.

America's small businesses could access the product through a simple application to purchase up to 3 months of up to 80 percent revenue replacement distributed through licensed insurance professionals. Businesses could then use these funds to pay salaries, rent, and other operating costs during the pandemic.

A parametric trigger mechanism would eliminate the friction to ensure a quick automated relief upon the occurrence of conditions established in advance. This process would put cash in the hands of businesses immediately, avoiding a long, detailed coverage analysis or complex claims adjustment procedures.

Responding directly to stakeholder feedback, the BCPP also contemplates an excess program, an event cancellation provision for customers who seek this additional protection or are in need of more specialized coverages.

Most importantly, the BCPP is also the current proposal that would be most affordable for America's small businesses. Even with a Federal backstop, coverage under the other proposals would likely be far more expensive than most businesses can afford. Because pricing for the BCPP product would be federally subsidized, the cost could be made more affordable than the other proposed programs, thus encouraging a high take-up rate, which is essential for preserving the broader economy during a crisis.

APCIA and NAMIC are appreciative of the ideas and the proposals that have been brought forward by congressional leaders and the business community to address the pandemic risk challenges. We are committed to working with you on solutions that can provide the effective and affordable protection.

Thank you very much.

[The prepared statement of Mr. Kuhlmann can be found on page 100 of the appendix.

Chairman CLAY. Thank you, Mr. Kuhlmann.

And let me thank all of the witnesses today for their testimony.

We will now move to the questioning of witnesses, and I recognize myself for 5 minutes.

According to the National Association of Insurance Commissioners (NAIC), over 184,000 business interruption claims have been made during the COVID-19 pandemic and less than 1 percent of these claims have been paid out.

I would make the point that to own and operate a business in this country, you should not need a battalion of insurance lawyers at your side to understand and make claims on your policy, if necessary. And most business owners are not experts on business interruption insurance exclusions and other obtuse language that is frustrating to understand, especially when you are trying to pay your staff, deal with payroll taxes, and protect against other potential liabilities.

Ms. Cantrell, this is for you. Can you please share for us the policyholder's perspective here? What kind of toll has this pandemic had on businesses like your own, especially the many businesses who believed they had policies that would protect them?

Ms. CANTRELL. Yes. Thank you very much.

Many of my colleagues, quite honestly, have closed their businesses, not able to survive, and this is devastating in so many ways. One colleague had 34 people working for her. Another has been in business for 18 years. It has been stressful all around in just trying to figure out what our next moves will be. It has been devastating.

Chairman CLAY. Thank you for that response.

And, Mr. Kuhlmann, after the terrorist attacks of September 11, 2001, lenders would not support major construction projects without first guaranteeing that the project had terrorism insurance, which at the time was virtually unavailable or extremely unaffordable.

Congress responded by passing the Terrorism Risk Insurance Act (TRIA) in 2002. Today, we are considering the Pandemic Risk Insurance Act (PRIA), which is based largely on TRIA. Although the cost to insurers of a terrorism event is immense, the scale of a pandemic is even bigger.

Mr. Kuhlmann, are pandemics and terrorism events comparable enough such that a TRIA model can be used to provide affordable coverage for pandemics, too?

Mr. KUHLMANN. Thank you for your question, Mr. Chairman.

I don't believe that it is an acceptable model. Terrorism risk is by its very nature a very different risk than pandemic risk. The terrorism risk is something that is localized, and the risk itself can be spread out throughout the country, whereas the claims that are paid out would be localized to one certain region.

A pandemic, on the other hand, is something that is occurring simultaneously across the country, with claims that would have to be paid out simultaneously throughout the country. And it is just a very different risk.

Thank you, Mr. Chairman.

Chairman CLAY. Let me follow up with that.

While largely successful, TRIA has faced criticism for relatively low take-up rates among small businesses. In attempting to replicate TRIA, the TRIA model for pandemics, is there a risk that we are replicating the weaknesses as well?

Mr. KUHLMANN. Thank you, Mr. Chairman.

I do believe that you would indeed exacerbate the problems that you have outlined with TRIA. We don't necessarily feel that all of the criticisms of TRIA are warranted, but I think basing this on a similar model would exacerbate that because of the inability to spread the risk.

Chairman CLAY. And are there other ways to strengthen the TRIA model if we are to use it for pandemics? Do you have any thoughts on that?

Mr. KUHLMANN. I think the risk is, as I said, Mr. Chairman, it is just a very different risk that I don't think can be based off of TRIA for this purpose. I think the product would be unaffordable, too.

Thank you.

Chairman CLAY. Fair enough, and thank you.

And I now recognize the distinguished ranking member of the subcommittee, Mr. Stivers, for 5 minutes.

Mr. STIVERS. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate those questions. I am going to step back and look at the scope and scale of TRIA compared to PRIA, the risks, because I think there are some big differences here. I think it is hard to make the TRIA model work for a pandemic.

My first question is to Mr. Doyle. Mr. Doyle, thanks for being here today.

With the current version of PRIA capping liability at $750 billion, assuming we have to shut down the United States economy for 2 months—and many analysts have said it is about a trillion dollars a month—assume it is a 2-month shutdown because of the next pandemic, anything above $750 billion, who would be responsible for that? And how would that work? Because that is more than the total reserves of the entire property and casualty industry.

Mr. DOYLE. Thank you, Congressman.

As you suggested in your opening remarks, as did the chairman, we applaud Congresswoman Maloney for putting a proposal on the table.

There is no question that it has limitations. And as some of my fellow participants on this panel testifying before you today have said, the economic consequences of a pandemic are quite different or can be quite different than a terrorism event. So we would need to find a way to scale up on that capacity, depending upon, again, the overall ambitions of Congress.

Mr. STIVERS. Just for the record, wouldn't it be true that above that $750 billion limit, insurance companies would be on the hook for it until they are completely broken and bankrupt?

Mr. DOYLE. I think that is right, Congressman, or they would be reluctant to participate, presuming that it is voluntary participation.

Mr. STIVERS. Because of that, I think you will find almost no insurance companies that would be willing to participate in the current model that we are talking about today of the draft legislation, and I think that is sort of the key. And if people won't participate, it won't work. So, I really appreciate that.

By the way, I appreciate our conversations when we have talked about this, and I appreciate you taking a principles-based approach. I think we all need to take a step back, start with a principles-based approach, and then sit down as a big group and figure out a way forward on this. It may be an insurance-based approach, or it may be another approach.

Frankly, I do like building private capacity, but I am troubled by the fact that it is hard to make government takings an insurance risk.

What we can do is cap the liability of each individual insurance company at some small level and then grow it over time so it doesn't bankrupt anybody, but I don't think we can truly make this an insurable risk.

And I would like to ask Mr. Kuhlmann, do you believe there is any way to make this an insurable risk?

Mr. KUHLMANN. Because of its very nature, I don't believe it could be, because of the fact that you would have this occurring at tens of millions of businesses at the same time.

Mr. STIVERS. Okay. So assuming we can't make it an insurable risk, if we did use an insurance model, and every insurance company had an exact dollar stop-loss, how comforting would that be to you, depending on, obviously, where that stop-loss is? And next, we will talk about what that means to a Federal program.

Mr. KUHLMANN. Sure. I think, Congressman, that in using an insurance-based model, you also have to factor in the adjusting process for that, and the cost and the time of the adjusting process for that, and then the affordability.

Mr. STIVERS. If I can interrupt for a second, it is a parametric, trigger-based approach, because in a pandemic, there is not time or scale for the adjustment process. So, assume for a second it is a trigger-based parametric approach.

Mr. KUHLMANN. What I would be concerned about is if we look at this current COVID pandemic, we have had wildfires in Colorado, we have had a tornado in Arkansas, we have had hurricanes in Louisiana. These are our policyholders that we are there for, that we are paying out and taking care of, and to do that at the same time with—

Mr. STIVERS. I only have a couple of seconds here, so I would like to [inaudible] Interested in answering that.

Ms. McLaughlin, have you had conversations with your CEO [inaudible] conversations with him about [inaudible] deeply important part that is missing here?

Ms. MCLAUGHLIN. I'm sorry, Ranking Member Stivers. I had a hard time hearing your question.

Mr. STIVERS. Oh. I was asking if you had any conversations with your CEO about event cancellation coverage?

Ms. MCLAUGHLIN. About our event cancellation coverage? Certainly, our proposal really is trying cover Main Street America. So, the proposal that we have put forward really doesn't contemplate event cancellations, but certainly it is a framework, sir, so we can expand it as we see that it is needed in the future as well.

Mr. STIVERS. I yield back.

Chairman CLAY. The gentleman's time has expired.

I now recognize the gentlewoman from New York, Ms. Velazquez, who is also the Chair of the House Small Business Committee, for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Ms. Cantrell, it is very nice to see you again.

Ms. Cantrell, I have been so concerned about the impact of COVID-19, how it is impacting our nation's small businesses, that back in May we held a forum in my committee on business interruption.

I just would like to ask you, do you think that if we had had a program in place like the one that we are discussing here today under the Pandemic Risk Insurance Act, your business would be in a stronger financial position and better prepared to withstand the economic downturn caused by the pandemic?

Ms. CANTRELL. Absolutely. It would have been a game changer for me and countless others in our community and around the country, absolutely.

Ms. VELAZQUEZ. Thank you.

Mr. Kuhlmann, since the start of the COVID-19 pandemic the insurance organizations that you are representing here today have consistently maintained that pandemic business interruption is an uninsurable risk. Instead, your organization has proposed the creation of the Business Continuity Protection Program.

First, can you explain why you believe pandemic business interruption is an insurable risk? And then, can you explain how the Business Continuity Protection Program will work?

Mr. KUHLMANN. Sure. Thank you, Congresswoman.

As I have said previously, I think it is an uninsurable risk, certainly for small and medium-sized insurers such as Shelter, where you would have millions of claims all at the same time throughout the entire country. It is just something that would not be an insurable risk for us and I don't think, quite frankly, for most companies.

But I think the BCPP that we have proposed would be a program that would have a parametric trigger where, because it is a Federal program and it would be subsidized by the Federal Government, there would be premiums that would be paid, but they would be affordable for small businesses, for nonprofits throughout the country, and it would be delivered through the agency network that is currently out there and highly regulated by the States. People would be able to purchase up to 80 percent of their lost revenue for up to 90 days. And I think it would be very good.

Ms. VELAZQUEZ. Thank you. I just have one other question.

Mr. Doyle, Marsh was one of the first companies to advocate for the creation of a public-private pandemic risk solution.

First, how would you respond to what Mr. Kuhlmann just said? And second, can you explain why Marsh believes that if the right incentives are created, insurance companies will be able to serve their traditional function of mitigating risk?

Mr. DOYLE. Thank you very much for the question.

I recognize that it is complex. I recognize that it is a unique cat risk. We have talked about the lack of diversification a bit, but we have many clients just like Ms. Cantrell's business who are suffering and are under great distress at the moment, and they need to us tackle hard at the moment, which is why we are here.

I fundamentally believe in the social benefits of insurance. We will be able to, if we structure the program in the right way, invest in new technologies, and better collect and manage data to build models and new ways of working.

I am right now sitting in my office in New York City, in Midtown, Manhattan. My experience coming to work today was very different than my experience was on March 12th. And so, we need to begin those steps to harden infrastructure and to bend the risk curve for the next pandemic.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. I yield back.

Chairman CLAY. Thank you so much, Ms. Velazquez.

And now, I recognize the gentleman from Florida, Mr. Posey, for 5 minutes.

Mr. POSEY. Thank you very much, Mr. Chairman and Mr. Ranking Member, for holding this meeting today.

I appreciate the well-intended efforts of the sponsor to help small businesses, but I am afraid essentially what we have here is a proposal for another government program that will try to do what the market won't do on its own without subsidies. We are being asked to underwrite a government program to insure business losses and do so at premiums that cannot possibly actuarially cover the payouts for such losses.

Mr. Lehmann, from a social policy point of view, is there any economic justification to subsidize insurance for business interruptions due to a pandemic but not to do so for interruptions due to a financial crisis, such as the one we had in 2008?

Mr. LEHMANN. That would be a difficult distinction to make. I can see in both cases why there is a role for government to provide assistance. Whether there is a need to create an insurance program, and whether an insurance program is the best way to spend $750 billion, is less clear to me particularly when, as I mentioned earlier, only a minority of businesses have business interruption. If you don't have a business interruption policy—and if you do not own your property, you often will not have a business interruption policy—then you would not possibly benefit from this program.

Could that $750 billion be better spent in directly aiding businesses? I think it's likely, and I especially think, let's get to that. Let's get through this pandemic first, provide the help that we need today, and then we can get to the point where we can ask that question about future pandemics.

Mr. POSEY. Thank you for the very complete but concise comments.

Mr. Kuhlmann, we hear about flaws in proposals that are modeled after the Terrorism Risk Insurance Program. I voted for a long-term TRIA reauthorization last year since it fills a critical role in the terrorism insurance market. But in this case, there is no existing market for pandemic insurance that has failed as it had before the creation of TRIA, and it is obvious to me that we can't try to force something that is uninsurable, like pandemic risk, into a terrorism model. I think that it just simply won't work, and we will need to lower insurer and business participation due to incredibly high costs that come with trying to tie pandemic coverage to a risk-based pricing system.

Mr. Kuhlmann, can you elaborate on this point a little bit?

Mr. KUHLMANN. Absolutely. I think that is exactly the point that we would make, is that I think that trying to either force the coverage onto companies or even if you make it voluntary, you would have not a great takeup among insurance companies. And even then, it would be unaffordable unless taken up among insureds themselves, and I think it would then become even more expensive with less participation.

Mr. POSEY. Thank you.

Now, back to Mr. Lehmann. We have various models for dealing with greater risk in this country now. For example, the National Flood Insurance Program (NFIP), another heavily subsidized program, and the entire range of programs under the Disaster Relief Fund, provide a form of insurance for rare events like floods, hurricanes, and earthquakes.

The government is, in this case, the insurer of last resort, so to speak. Rather than creating an insurance program that is designed by captives and has associated moral hazard, we could integrate business loss assistance into the Stafford Act, along with cost sharing. Wouldn't that be just as effective as a subsidized insurance program like TRIA to provide us greater control and also achieve integration with the FEMA programs that are addressing the current pandemic? I just would appreciate your thoughts on that.

Mr. LEHMANN. A good argument could be made that the pandemic is more like a public catastrophe than it is like an economic assistance program, and so some versions of the BCPP over its drafting, I know, considered something like that. I think the Stafford Act is a way to at least respond to sort of the public closures, like that piece of it where you have a public health authority that orders closures. That is a public responsibility and [inaudible] In reimbursing people to comply with taking makes good economic sense.

Mr. POSEY. Thank you.

We often hear arguments that insurance, if it is actuarially and physically sound, helps a firm make—excuse me, my time is up.

Chairman CLAY. The gentleman's time has expired. And I am going to—because of the large list of Members who are waiting to ask questions, I am going to have to ask you to not ask that question. I'm sorry, Mr. Posey.

Will you yield back?

Mr. POSEY. Certainly.

Chairman CLAY. Thank you, Mr. Posey.

At this time, we will now go to the gentleman from Missouri, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman. Thank you for holding this hearing.

It is extremely important that we deal with this issue. And what I want to focus on is—I understand the varying PRIA program proposals that have been offered, which involves the retention of some amount of risk by private insurers for different types of business interruption insurance vehicles depending, of course, upon the size of the policyholder.

I would like to engage our panel just for a bit on this issue, and I want to specifically talk about the risk tolerance of the private sector before it makes sense for the Federal Government to intervene. So I would like for the witnesses, if you would, to discuss the broad tolerance of the insurance market under various adverse situations.

Is the Federal Insurance Office (FIO) or any other independent analytical body effectively evaluating this question? And, if so, when can we expect some data? Aren't we just kind of outblowing in the wind right now?

Any of the panelists, please?

Mr. LEHMANN. Congressman, I am not aware of FIO conducting any [inaudible] on this question yet. FIO, I would imagine, is currently in transition, and we will see if they do take—I do think that it would be wise to direct FIO to examine the question of availability of coverage for business interruption and other coverages. Business interruption is not the only insurance coverage that has been hit by the pandemic. Workers' compensation, many liability claims, those are different things that need to be looked at as well.

Mr. CLEAVER. We are dealing with an extremely important program, and as far as I know, we are dealing with it without the data.

Mr. LEHMANN. I do believe the ICLE has had some data calls. I think some of the other witnesses might be able to speak to that.

Mr. CLEAVER. Yes, please. Any other witnesses, please speak to it.

Ms. MCLAUGHLIN. Congressman, this is Michelle McLaughlin from Chubb. At Chubb, we have been designing our program and we have the data for our own company, obviously. And what we are looking to do is create a program where insurers can have some skin in the game here, but with guardrails. So really our program, if you've seen from a small business standpoint, is to limit the exposure by the insurance carriers market share so we have a finite exposure and then charge actuarially sound rates to those carriers only for the insurer's portion so that it is affordable for those small businesses.

Mr. CLEAVER. Thank you very much.

On June 22nd, I sent a letter to the Department of the Treasury's Federal Insurance Office (FIO) asking them to work in coordination with the industry and relevant stakeholders in providing an assessment of the pandemic insurance landscape, as well as any efforts on the way at FIO to address possible shortcomings. This is the United States Congress, this is an important issue, and I think we need to have the data that everyone is dealing with, so that everyone can at least understand its parameters.

And right now, let's just say this is a big deal, but if we have to vote on something today, we would be voting in ignorance. We have no data. And I just don't think that with an issue like this, as significant as it is, that we would wade into the water without having an organized system of presenting data.

Am I wrong on this? You can tell me that I am wrong. It's okay. My wife says it.

Mr. LEHMANN. I think you are absolutely right, Congressman.

Mr. CLEAVER. Any other witnesses?

What does the silence mean?

Mr. KUHLMANN. I think we would support you getting that information certainly, and I believe that the NAIC is also looking at trying to gather some data. So, yes, we would support getting any data that we can to review that.

Thank you, Congressman.

Mr. CLEAVER. Thank you, Mr. Chairman. I yield back.

Chairman CLAY. You are very welcome, and I am sure your wife is not fearful of telling you the truth. Thank you to my friend from Missouri.

At this time, we will now go to the gentleman from New York, Mr. Zeldin, for 5 minutes.

Mr. ZELDIN. Thank you Chairman Clay and Ranking Member Stivers for holding this hearing today. And thank you to the witnesses for being here.

I represent New York's First Congressional District, which was one of the areas first and hardest hit by COVID-19. Long Islanders are tough and have found ways to adapt to the pandemic, but many businesses in my district are facing difficult decisions as we reach the colder months in New York. Restaurants, gyms, and other small businesses are once again facing increased restrictions on how and when they can operate.

Congress did a great job coming together, not as Republicans or Democrats, but as Americans, when we passed the CARES Act, which enacted the Paycheck Protection Program (PPP) to provide needed liquidity for our small businesses. It is vital that Congress comes together again and passes another round of PPP funding to help businesses weather any government-placed restrictions. It is also important that we start thinking about ways to have liquidity measures ready and in place to assist small businesses with any potential future pandemics.

I am grateful that Representative Maloney, a fellow New Yorker with whom I worked to reauthorize TRIA, has started an important conversation about how to be more proactive for future pandemics. However, I want to dig a little deeper into whether an insurance product makes the most sense or if there are other potential solutions that would provide liquidity more efficiently to Long Island small businesses.

Mr. Kuhlmann, one thing we learned from this crisis is the importance of getting cash quickly to small businesses that are forced to shut down through no fault of their own. Can you talk a little about the difficulties of using a business interruption insurance product and that claims process during an pandemic?

Mr. KUHLMANN. Absolutely. Thank you, Congressman. Yes, using a claims-based process would—you would have to have specialized adjusters who are handling these claims, and it is almost a form of forensic accounting that is necessary to be able to evaluate the claims. And even doing that as efficiently and quickly as possible, it is still going to be not as timely as it is going to be needed in a situation like a pandemic. And it is also very expensive, which will add to the premiums.

Mr. ZELDIN. Is there a more efficient way to provide liquidity quickly to businesses that is not business interruption insurance?

Mr. KUHLMANN. Well, certainly, we feel that the BCPP would be a way with the parametric trigger that would be able to almost immediately get funds into the hands of the policyholders in that regard.

Mr. ZELDIN. Ms. McLaughlin, pivoting slightly, business interruption insurance is a product that can be triggered by physical damage to property. However, there are other specialized insurance products out there, like production insurance or event cancellation insurance, that are critical for financing film productions, sport events, and other live events.

Is there a role for the Federal Government to play in helping these markets regain insurance coverage?

Ms. MCLAUGHLIN. Thank you, Congressman. Really, the proposal that we have put forth is meant to address Main Street America, but certainly we think we have created a framework that, once we have all of the elements combined together, we can expand that to include future types of coverage like you mentioned here today.

Mr. ZELDIN. Mr. Lehmann, after 9/11, construction halted in New York City because lenders did not want to extend credit without protecting the underlying collateral from a future terrorist attack. Congress correctly responded with TRIA to make sure that lending and financing for New York City's recovery would be strong. Many of our nation's lenders have stepped up and provided forbearance to help businesses that do not have the cash flow to meet scheduled debt payments, but this is unsustainable in the long term, and a proactive solution would be preferable.

Whether or not an insurance product is the best method, do you foresee market forces leading to a necessity in creating proactive solutions to provide liquidity to small businesses during a pandemic so that these loans are safer and sounder?

Mr. LEHMANN. It is possible. I am a bit skeptical of that, because in the case of terrorism, the insurance market pulls back coverage that had previously existed. They introduced exclusions that weren't there before. That is not the situation we are facing here. No business had—or very, very few businesses had coverage for a pandemic before COVID. Lenders have been providing their lending all along. I don't imagine lenders are going to ask for an insurance product that does not exist. I think lenders still want to do business, and they are not going to foreclose, there is no market for [inaudible].

Mr. ZELDIN. Thank you. I yield back.

Chairman CLAY. Thank you, Mr. Zeldin.

At this time, I recognize the gentlewoman from Ohio, Mrs. Beatty, who is also the Chair of our Diversity and Inclusion Subcommittee.

Is Mrs. Beatty there? If not, we will come back to Mrs. Beatty. And I will now recognize the gentleman from Texas, Mr. Green, who is also the Chair of our Oversight and Investigations Subcommittee, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Thank you very much. And I thank the ranking member and the chairwoman of the Full Committee as well.

Ms. Cantrell, your testimony was quite moving, to be very candid with you. I recorded one phrase that you used. You indicated that you were experiencing the darkest days of your life, and that caused me a lot of concern. Because if I multiply this by all of the many persons who were in similar situations, it means that there was a lot of hurt and a lot of pain, obviously.

And for me, as I reviewed this, it is about individual businesses. I have a statement from the staff indicating that losses just for businesses with under 100 employees during the pandemic in the spring were as much as $431 billion per month. It says to me that this is really about the economy. Small businesses make up the economy. And I would like to see us arrive at a solution, if at all possible, honestly, because the economy impacts everybody, not just the individual businesses. So I would like to see a solution, and I am willing to work across the aisle to try to accomplish such a solution.

But, Ms. Cantrell, I do want to ask you about something related to policies in general. Were you of the opinion that you had coverage for a pandemic at the time you were experiencing these dark moments in your life?

Ms. CANTRELL. Yes. Thank you very much for your question. And, yes, when I had been paying into insurance, I thought I was covered for all situations. I never thought of—there are many things, I am sure, that insurance companies think of, that I as a business owner would not think of. I guess that was one of them. But I certainly absolutely thought I was covered.

And the main topic with all of my colleagues when we speak daily and for those months, those really dark times—we are still in them—was about how we are going to pay employees, payroll protection, getting that, and insurance as well. And many of us spoke about how we had been paying in for years into something that wasn't going to help us now.

Mr. GREEN. Well, that is a concern that I have, and your testimony really sparked this interest. And I have spoken to staff members since you made that comment because of how it has impacted my thought processes.

Would it have been beneficial to you, ma'am, to have had a notice, some disclosure that was clear and concise such that you would know what you were buying? Do you think that, had you known, while it may have been difficult for you, it would have been something that you had an expectation otherwise for? For example, you wouldn't have thought that you would have the coverage that you didn't have, so you wouldn't have had that expectation. Because I am sure that was quite a letdown for you when you found out.

So, would disclosure have at least helped you to some extent or caused you perhaps to decide that you needed to look elsewhere for some insurance for that kind of coverage? Would disclosure have helped you?

Ms. CANTRELL. I understand what you are saying. I think hindsight is 20/20. I certainly will be more—whether it is my lease, whether it is my insurance, there are so many things that the pandemic has opened up about what I need to ask for going forward. I am hoping that the government helps in some ways with some of those things.

Would it have helped? I wouldn't have known to ask for it. Now, like I said, I certainly would have. I think that there was so much uncertainty. There still is so much uncertainty and so much hope about that things would be—

Mr. GREEN. My time is kind of limited. Let me just—forgive me for interrupting. But what I am trying to get at is, would it be beneficial for me to work with staff on some sort of disclosure so that you won't feel like you paid all of these many years only to find out that you don't have what you thought you were purchasing? And if that disclosure is beneficial, then I am going to look into developing such a thing for you and others.

Ms. CANTRELL. I think disclosure would be great. I don't know how many business people are reading every fine line of everything to know what is and what is not covered. When I talked to my insurance agent, and he said this will cover you in all situations, that is what I listened to.

Mr. GREEN. My time is up. Thank you, Mr. Chairman.

I read my policy once, and I hope I never have to read it again.

Chairman CLAY. Thank you so much, Mr. Green.

And now, the gentleman from Tennessee, Representative Kustoff, is recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Chairman Clay. Thank you for convening today's hearing, and thank you to the ranking member. And I would also like to thank the witnesses who are appearing virtually today.

Ms. Cantrell, if I could, if you are still on—okay, you are still on—I want to echo what Congressman Green said about your testimony. I find it compelling. I think everybody who listened to it found it compelling, and we probably all have constituents in our districts from whom we have heard the same or similar stories.

My question to you, kind of following up on what Congressman Green was asking you is, if PRIA was in existence or if you had the coverage you thought that you had or the Business Continuity

Protection Program was in existence, and you had to litigate your claim, what would the effect be to your business?

Ms. CANTRELL. I'm sorry, if I took legal action against my insurance company?

Mr. KUSTOFF. If you thought you had—if the coverage did, in fact exist, but you had to litigate, what would the effect be on your business?

Ms. CANTRELL. Quite honestly, I don't have those resources to take on an insurance company. And having talked to my insurance company since this time too, he made some point about that if in good faith, if we don't try to work things out with our insurance company, then my coverage would cease as well. So, it never occurred to me for litigation. That is not in my mindset, and I didn't really think—David/Goliath—didn't really think it was going to work in my favor.

Mr. KUSTOFF. Same question, if you didn't have to litigate but it took, say, 6 months for you to get your claim paid, what would the effect be to your business?

Ms. CANTRELL. If I knew there was hope coming—I felt that way with the PPP, and then that was something that could be really helpful and supportive and keep us going. I can't speak for others, but I would think that knowing relief was coming would be helpful.

Mr. KUSTOFF. Fair statement. Though, if you knew that it would take 12 months for your claim to be paid, it would have a detrimental effect on your business, wouldn't it?

Ms. CANTRELL. Twelve months is a devastating amount of time when your rent is very high, and health insurance and payroll costs.

Mr. KUSTOFF. I guess my point is, you would really need that claim to be paid in a fairly quick manner in order to be helpful to your business, correct?

Ms. CANTRELL. Absolutely.

Mr. KUSTOFF. Thank you very much.

Mr. Lehmann, the way you look at and read PRIA, the way it is drafted now, is there any prohibition for a policyholder, if PRIA did exist, to receive a payment to have their claim paid and then at some point in the relatively short-term future lay off all of their employees?

Mr. LEHMANN. No, That wouldn't be unusual. The insurance contract could specifically be insuring payroll, but that is going to depend on the contract between the insurer and the insured. The government is not involved in that process, and PRIA, from what I see, does not propose anything that would limit that from happening.

Mr. KUSTOFF. And, Mr. Lehmann, if PRIA did exist the way it is drafted now, a claim was paid, and then the employees were laid off, what would the effect be on the economy?

Mr. LEHMANN. Generally speaking, the thing that we care about are these relationships, relationships between employers and employees, relationships between businesses and customers. The whole goal of PPP was sort of to put all of these businesses into like an induced coma so that we could tackle the virus, then bring them back and hope everything comes back to normal. And it may not, in many cases, come back to normal, but that is how that was structured. I think that is a good structure. Insurance is not quite structured the same way.

Mr. KUSTOFF. Along those lines, if PRIA were created, can you talk about what the challenges would be in establishing and running a new permanent Federal program designed to affect pandemic-related losses?

Mr. LEHMANN. Pandemic losses can be pretty—like TRIA has the certification requirement from Treasury. PRIA—public health is a local matter, for the most part. Determining businesses that cross different jurisdictions, some pieces of the business may be in a public health zone and some pieces not. That is going to take quite a bit of work.

Mr. KUSTOFF. Thank you, Mr. Lehmann.

And I have 19 seconds left, so I will yield back my time. Thank you, Mr. Chairman.

Chairman CLAY. Thank you so much, Mr. Kustoff.

I wanted to now go to the gentlewoman who is the Chair of the House Oversight and Reform Committee, as well as the person who brought this issue to the subcommittee's attention, my friend, Carolyn Maloney of New York. You are recognized for 5 minutes.

Mrs. MALONEY. Thank you. Thank you so much, Chairman Clay. And let me express how much I have enjoyed working with you over the years and how sad I am that you will not be returning. I want to thank you for this hearing, and for your decades of work to help so many people. I also want to thank the ranking member and all of our panelists who are here today.

I would like to ask Mr. Doyle, the CEO of Marsh—which, incidentally, was the only company that could insure New York without PRIA, along with Lloyd's of London, during that time. We all recognize that pandemics are unique and the economic effects of pandemics can be devastating. A broad consensus has emerged, supported by research from your company and proposals like Chubb's, that pandemic risk is insurable with an appropriate Federal backstop.

I want, first, to thank Marsh for all of the research that you provided on this issue, and I hope you can make it available to all of us. But I would like to ask you, can you explain why any Federal program must include a Federal backstop? And also, if you could talk about being able to insure pandemic risk? A number of panelists have said that they believe pandemic risk is totally not insurable. Your comments on that?

And, again, thank you for your research, and we look forward to hearing your comments.

Mr. DOYLE. Thank you, Congresswoman. My connection was poor before, so I didn't hear a few of the prior questions from the committee, so apologies. But I could hear you clearly, and thank you again for your leadership on this issue.

Again, pandemics are global by nature. They lack diversification. And so, unlike other cat risks, diversification is a fundamental part of insurance. And so, the economic consequences are too severe and beyond the risk-bearing capacity of insurers to ultimately bear.

Many insurers have come forward and we have had very constructive dialogues. Of course, Ms. McLaughlin from Chubb on the panel here today being an important voice, so many believe that the industry has a big role to play.

And I would also submit that, with all due respect, shutting down businesses or putting businesses in a coma is not an ideal future state. We ought to be looking to ultimately change the outcome of the next pandemic.

Mrs. MALONEY. I wasn't able to hear his response, so I am going to ask to get that response in writing for the question that I asked. I know my time is almost up.

I want to ask Ms. McLaughlin, my bill would require insurers to share the risk with the Federal Government. Chubb's CEO has said that he believes the industry, "does have the wherewithal to take risk here," while your COO said it was, "a mistake for insurers to think they could not insure this risk at all." And Chubb is not alone. Other leaders have come out and said that they support it.

Can you explain why risk sharing is possible and necessary for any Federal program?

Ms. MCLAUGHLIN. Thank you, Congresswoman, and thank you for your leadership on this as well. Chubb feels it is very important for the industry to participate in the solutions. By playing a risk-sharing role, because of the industry's knowledge and experience, can help drive better behaviors. We really feel the industry needs to have some skin in the game here. Our involvement in a public-private partnership with the Federal Government will lead to a better understanding of pandemic risks and incentivize and improve risk mitigation and preparedness.

A solution that commits insurance industry capital also provides an opportunity for increased risk sharing over time as direct and secondary markets develop, thus helping reduce the government's financial burden in the future.

Mrs. MALONEY. Thank you so much.

And, Ms. Cantrell, thank you for your work in small business. How would pandemic risk insurance improve your business' ability to survive a pandemic?

Ms. CANTRELL. Thank you so much. Yes. Every other store that I see when I am out right now has a for-rent sign on it, so, me and so many others would really have so much hope and financial stability for the future.

Mrs. MALONEY. Thank you.

And I just want to say that small businesses across the country have closed their doors forever. Professionals, like the 2,200 organizations that signed the American Society of Association Executives' letter in support of my bill, have canceled their annual events that provide the bulk of their funding without any event cancellation insurance. And despite what some have said earlier, this is included in my bill to cover [inaudible] related losses. And I just wanted to get that to correct the record.

But also to emphasize again, Mr. Chairman, this is just a marker. This is just a proposal, a draft, shall we say, to be improved upon. It is not the end game. It is easier to work off of a draft than to just go to a hearing without anything of a point of reference to build on. So, I just want to say that I am open to all suggestions.

Thank you. I yield back. Thank you again.

Chairman CLAY. You are very welcome. We thank you for that perspective, that it is just a marker. I appreciate hearing that.

At this time, the gentleman from Tennessee, Mr. Rose, is recognized for 5 minutes.

Mr. ROSE. Thank you, Chairman Clay and Ranking Member Stivers, for holding this important hearing. I know we have been trying to hold this hearing since June, so I am glad we can discuss this important issue here today.

The COVID-19 pandemic has devastated businesses nationwide. The government-mandated shutdown led to massive furloughs, layoffs, and closures. Programs like the Paycheck Protection Program made it so that businesses across the country, including in my home State, could keep their doors open and their employees on the payroll. This program was critical because it, in nearly all instances, the financial losses our businesses faced were not covered by insurance, as we all know.

As we begin to consider legislation to combat this issue in the future, I believe any legislation this committee approves must have a bipartisan consensus. It should include input from all stakeholders and require voluntary participation.

The legislation attached to this hearing to date fails to pass that test, but I do appreciate both the chairman and the bill sponsor, Mrs. Maloney, for recognizing this bill as a starting point and being willing to work across the aisle for a solution.

There are many alternative solutions that have both their advantages and disadvantages and are worthy of further consideration as we seek bipartisan consensus, and I look forward to furthering that discussion today.

The Pandemic Risk Insurance Act would require participating insurers to offer pandemic risk coverage as part of their business interruption policies. Setting aside whether the mechanics of PRIA would even work, this structure could lead to incredibly high cost of coverage.

Mr. Lehmann, what would happen if insurers largely declined to participate in the program?

Mr. LEHMANN. To answer the first part of the question, I don't believe that it actually does require the insurers to make the offer, but they have the option to participate in the program. I don't imagine many traditional property and casualty insurers would be interested in participating. The administrative costs would be pretty large. There is not much of their own capital that is going to be contributed. They are only retaining 5 percent. But if the program is exhausted, if the $750 billion is exhausted, given the size of these sorts of events, they could be on the hook for money over that cap, and it is unclear how that would work out.

I think it will largely be of interest to the specialty operators, like captives and risk retention groups, that will largely serve individual policyholders, large companies, some governments, and so forth. And that is what we see in TRIA as well, that a good portion of the TRIA backstop is ultimately close to captive.

Mr. ROSE. What would happen if insurers who did choose to participate in the program made coverage essentially unaffordable for most small businesses?

Mr. LEHMANN. Given the cost of administering it, it probably would be pretty expensive, even without the insurer's own capital on the underwriting side. It is difficult to know what this would look like. If it were more—if it were risk-based, you would expect businesses that have indoor dining and those sorts of things, anything where there is person-to-person interaction would have more expensive coverage, and they would probably not opt to buy it. Because if you are a small business, that would be quite a bit. And you would, as you did before this pandemic, take the risk that it is not going to happen. Usually it won't, but once in a hundred years.

Mr. ROSE. Mr. Lehmann, you have pointed out that the general difficulties of using insurance as a tool for spreading risk in a pandemic event, several of the proposals being discussed in the hearing today, including PRIA, follow the insurance model.

Mr. LEHMANN. Yes.

Mr. ROSE. Would you explain to the committee why the insurance model would not be an efficient and effective way to get aid to businesses?

Mr. LEHMANN. The first part is just takeup. As I mentioned, only about a third of businesses have business interruption insurance, which means most businesses would not be affected by that.

The other side of it is that a lot of the loss is not an insurance claim. Most of the lockdowns were lifted in this country in September. Ask businesses if they thought business was normal. It obviously wasn't. It wasn't the shutdown that caused the loss; it was the pandemic. And there is no cognizable insurance claim for, "business is bad." There is no business-is-bad insurance.

Mr. ROSE. Okay. Thank you.

Mr. Chairman, I see that my time has expired.

I think what we have learned today is that this hearing is an important first step to solving this complicated issue, and I look forward to working with my colleagues on both sides of the aisle to find a solution. And I yield back.

Chairman CLAY. Thank you, Mr. Rose. I couldn't agree with you more.

At this time, I think I saw the gentlewoman from Ohio, Mrs. Beatty, on.

Mrs. Beatty, are you still on?

Okay. Apparently, she is not there. So, we will now recognize the gentleman from Washington State, Mr. Heck, for 5 minutes.

Mr. HECK. Thank you, Mr. Chairman.

I am not going to take that much time. I actually don't have a question, just a couple of quick comments I would like to make, sir, the first of which is to thank the panelists very much. This is a profoundly interesting and important conversation. It is, of course, focused on prospective approaches to deal with what we are experiencing right now, but it does serve as an opportunity to underscore the severity and the circumstance we are in, and I don't think it can be exaggerated or repeated too often.

American families and businesses are hurting on an unprecedented scale. The fact is that what we have done in the past in the form of PPP and unemployment extension, these have run out. Businesses have—as my father used to say—eaten their seed corn, and they are on the brink of wholesale bankruptcies. And it is incumbent upon this Congress to act, to figure out a way to get to yes, especially as we head into the teeth of this frightening spike in the spread of COVID, even among our colleagues. We have to figure out a way to act.

And the second comment I want to make, under a point of personal privilege, is to express to you, Mr. Chairman, how much I have enjoyed and appreciated serving with you. I wish you all the best going forward, sir. I cannot exaggerate my gratitude for the collaboration we have experienced over 8 years, especially of late, your leadership on housing issues and, frankly, Mr. Chairman, your friendship. I wish you Godspeed.

And with that, sir, I yield back.

Chairman CLAY. Thank you so much. That is so kind.

Let me now recognize the gentleman from Wisconsin, Mr. Steil.

Mr. STEIL. Mr. Chairman, thank you very much, and thank you for having today's hearing.

I want to dive in on a couple of specific questions. Mr. Lehmann, I am going to direct them at you if I can. One of the things I think we haven't really hit on here in this discussion is that historically, our insurance markets are regulated at the State level. State insurance regulators are really required, and we rely on them, to make sure that insurance policies are solvent. Kind of think back towards SARS, when some of these pandemics came on line, people became concerned.

We have 50 States. Is it, to your knowledge, that all 50 States have allowed exclusions for pandemics in their policies to maintain solvency?

Mr. LEHMANN. Yes. The viral exclusion does date to SARS and was promulgated by the International Organization for Standardization (ISO), which is the standard-setting organization for a lot of policy language, and that—

Mr. STEIL. Cognizant of time.

Mr. LEHMANN. Sure.

Mr. STEIL. But big picture, we have 50 different State regulators. All 50 State regulators across the country reached the same conclusion, to your knowledge, on that?

Mr. LEHMANN. Yes.

Mr. STEIL. So then, what we are looking at is, what would be the demand for this? We have a lot of conversations comparing TRIA to PRIA. Under TRIA, we have 9/11. We have a lot of bank loan covenants that are coming online, demanding terrorism risk coverage. The free market is not providing that. Congress is called to act to address a real market demand.

To your knowledge, is there a market demand by bank loan covenants or other market demand that is driving us forward as it would relate to providing this type of pandemic coverage at a national level?

Mr. LEHMANN. I have heard anecdotal chatter that that may be a thing lenders are looking at, but I know of no evidence that it is a common requirement. It would seem very unlikely for banks to require something that doesn't exist. It would mean they would make no loans.

Mr. STEIL. But in a sense, they did in TRIA, right? We saw the markets kind of start to "glum up," if you will, for lack of a better phrase, following 9/11, where there was catastrophic loss. And Congress was called to act because there was a hiccup, for lack of a better phrase, as it related to providing liquidity, in particular, in the real estate industry as it relates to TRIA. But, to your knowledge, you haven't really seen that play out on the financial side as it relates to pandemic insurance?

Mr. LEHMANN. Not as yet. And one thing that is different is that TRIA—following 9/11, existing terrorism insurance disappeared, and so the lenders had that security before and they lost it. That is not the case here. We didn't have pandemic coverage before COVID, and we don't have it now.

Mr. STEIL. And following SARS really was truly probably carved out almost explicitly in many of these programs. Can I ask you to comment? I think one thing that we haven't dove into as far as I would like, the triggering event that would be required would really shift in many ways from traditional insurance coverage being an actual occurrence of an event to a triggering event that would require possibly an Act of Congress—

Mr. LEHMANN. Right.

Mr. STEIL. —an act of State Government.

Mr. LEHMANN. Right.

Mr. STEIL. And it seems like that would really set up a potential either moral hazard or political hazard. You can phrase it as you like. But you can envision the pressure that would be placed on the decision-maker in a political environment versus a tornado catastrophically comes through a town. It occurred, right?

Mr. LEHMANN. Absolutely.

Mr. STEIL. —second-guessing whether or not there was a tornado that came through. This would be a triggering event.

Can you just comment on, are there other instances that you can think of where a government actor, a political actor, would control a triggering event, and how that has played out as it relates to a potential moral hazard?

Mr. LEHMANN. The only real comparison is TRIA, where the Treasury Secretary has to certify a terrorist event, but we haven't had one. We have never had a terrorist event that has been certified by the Treasury Secretary. And then, through the various proposals, BCPP, the Chubb, and PRIA, and so forth, they all kind of consider different stakeholders making those decisions, and that obviously can be complicated, and certainly there will—a public official will have pressure from the public.

Mr. STEIL. Sure. But just from a comparison standpoint, obviously, TRIA would have that. People on this committee are pretty knowledgeable about how that trigger would work. But you don't see other instances where what I would consider free market, private insurance is triggered by a political action rather than an event occurring?

Mr. LEHMANN. Yes. Usually, events are defined and you don't need the government to tell you—

Mr. STEIL. Seeing my time has expired, I yield back. Thank you very much.

Chairman CLAY. Thank you, Mr. Steil.

I now recognize the gentleman from Florida, Mr. Lawson, for 5 minutes.

Mr. LAWSON. Chairman Clay, it is great to see you, and I want to thank you so much for this hearing. This is a really important hearing because it affects people and businesses all over the country.

My question is—there was an article in the Philadelphia Business Journal reporting that there have been over 700 lawsuits brought by policy owners against insurance companies that have denied businesses interruption coverage for losses sustained as a result of the COVID-19 pandemic, insurers almost unanimously denying every claim across the country by taking a position that COVID-19 does not constitute a direct physical loss or damage of the covered property because the virus does not physically alter or tangibly destroy the property like fire damage or any other damage.

So I guess to Ms. Cantrell, can you please share from the policy owner's perspective about this issue? Because this is a pretty interesting issue and I really need to know how the panel—what they think about that.

Ms. CANTRELL. Are you asking about the litigation part of it?

Mr. LAWSON. The litigation part of it and how it affects—and I will tell you, the reason why I am asking that is because in the health insurance area and so forth, insurance kind of looks at it now as if everybody has a preexisting condition based on the virus and so forth. There is so much litigation involved that people who are filing, insurers are saying we are denying all these because it does not alter property.

Ms. CANTRELL. Right. Yes, I understand. And as I mentioned earlier, I didn't file any legal action. We haven't sustained any property damage, but we were shut down by the government, the governor's orders. There was really nothing I could do. I luckily had a website, and that is how we were able to even function and make any money at all.

So I find that maybe the language—and this is what we are talking about today, but the language isn't there to support small businesses or businesses at all. So, I didn't take any legal action, but I see others have.

Mr. LAWSON. Would anybody else on the panel like to respond?

I can't hear. Is that John speaking?

Can I see the hands of anybody who wants to respond?

If not, I have another for anybody on the panel out there.

Looking at your proposal, I know that there are conflicting thoughts on premium charges for a Federal backstop. However, given the challenges that private insurers face in providing business interruption and even cancellation insurance for pandemic risk, do you believe that some type of governmental backstop program may be necessary if pandemic risk insurance is going to ever be widely available to U.S. businesses? And this is for the whole panel.

Mr. LEHMANN. I think the entire panel agrees that the private market alone is not going to cover a risk like the global pandemic. I think that is one thing that we all agree with, that it is too correlated a risk. You are not going to have just a private solution.

The government needs to do something. What that something is, we might disagree on, but that there is a government role, I don't think anyone disagrees.

Mr. LAWSON. Would anybody else care to elaborate on it?

Mr. DOYLE. Congressman, this is John Doyle. Can you hear me now?

STAFF. Yes, we can hear you.

Mr. DOYLE. Apologies.

Look, I think we have been working on behalf of more than 10,000 of our policyholders to get their claims paid. In many cases it is excluded, which is why we are here. We need a program that covers this risk going forward. We need to structure it in a way that encourages participation, it is subsidized by the government, it has a quick and simple trigger to get liquidity into the system so we can keep Ms. Cantrell's business alive, and we need to create the right incentives to bend the risk over time.

With all due respect to my fellow panelists, shutting a business down or putting Ms. Cantrell's business in a coma, I think we ought to set our sights a little bit higher than that.

Chairman CLAY. Your time has expired, and I appreciate the line of questioning that you followed.

The gentleman from Texas, Mr. Gooden, is now recognized for 5 minutes.

Mr. GOODEN. Thank you, Chairman Clay. I first just want to say how much of an honor it has been to work with you during my first term in Congress, and you will be missed, and I appreciate the time we have had together.

Chairman CLAY. Thank you.

Mr. GOODEN. And also, Chairman Clay, without objection, I would like to insert the bipartisan bill, H.R. 7671, the Small Business Comeback Act, along with a list of supporters' letters for the record.

The legislation will complement the CARES Act and the Paycheck Protection Program by simplifying the application process and reducing restrictions on how funds can be used. It is aimed at providing continued [inaudible] Businesses and employees most impacted by COVID-19, which are small businesses, and [inaudible] operating in underserved areas. And I believe this legislation will be instructive on how to address future pandemics.

I also want to thank the witnesses on the panel representing the National Retail Federation, NAMIC and APCIA, [inaudible] The bill. I would also like to ask witnesses to submit their comments on this legislation for the record as well.

Chairman CLAY. And, Mr. Gooden, you want that as part of the hearing record. Is that correct?

Mr. GOODEN. That is correct, Mr. Chairman.

Chairman CLAY. Without objection, it is so ordered.

Mr. GOODEN. Thank you.

Mr. Lehmann, I wanted to ask you to comment. It seems as if the concept of insurance is perhaps being overlooked by some, and that principle, the basic principle that it is designed to be covering the losses of the few paid for by the many. And in this case, a global pandemic or a national pandemic is a major loss of everyone paid for by everyone.

So I would like for you to touch on that, but I also want you to comment on this idea of a mandate for insurers. Some have suggested that it might help to solve the issue we are talking about today if we mandate that insurers offer this coverage, but would that work? And what are the unintended consequences and consequences to the market as well?

Mr. LEHMANN. Yes. I believe I put in my written statement the line I have used a lot, but if half of the global economy shuts down, the insurance industry alone cannot carry the other half on its back. There will never be a scenario where that is possible. That is why for an event of this size, correlation is not possible for the insurance industry to right on its own.

On the question of a mandate, the concern would be—the upside is if it is included in every policy that has business interruption, then Ms. Cantrell doesn't have to wonder, right? It is just automatic. I have business interruption, so I am covered for that.

The question is, if you add the cost, would the business still buy business interruption? Because two-thirds of businesses don't. That is an open question. If you reduce the [inaudible] of business interruption, then you are not necessarily getting the outcome that you want.

Mr. GOODEN. Thank you.

Mr. Doyle, I have heard from brokers around the country that the availability of pandemic-related insurance has disappeared, and some have indicated to me that Congress should wait until after the crisis is over before contemplating a program to address future occurrences.

In the case of TRIA, the incidents were catastrophic. It only affected certain areas, but it was a one-time incident. The very next day, we were talking about, what do we do because the attack had happened. In this case, the pandemic is still ongoing. We are potentially not even to the worst of it.

Do you have any thoughts on whether Congress should wait until after this is complete before we talk about a long-term solution from an insurance perspective?

Mr. DOYLE. Thank you, Congressman. The market for pandemic insurance was limited prior to COVID, and it is more limited today. And our clients are facing these risks and have no means to deal with them at the moment.

As I mentioned earlier in my prepared remarks, I think it is fundamental and critical to the economic recovery that we act, and act quickly. We should be thoughtful, of course, and as we have all talked about, what Congresswoman Maloney has put forth is a terrific starting place for a conversation. But I also think we can't wait. We need to move soon.

Mr. GOODEN. Thank you.

And, Mr. Chairman, I yield back.

Chairman CLAY. I thank the gentleman for your testimony.

At this point, we will now go to the gentlewoman from California, the Chair of the Full Committee, Chairwoman Waters, for 5 minutes.

Chairwoman WATERS. Thank you so very much, Mr. Chairman. I would request a point of personal privilege.

Chairman CLAY. Please proceed.

Chairwoman WATERS. Thank you.

Mr. Chairman, it is with a great deal of sadness that we will not have the opportunity to work with you in this Committee on Financial Services.

At this time, I would like to say to you today, that we will miss you. We will miss you, and we will miss your work. We will miss your leadership. We will miss your dedication to the great issues of this committee, and particularly on housing. I know how much time you have spent working on the issue of housing, and I know the successes you have had, not only in St. Louis, but in our little town of Wellston. I know this well.

What many Members do not know is that this is my hometown, I was born in St. Louis, and that we are family members; your first cousin is the father of my nephew. And so, the Clay family, the Moore family, and the Carr family is a huge family in St. Louis, Missouri.

We love you, we respect you, and we wish you the best as you move forward. The business of this committeee will continue to be conducted productively. So, thank you very much.

Chairman CLAY. Thank you so much, Madam Chairwoman, and cousin. You are recognized for 5 minutes.

Chairwoman WATERS. Thank you.

Now that they know, they won't have to hold it against you that you are my cousin.

Chairman CLAY. I hope not. Thank you.

Chairwoman WATERS. Thank you.

I will now turn to a question for Ms. McLaughlin. The largest industry trade groups have argued that pandemics simply cannot be insured against. Their proposed solution puts all of the responsibility for helping businesses and ensuring against the risk of a pandemic on the Federal Government. But not everyone within the insurance industry agrees. When cases of COVID-19 were first spiking in the spring, business interruption losses to businesses were estimated at over $1 trillion each month.

And so, I would like to ask you, do you think the Federal Government should be entirely on the hook for these costs? What do you think?

Ms. MCLAUGHLIN. I don't think the Federal Government should be entirely on the hook. I think that the insurance industry should play a role in this as well. But because we need to protect our balance sheets, we need to make sure that the role of the insurance industry has some guardrails.

And that is really what the Chubb program has presented. It has presented a finite exposure for the insurance industry, and as we learn about this over time, we think that that exposure or limit will grow.

Chairwoman WATERS. I want to thank you for your explanation and your concern and the way that you described the role that each should play.

And I am now going to Ms. Cantrell. When the pandemic first broke out and your business was forced to shut down, what were the expenses that were most urgent that you might have expected your insurance policy to cover?

Ms. CANTRELL. Yes. Thank you so much for the question.

First of all, our rent, which, since we are in New York City, is very high. Payroll costs. Health insurance. Our bills. All of the financial obligations that were due from buying in the retail cycle. So, all of those.

Chairwoman WATERS. So you are able to basically identify how government and insurance can play a role, and you believe that the Chubb proposal would accomplish that?

Ms. CANTRELL. I am not that familiar with the Chubb proposal.

Chairwoman WATERS. But do you think that both the insurance industry and government could or should play a role?

Ms. CANTRELL. Absolutely.

Chairwoman WATERS. You think that the insurance industry should not be left to try to bear the burden of the cost of COVID-19 or a pandemic. Is that right?

Ms. CANTRELL. I think it should be shared with a backstop, yes.

Chairwoman WATERS. Okay. Thank you very much.

And, Mr. Chairman, I will yield back the balance of my time.

Chairman CLAY. The chairwoman yields back.

I now recognize the gentleman from Indiana, Mr. Hollingsworth, for 5 minutes.

Mr. HOLLINGSWORTH. Thank you so much, sir, and I really appreciate your service to the subcommittee and to the committee as a whole.

Number one, I want to talk about all of the bad ideas that we are throwing around here, and I certainly want to put a nail in the coffin of what I think is the absolute worst idea that has ever been brought forth about how we handle this, and that is forcing insurers to pay out claims for which they did not collect premiums retroactively.

This is not even an idea. It is not even a solution. It is a rewriting of tens of thousands of contracts across this country, ripping apart the very basis of contract law which has underpinned our free market economy for 240 years. It is a violation of those basic principles.

And in addition to that, I think we all need to remember that every State regulator approved the exclusion of pandemic insurance as a part of business interruption insurance. That was approved by red and blue State regulators across the country, and I think that has been lost in the conversation.

I want to address my first question to Mr. Kuhlmann, and really ask—we are using the word, "insurance," a lot in this hearing, in this dialogue. But really, zooming out, I continue to hear from industry, from experts, and from academics that this is truly an uninsurable risk for the industry. Can you elaborate on why this is an uninsurable risk, briefly?

Mr. KUHLMANN. Certainly, Congressman. Thank you for the question.

The very nature of the pandemic, the fact that it is occurring all at the same time for tens of millions of businesses all at the same time, all over the country, it is not something that we can spread the risk around. Insurance, like Mr. Lehmann said, is something where you use the many to pay for the claims of the few, and this would be everyone attempting to try to pay for everything at once.

Mr. HOLLINGSWORTH. Right. So when I hear other Members talk about how they want government involvement in this and private-public partnerships, really what they mean by government involvement is either one of two things, right? Number one, trying to reduce the very high premiums that pandemic insurance would cost if it was in the private sector, because they want to improve uptake, so it would be reducing premiums, or the absorption of the massive contemporaneous losses that would occur. That is what I continue to hear people say by public involvement in this.

And the first is most disconcerting, because what I hear from all of these members saying, "Gosh, this would improve economic stability, we need more people to take this out so that their risks are lower," but if more people are taking it out, it means we have lowered the premiums dramatically, not reflecting the real underlying risk that is being taken either by insurance companies or by the government, because in and of itself it is standalone. If it were insurable, the cost would be very, very high. Isn't that correct?

Mr. KUHLMANN. That is absolutely correct. The affordability is very key. That is why we believe the BCPP is a way that you would have the product be much more affordable and could be bought by small businesses and nonprofits all over the country. And the more people that buy into it, of course, the cost of it will go down.

Mr. HOLLINGSWORTH. Right. But as you said, the more people who buy into it, the more concurrent losses you are also going to have, which means you need the government's balance sheet to step in. Because if uptake is very, very good, you will have the good problem of a lot of people getting paid out but the bad problem of a lot of people making those payments being taxpayers, and that continues to be a deep concern to Hoosiers and to Americans alike.

The second big thing that I wanted to touch on is this notion that in the future, future Congresses are going to say to American businesses, "Hey, you paid into this program, we are going to give you a recovery, but your business next door, which is suffering mightily in this future pandemic, is not going to get paid out."

I have only been in Congress for 4 years, but I have borne witness to many times when we did not make such a distinction, and the inclination of future Congresses will be to pay everybody, to give everybody a recovery, to help spur the economy along. And then no one will buy that "insurance" in the next round because they will recognize that everyone got the same payment whether they paid into the program or not.

So, I think this whole hearing is about a lot of bad ideas that are masked under good economic policy, are masked under insurance, but aren't actually either.

With that, I will yield back.

Chairman CLAY. Thank you, Mr. Hollingsworth.

And now, I want to recognize my friend and neighbor to the north from Iowa, Mrs. Axne, for 5 minutes.

Mrs. AXNE. Thank you, Mr. Chairman. It is so good to see you. And I'm really grateful to be here, having this hearing on a really important topic right now.

We all know that our country has been hit incredibly hard by this pandemic.

Can you all hear me okay, or am I echoing?

Chairman CLAY. You are echoing. Perhaps our technicians can help us. Try it again, Cindy.

Mrs. AXNE. Let's try this again.

Chairman CLAY. Still echoing. Wow. Can we come back to—well, I can hear you now. Go ahead.

Mrs. AXNE. How does that sound?

Chairman CLAY. Still an echo.

Let's go to Mr. Gonzalez of Ohio, and then we will come back to you, Cindy.

Mrs. AXNE. Okay.

Chairman CLAY. The gentleman from Ohio, Mr. Gonzalez, is now recognized for 5 minutes.

Mr. GONZALEZ OF OHIO. Thank you, Mr. Chairman.

And thank you to everybody for participating in this hearing. Obviously, a lot of thought has gone into the various proposals, and I appreciate that. I don't want to be too negative on the work, because I know people are sincerely trying to solve what is a very difficult problem.

Having said that, I do want to associate myself with Mr. Hollingsworth's remarks almost in full. It seems awfully premature. And I have heard from Mr. Kuhlmann. I am curious what Mr. Lehmann, Ms. McLaughlin, or Mr. Doyle would say. Does anybody believe that this is an insurable risk in the traditional sense?

Mr. LEHMANN. Congressman, I guess I will go first.

There are risks within the pandemic that are insurable. It is not possible for the industry, at the macro level, to insure the entire pandemic. You can have a policy that is discrete and has caps. So long as those caps will be respected, then an insurer will write. It is just not nearly enough for the size of the problem.

Mr. GONZALEZ OF OHIO. Precisely, yes. And I think, again, I will be very quick because, frankly, Trey did as good a job as you can possibly do to reflect my personal views.

But again, I would say we are in the middle of this, not at the end. I think it is very premature and, quite frankly, arrogant to think that we could right now sit here and drum up the perfect program or a workable program that would insure us against future pandemics.

Personally, I think what we probably should do is navigate our way through this current pandemic, review how all of the programs we put in place worked, what worked well, what didn't work well, what adjustments would we make in future pandemics, and then move forward from there.

But I do appreciate all of the work everybody has done, because I know we are all trying our best here. But that would be my take.

Thank you for the hearing. Thank you for recognizing me. And I yield back.

Chairman CLAY. The gentleman from Ohio yields back.

I would like to go back to the gentlewoman from Iowa, Mrs. Axne.

Mrs. Axne, are you there?

No? Okay. She is not there now.

So, Mr. Timmons of South Carolina, you are now recognized for 5 minutes.

Mr. TIMMONS. Thank you, Mr. Chairman.

And, Mr. Chairman, thank you for your great service to this committee and to the House as a whole. I wish you the best in the future. We will all no doubt miss your leadership.

Chairman CLAY. Thank you.

Mr. TIMMONS. So, we find ourselves in the midst of a disaster. Make no mistake, this pandemic has devastated folks all over the country, the very same people who send us to Congress to be their voice in these critical decisions.

As a small business owner myself, I feel the intense pain of many beloved local stores and restaurants in my district who will not be opening anytime soon, if they ever do reopen. These places operate on thin margins and rely on loyal customers, many of whom are unwilling or unable to return to the ways they are accustomed to shopping. And this is not the business owners' fault. And from what I have heard today, any long-term solution must work for all parts of the economy, and most importantly, that must ultimately help those who are forced to close their businesses by the government.

On that note, Mr. Kuhlmann, would PRIA as proposed address the problems so many of our small business owners are currently facing?

Mr. KUHLMANN. We believe that the BCPP is a better model than the proposed PRIA, mainly because you are back into the insurance model for handling those claims and the amount of time that it would take to actually adjust the claims versus the BCPP, which could get money directly in the hands of the small businesses who need it.

Thank you, Congressman.

Mr. TIMMONS. But PRIA, you would agree, would not necessarily as designed help the small business owners that we are most focused on helping. Is that a fair statement?

Mr. KUHLMANN. And I believe part of that is the affordability of it. I think that the BCPP will be much more affordable than a PRIA model, which I think just would not be affordable for most small businesses who operate on, as you said, a very thin margin. I agree.

Mr. TIMMONS. If PRIA had been the law last year, does anybody on this call want to estimate the cost to the Federal Government for its portion of these losses? Does anybody have guesstimates? We are talking trillions, I am guessing.

Mr. DOYLE. Yes, Congressman, that is why we need—if the diversification issue didn't exist, the private market would have solved for this already. So, this is why we need the ultimate support of the Federal Government.

Mr. TIMMONS. I certainly appreciate my colleague's willingness to put her idea on paper. I don't believe this is a realistic solution. But my colleagues, Mr. Gonzalez and Mr. Hollingsworth, have made solid points.

Insuring the risks posed by potential terrorist attacks versus the risks posed by a global pandemic, they just couldn't be more different. Terror attacks, even the worst, most devastating ones, are typically confined to relatively small geographic areas and they have a very clear beginning and end.

Pandemics, on the other hand, by definition, are occurring everywhere at once for an unknown amount of time. So to think that we can essentially copy and paste our plan for insuring against terrorism for that of insuring against pandemics, it just doesn't work.

Furthermore, I believe that the time to plan for the next 100-year pandemic is not in the middle of the current one. Small businesses are suffering due to government closures. Nothing we are discussing today will help Ms. Cantrell or any of the other businesses in our districts that are facing the prospects of closing right now.

The CARES Act was very helpful, but it was over 7 months ago. Our inaction in Congress is, quite frankly, disgraceful. When the government puts people out of work due to no fault of their own, for safety purposes of our citizenry, it must step in and make those businesses and individuals whole. We have neglected our duty and must act immediately.

Many businesses in my district were able to get PPP loans, and that is something that we all agree on. We need to make sure that businesses that are still suffering, that have the revenue loss, are able to get the assistance. If we are going to shut them down, we have an obligation to make sure that they get through this pandemic.

I believe that we can get this done. I believe we need to get it done quickly. And I look forward to working with my colleagues to get through this pandemic and then finding a good policy-based solution that will allow us to prepare for the next one.

And with that, Mr. Chairman, I yield back the balance of my time. Thank you.

Chairman CLAY. Thank you, Mr. Timmons.

Let me say that if you have any relationship with your two U.S. Senators, I would urge that you talk to them about getting back to the negotiating table with Speaker Pelosi, as well as with Treasury Secretary Mnuchin, and that would help us address some of the issues that you raised.

Mr. TIMMONS. Yes, Mr. Chairman, I have been pushing that as hard as I can. But at the end of the day, we need to help people who are being adversely affected by COVID, not bail out States' insolvent pension funds. So, I think we can find a way forward.

Chairman CLAY. And we as a Congress have to agree that we want to help the American people during this global health pandemic.

Let's try Mrs. Axne one more time.

You are recognized for 5 minutes, Mrs. Axne.

Mrs. AXNE. How does this sound, Mr. Chairman?

Chairman CLAY. Much better. It sounds like you.

Mrs. AXNE. Perfect. Thank you so much for putting up with my technical difficulties. I never thought I would be saying that in the middle of a hearing, but here we go.

Thank you so much, Mr. Chairman, for holding this hearing and for having me here. This is an incredibly important topic, of course, for small businesses across the country who have been hit so hard with this pandemic. We could be looking at 40 to 50 percent of our restaurants closing in the next 6 months, and that is just one example, with COVID uncontrollably getting worse across this country.

The starting point for what we are discussing here today is that businesses in my district and around the country found out in March that even if they were in the 30 to 40 percent of companies that had business interruption insurance, it likely didn't cover pandemics.

Mr. Doyle, none of the proposals we are discussing today would be retroactive and cover COVID-19 losses. Is that correct?

Mr. DOYLE. That is correct, Congresswoman.

Mrs. AXNE. Thank you.

Now, I know that estimates for the losses were more than $400 billion per month for just the smallest businesses.

Ms. McLaughlin, or Mr. Kuhlmann, I am wondering, how much in losses do you think that we might be talking about insuring? Do you have an updated estimate for the losses so far this year?

Ms. MCLAUGHLIN. Congresswoman, I don't have an estimate of the losses this year.

Mrs. AXNE. Okay.

Mr. Kuhlmann, do you?

Mr. KUHLMANN. No, I do not.

Mrs. AXNE. Okay.

Mr. KUHLMANN. Thank you.

Mrs. AXNE. So for any of the witnesses, if this were just to be covered overall, do you have a sense of what kind of premiums then that we would be talking about relative to current business interruption insurance?

Mr. DOYLE. Congresswoman, what I am suggesting is that we develop a program that encourages participation. It would need to in some way be subsidized by the U.S. Government's balance sheet. I would make the case that the Government ultimately is holding the risk today.

What is missing today from whether it is the CARES Act or the BCPP are the social benefits of insurance. And we can mitigate the future impacts of pandemics on our economy if the private market, the government, and our policyholders come together.

Mrs. AXNE. I very much appreciate that. But I have to be honest here. It is hard for me to evaluate proposals to cover future pandemics when no one knows what those premiums might be. That is an important piece of what this looks like.

Mr. Doyle and Mr. Kuhlmann, do you have any sense of what percentage of businesses might want pandemic coverage either with or without a Federal subsidy? And if you are including a Federal subsidy in that, how large do you estimate that subsidy to be?

Mr. DOYLE. It is hard to say what the ultimate take-up rate would be, Congresswoman. Of course, it would depend upon how we structured and ultimately priced the program. But a government subsidy would be required and we would need to figure out the modeling and the data behind that.

Mrs. AXNE. Okay. So, no clear understanding right now at this point on the kind of premiums and/or the types of subsidies that would be necessary for that is my understanding.

Mr. DOYLE. It would ultimately depend upon the amount of risk that the government would be willing to backstop for the private market.

Mrs. AXNE. Okay. Now, this crisis of course, unfortunately, has shown us firsthand how many of our businesses can't even go weeks without some revenue coming in.

And there is another issue that we have to address here, which is how fast we can get relief to the businesses that need it. And we certainly saw that with the PPP this spring, how much of a difference even just a few weeks can make in getting that into folks' hands. And I know firsthand, that processing insurance claims isn't always the quickest process, and that is without everyone making a claim all at the same time.

Under any of the concepts we are considering, how quickly would businesses be able to get the help they need during a pandemic? And I would take an answer from each one of you or any one of you on this.

Mr. DOYLE. For me, Congresswoman, I would connect it to a parametric trigger. If we could set the right trigger, we could get that claim paid quite quickly, within weeks.

Mrs. AXNE. Within weeks, you said?

Mr. DOYLE. Yes.

Mr. KUHLMANN. I think, Congresswoman, under the BCPP with a parametric trigger, it would be immediate. You would not have a traditional claims process where you are having an adjustor trying to do some forensic accounting on determining the amount of the claim. So I think under that, under the BCPP, it would be nearly, nearly immediate, yes. Thank you.

Ms. MCLAUGHLIN. And, Congresswoman, under the Chubb program as well we are looking at a parametric structure for small businesses so we can get the funds in the hands of the small businesses as quickly as possible.

Mrs. AXNE. Okay. Well, thank you for that.

Since these proposals are all forward-looking, I want to make sure that we have a solution that actually works for the businesses that need it.

Honestly, I just want to make sure that we don't raise costs for businesses so much that insurance could be unaffordable and push them out of business right now as we are coming out of a pandemic. We also risk fighting the last war and charging businesses for something they won't even use. So, thank you so much for your answers to give me some clarity.

And, Mr. Chairman, I yield back.

Chairman CLAY. Thank you so much, Mrs. Axne.

And I understand the ranking member from Ohio, Mr. Stivers, wants to make a closing statement.

Mr. STIVERS. I just wanted a point of personal privilege, Mr. Chairman.

Chairman CLAY. Please go ahead.

Mr. STIVERS. I will be very brief.

I think this hearing is another example of you showing your leadership and what you have done to make Congress better, to make America stronger, and to serve your constituents, Mr. Chairman.

And I, for one, am very proud to have worked with you. And I want to say good luck to you in your future, and that we will all miss you very deeply and your expertise, your hard work, your diligence, and your caring nature, Mr. Chairman.

Chairman CLAY. Thank you.

Mr. STIVERS. Thank you for what you have done to make our country better and to represent the best of us. Today is just another example of that. Thanks for a great hearing today. You have made a difference for America. God bless you in the future, Mr. Chairman.

Chairman CLAY. Thank you so much, Mr. Stivers.

And let me first say, I would like to again thank our witnesses for their testimony today.

Without objection, I would like to submit a letter from Ranking Member Stivers and I to President Trump for the record, and also a letter to House leadership. Both letters address pandemic risk insurance.

Without objection, it is so ordered.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And now, in closing, this hearing has certainly raised interesting and intriguing issues on how to best protect businesses of all sizes during a global health pandemic. And I want to thank Chairwoman Maloney for bringing this issue to the forefront, and I am certain this will not be the last we hear of this issue.

More than likely, this will be the last hearing that I chair of this subcommittee, since I will be leaving the House at the end of the 116th Congress. Let me say that it has been an honor and a privilege to serve in this august body, and a distinction only experienced by some 11,000 Americans throughout our nation's history.

And as Chairwoman Waters mentioned, we are relatives, but to me, to all of the Members of this committee and this Congress, I look at you all like we are family, and I hold you in my heart as such. And I wish you all success in the 117th Congress, and God bless you all.

This hearing is adjourned. Thank you.

[Whereupon, at 12:29 p.m., the hearing was adjourned.]

APPENDIX

November 19, 2020

United States House of Representatives
Committee on Financial Services
Subcommittee on Housing, Community Development and Insurance

Hearing on
"Insuring against a Pandemic: Challenges and Solutions for Policyholders and Insurers"

Thursday, November 19, 2020

STATEMENT OF ANN CANTRELL
Owner, Annie's Blue Ribbon General Store, on behalf
of the National Retail Federation

Good morning, Chairman Clay and Ranking Member Stivers. It is an honor to appear before you today to discuss pandemic risk insurance from a policyholder's perspective. I would like to give a special shout out and thanks to my Congresswoman, Nydia Velasquez, who has been a champion for women-owned businesses. We have been women owned and operated since the get-go, so I am so proud that she chairs the House Small Business Committee. The fact that this hearing is being held shows that members of Congress really do care about the people on Main Street.

The National Retail Federation has partnered with Congresswoman Carolyn Maloney, the sponsor of the Pandemic Risk Insurance Act, and we would like to thank her for her leadership on this issue. We look forward to bringing much-needed protection and relief to retailers across the country who have been suffering during this crisis. Retail sales and jobs have been devastated by the pandemic. This is not only a health crisis but a dire economic crisis.
It is an honor to appear today on behalf of NRF. I am joining you from Brooklyn, N.Y., where I have had the pleasure and honor of owning a thriving gift shop for the past 13 years. We are a community store and people look to us as a pillar of light and hope in the neighborhood. Kids meet their friends at the shop to pick out a gift for their teacher, parents bribe their kids with a treat from our store if they have to get a shot at the doctor or reward them if they get a good report card. Neighbors come in daily to see what's new.
However, this all changed in March when the whole world started to cave in around us because of COVID-19.

When my team and I discussed closing on Friday, March 13 – yes, Friday the 13th – I immediately called my insurance company. My broker has been with me since the beginning and has never steered me wrong. We have an honest relationship, and he knows my business well. I love that he and his wife even follow my shop on Instagram. He taught me my favorite term in business – "measured risk." That's exactly what he called my move to a new location seven years ago when we doubled our square footage and quadrupled our business.

NATIONAL RETAIL FEDERATION
1101 New York Avenue, NW, Suite 1200
Washington, DC 20005
www.nrf.com

He has always been extremely helpful and straightforward. I remember proudly showing him our new "place" as he explained in detail our comprehensive insurance policy that would cover 12 months of business income if something should happen to my business and I needed to shut down. I have all-risk special form insurance from the Hartford/Sentinel Insurance Company, which costs $6,182.53 annually. That doesn't include workers comp or ERISA bond insurance, which I also carry. This is a big expense for a small business, one I had thought would help me in crisis situations. However, harsh reality soon set in.

I quickly learned that viruses and pandemics were excluded from insurance policies like mine years ago and even though we were ordered to close our business by the governor, there would be no relief from our insurance company because it was not considered to be a business interruption since it was not property damage. Insurance companies should not be in the practice of denying policy holders coverage when they need help the most. What happened to "You're in good hands" or "Like a good neighbor, So and so is there?"

As I read back through the email conversations with my broker, my heart just sinks at the desperation in my tone as I slowly realized what was happening. Even as I followed up after seeing posts on social media saying restaurants would be covered and reached out for help and guidance, there was no relief in sight. I made similar calls to my landlord as I tried desperately to figure out how I could keep covering other financial obligations and pay my team members. I kept trying to figure out our next moves.

The past few months have been the darkest in my life. Navigating the uncertainty of a business I have dedicated years of my life to has been so sad and stressful, compounded by the frustrating and traumatic experience of applying for and hoping to get a PPP loan. Fortunately, we did receive a $58,000 PPP loan and I would like to thank you Members of Congress who supported the CARES Act which really helped to keep us afloat. All in all, we were closed for over three months, missing some really big holiday selling for us through Easter and Mother's Day. In the same timeframe in 2019 we made over $300,000. This year, we made a little more than half that at $166,000.

I understand that the Pandemic Risk Insurance Act is a solution that would only cover future pandemics, but it still needs to be passed as soon as possible because we never know when the next pandemic will come. We certainly didn't see this one coming. And in the meantime, I urge members of Congress to provide some type of relief to businesses that were forced to close by government mandate during COVID-19 even if it's not in the form of business interruption insurance as such.

I would also like to note that the National Retail Federation is a member of the Business Continuity Coalition. The BCC seeks not only widespread availability and affordability of non-damage business interruption insurance coverage but also restoration and expansion of pandemic coverage in other lines. That includes event cancellation, movie/TV production insurance, employment practices liability, and other lines that have been hard hit by Covid-19.
The Pandemic Risk Insurance Act would establish a federal program that would help businesses obtain insurance coverage for pandemics modeled on the program for terrorism insurance established following 9/11. When businesses could not obtain coverage for acts of terrorism after 9/11, Congress stepped in. It is time for Washington to do the same for pandemics.

This country needs the Pandemic Risk Insurance Act. Not every pandemic will have a worldwide impact, but when and where one occurs it is likely to once again result in a nearly total cessation of business. This legislation is the cornerstone of a proactive approach in managing the risk and impact of a pandemic in the future. It is time for a real solution to solve a real problem. I would like to thank the committee for inviting me and I am ready for any questions you may have.

MARSH

Marsh & McLennan Companies, Inc.
1166 Avenue of the Americas
New York, NY 10036
+1 212 345 5000
Fax +1 212 345 4808

Testimony of

John Q. Doyle,
President and Chief Executive Officer, Marsh,
Before the United States House Committee
on Financial Services

Insuring against a Pandemic:
Challenges and Solutions for Policyholders and Insurers

November 19, 2020
Washington, D.C.

MARSH & McLENNAN COMPANIES

Good morning Chairman Clay, Ranking Member Stivers, and members of the Subcommittee.

My name is John Doyle, and I am President and CEO of Marsh. Thank you for giving me the opportunity to appear before you today and share Marsh & McLennan's perspective on the need for a public private partnership to insure pandemic risk.

As the world's leading insurance broker and risk advisor, Marsh & McLennan has a particular expertise in pandemic risk. We have a longstanding involvement with the World Economic Forum, including as a sponsor and contributor to its annual Global Risk Report, which has for many years warned of the likelihood and potentially high impact of a global pandemic. In 2017, our company helped the World Bank structure the first-ever pandemic risk bonds. In 2018, Marsh developed an innovative insurance product, called PathogenRX, to provide pandemic business interruption coverage for key industries including aviation, construction, gaming, hospitality, retail, and tourism.

The ongoing COVID-19 pandemic has affected us all, personally and professionally. And while the pandemic is first and foremost a human tragedy, we are deeply concerned about its impact on the economy and our clients. Helping clients manage risk is our core business, and today we are here to give voice to our policyholders. I'd like to emphasize that point: Our role as an insurance broker is, first and foremost, to be an advocate for our clients.

Why we need a pandemic risk solution now

Pandemics are by definition global in nature, which means that clients and insurers cannot diversify against them in the way that they might with other local or regional catastrophe risks. And the stakes for policyholders — and these include businesses of all sizes and sectors, educational institutions, non-profit organizations, public entities, and more — regarding pandemic risk are too high to defer action. At Marsh & McLennan, we believe there is a need to:

1. Establish, by working with Congress, a viable insurance market for pandemic risk with sufficient, affordable capacity for all policyholders.
2. Create greater certainty for businesses and their employees during a recurrence or future pandemic. This can be achieved by providing greater clarity in program policy coverage.
3. Facilitate clients' access to capital from lenders who will require assurance against future pandemic risks.
4. Enhance the resilience of the US economy and its capacity to bounce back more rapidly from a future pandemic event. This includes linking risk mitigation to premiums, or price and coverage could be impacted by the steps a business takes to meet certain mitigation requirements. A federally backed pandemic risk insurance program should encourage improvements in health and safety practices.

5. Support greater investment by the insurance industry, as well as the government, in data collection and modeling tools to help insurers, brokers, and businesses to anticipate and quantify potential risks.

We can create a workable solution

The insurance industry has a strong track record of helping businesses of all sizes mitigate critical risks, including natural catastrophes, workplace hazards, cyber threats, and more. That institutional knowledge and expertise can be used to help businesses understand and manage pandemic risk.

We believe a public-private partnership with the right incentives for all parties is the best option to mitigate the potential future economic impacts of pandemics, and accelerate economic recovery from COVID-19. We understand that the attributes of pandemic risk cannot be compared equally to other risks, such as natural catastrophes or terrorism, but the process for developing a solution for pandemics is comparable.

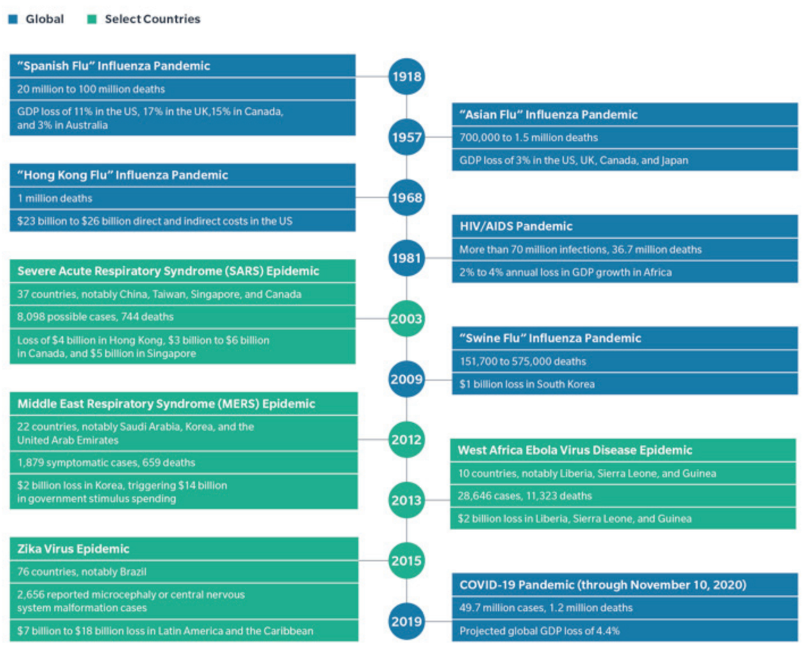
We use the following principles to guide our thinking about how to create a workable solution:

- Risk Mitigation and Resilience: How should the scheme's design embed measures to encourage resilience in the community — for example, by incentivizing preventative measures on the part of insureds, by investing pool reserves in resilience initiatives, or by linking the scheme to ongoing government commitments to building resilience in the system.
- Funding Model: Could the public private partnership facilitate increased private market participation over time with the appropriate level of industry commitment.
- Scope of Coverage: Should coverage be compulsory to offer, and sold as a standalone product depending on the client segment, and should it be compulsory at some level to purchase coverage.
- Distribution and Operating Model: A solution must contemplate the infrastructure required to operate the scheme on an ongoing basis, and the technology necessary to meet its objectives.
- Claims Process: A solution must include a well-defined trigger that defines relevant thresholds and specifies how and when claims are paid.

SECTION ONE: Pandemics In Context

With that, let me offer a brief view on the nature and trajectory of pandemics. Going back to the Spanish flu just over 100 years ago, the world has witnessed many outbreaks, epidemics, and pandemics. The Spanish flu caused as many as 100 million deaths; other outbreaks have killed fewer, but brought billions of dollars of economic damage.

FIGURE 1 Pandemics and epidemics have had notable impacts on human health and the economy.
SOURCE: METABIOTA, WORLD HEALTH ORGANIZATION, INTERNATIONAL MONETARY FUND



Despite advances in medicine and health care, the frequency and potential severity of infectious disease has increased over time. The ease of global travel, urbanization, and land use changes all make it easier for disease to spread. Just since 2003, we have seen outbreaks of SARS, Swine Flu, MERS, Ebola, Zika, and now COVID-19.

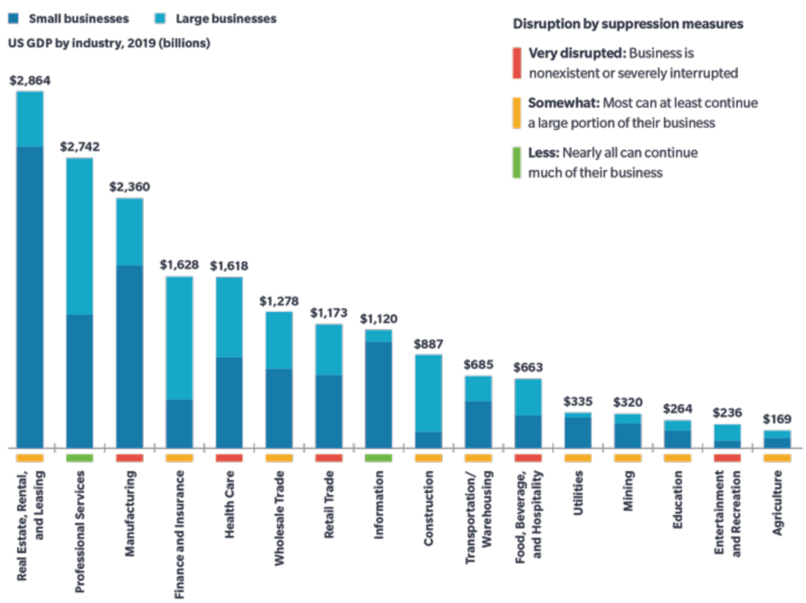
At the same time, global supply chains and economies have become increasingly interconnected. This makes the potential economic disruptions from a pandemic far greater today than in the past.

Indeed, the economic damage from COVID-19 has been immense, measured in trillions of dollars in the US alone, as organizations, states, the federal government, and other countries have implemented a variety of measures to try to slow the virus' spread. As noted in the report that we provided in the appendix to our testimony, some industries — such as manufacturing, health care, travel, and entertainment — have been especially hard hit. But every industry has been affected.

It is this widespread economic damage from COVID-19 that has us here today.

FIGURE 2 Disruptions from COVID-19 vary significantly by industry.

SOURCE: US BUREAU OF ECONOMIC ANALYSIS, US SMALL BUSINESS ADMINISTRATION, MARSH/OLIVER WYMAN ANALYSIS



We see three particular ways in which COVID-19 has been more complex than past epidemics and pandemics:

1. It was sudden and spread quickly. Within 60 days of the first case being reported in late December, nearly a year ago, the virus had spread to more than 50 countries, according to the World Health Organization.
2. The ensuing economic downturn was driven not by a reduction in supply and demand, but by concerted actions from governments to curtail social interactions and other activity.
3. The interconnectivity and interdependence of global supply chains exacerbated the impact of the steps aimed at stopping the spread.

For these reasons and because we are witnessing an increase in the number of outbreaks, Marsh believes that creating a public-private pandemic risk solution can instill confidence in businesses, accelerate our economic recovery, and provide needed protection against future pandemics. A pandemic risk insurance program is essential for all of our policyholders, no matter their size.

The credit and power of the US government is essential to create a risk program to harness the financial and social benefits of insurance to mitigate pandemic-related economic losses and provide greater certainty about a sustained recovery.

At the same time, the insurance industry has a role to play.

SECTION TWO: Impact on the Availability and Affordability of Insurance

One of the main questions you may have today is: Are pandemics insurable? The question has sparked considerable debate and, like the pandemic itself, the answer is complex. The last several months have demonstrated that traditional insurance solutions — and the commercial insurance market — cannot fully provide businesses and others with the protection they need from the enormous costs of pandemics.

The reality is that pandemic insurance has existed for a long time, but is rarely purchased, given its cost and the low likelihood of an event. Oftentimes, various insurance policies explicitly exclude pandemic risk. The reason for that is grounded in both math and psychology: The payouts, while sporadic, can be so enormous they dramatically exceed insurers' capacity to bear them.

On the math side, most insurance policies cover events like a fire, which may affect a single property, or like a hurricane or earthquake that may impact a region. Pandemics can affect the entire world, which boosts the potential cost of insuring them exponentially.

On the psychology side, pandemics are rare, and policyholders are reluctant to buy insurance against a risk that hasn't occurred in decades, or that seems theoretical.

Despite that, many companies are now looking to their insurance policies for help with the ongoing financial loss from COVID-19.

Even without specific pandemic insurance in place, insurers will undoubtedly pay out tens of billions of dollars in COVID-19-related losses. Nevertheless, some policyholders will be disappointed.

The last several months have demonstrated that there may be significant limitations regarding the extent to which property and liability policies respond to pandemic-related losses. While some specialty polices may include coverage for pandemic claims, the vast majority of policies do not explicitly cover this risk. And, given the specific and extensive effects of COVID-19, many insurers have started to exclude pandemic risk and communicable disease risk going forward.

I'd like to highlight a few forms of standard coverage for you, to provide an indication of the many challenges policyholders face. As with any discussion of insurance coverage, it's important to note that the specific language in individual policies will ultimately determine any COVID-19 or future pandemic coverage.

Business Interruption

Perhaps the most contentious area of insurance related to the pandemic at this time involves business interruption coverage, which is typically also one of the greatest areas of need for policyholders in a disaster. Put simply, this is the coverage that policyholders seek from their property insurance for financial losses incurred due to a disaster such as a fire, a hurricane, or an earthquake.

Marsh clients globally have made more than 11,000 business interruption claims related to the pandemic.

But most property policies have terms that preclude coverage for COVID-19 related losses. For example, they may say that there has been no physical loss or damage to trigger coverage, that fear on the part of the public does not trigger coverage, or that a "contamination" exclusion prevents coverage.

There are arguments in favor of policyholders that Marsh and others have been advocating since the COVID-19 outbreak began, most of which stem from policy language that could be mitigated through a dedicated line of pandemic coverage. But as litigation arises, it may be months, or even years, before issues are ultimately resolved.

And even where insurers may have provided coverage in the past, many are now reducing or eliminating coverage, regardless of pricing and terms, leaving fewer options for insureds.

Event Cancellation

Another area of concern is event cancellation coverage. Available capacity for this risk was already on the decline in 2019. COVID accelerated that trend. We have seen a 25% reduction in insurance market capacity over the last two years. Efforts to slow the spread of the virus included canceling thousands of events, from mega-events like the 2020 Olympics to smaller concerts, lectures, and more. As with business interruption, event cancellation policies are subject to exclusions. And, following considerable losses on these policies related to COVID-19, we are seeing exclusions for communicable diseases coverage going forward.

Workers' Compensation

The last coverage area I'll touch on today is workers' compensation insurance.

Although workers' compensation statutes and case law can vary by state, compensability generally requires that an illness or disease be "occupational." As COVID-19 has spread, it has become increasingly difficult to determine whether an employee has contracted the illness in the workplace.

Whether a specific case is compensable will be determined by the facts established during an investigation of the claim, as well as the governing law in the jurisdiction where the claim is reported. As of today, at least 20 states have introduced COVID-19 related workers' compensation laws and regulations, including some that shift the burden of proof from employees to employers for claims in select occupations.

CASUALTY/WORKERS' COMPENSATION

20 states introduced workers' compensation laws and regulations, including some that shift the burden of proof from employees to employers for claims in select occupations.

Building large excess casualty insurance programs is becoming increasingly difficult for buyers across many industries.

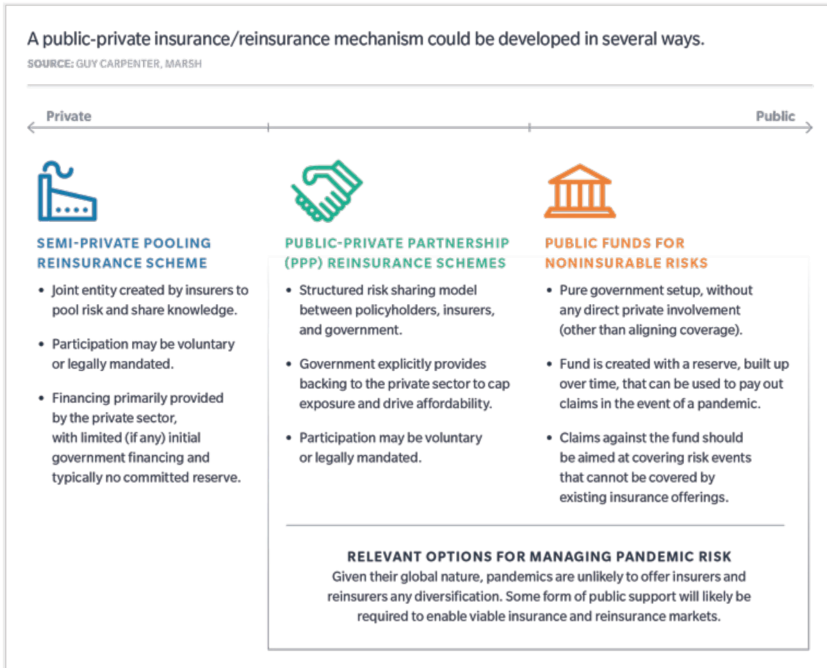
Because insurers cannot explicitly exclude occupational illnesses as a result of communicable diseases from their workers' compensation policies — and because employers are required in nearly all states to purchase workers' compensation insurance — the options for buyers could become limited amid future outbreaks, epidemics, and pandemics.

SECTION THREE: The Role of Public-Private Insurance Partnerships

The complex nature of pandemic risk means that we need strong, national pandemic risk management. This requires insurers, backed by the federal government, to write pandemic insurance policies and brokers to contribute our risk knowledge and infrastructure. Widespread pandemic coverage would make the insurance sector the first line of economic response in future outbreaks.

Indeed, I would argue that we need to position the insurance sector at the forefront of efforts to help prevent the next pandemic. Key to building a more proactive and agile response to the next pandemic will be an insurance and risk management partnership that helps facilitate coverage and aligns the needs of insurance buyers and insurers to avoid losses while incentivizing pandemic risk preparedness and mitigation.

Recent history provides examples of just how this has been accomplished. A range of risk-pooling models — from pure private partnerships to state-financed funds for non-insurable risks — can be used to address difficult risks.



Although circumstances between pandemics and terrorism differ, the Terrorism Risk Insurance Act, or TRIA, provides one example for such a public private partnership. Before the attacks of September 11, 2001, terrorism was generally not a clearly defined coverage in commercial property insurance policies. Most standard property policies covered terrorism either as part of the policy or without specifically mentioning terrorism — that is, the policies did not directly address terrorism, so they effectively covered it.

In the aftermath of 9/11, reinsurance for terrorism risks was withdrawn and commercial insurers stopped covering them. Insurers' general view at that point was that the risk of loss was unacceptably high, unpredictable, and difficult to price. In November 2002, to address concerns that the lack of terrorism risk insurance could have significant effects on the economy and to ensure its continued availability and affordability, Congress passed TRIA.

The federal backstop created by TRIA — and reauthorized several times since — has enabled a more resilient society. It created a viable commercial insurance market for terrorism, and it provided much-needed assurances to lenders — without which commercial property development would not be possible — and helped stabilize the overall economy.

FIGURE 7

Existing risk pooling structures can offer several lessons.

SOURCE: MARSH

Key Learning	Selected Examples
Significant loss events or changes in how risks are modeled can lead to market-wide capacity withdrawal.	TRIA was passed in 2002 following a widespread withdrawal of commercial terrorism cover by reinsurers after the September 11, 2001, terrorist attacks. Flood Re was developed to provide affordable flood risk cover to the approximately 3% of UK homeowners living in high flood risk areas. Industrywide improvements in flood risk modeling had made coverage unaffordable for this cohort.
Extreme risks typically require some form of government backstop.	Government treasuries are the insurer of last resort on multiple loss sharing schemes. For example, the US National Flood Insurance Program (NFIP), the UK's Pool Re, and France's CCR Cat Nat and Gestion de l'Asurance et de la Réassurance des risques Attentats et actes de Terrorisme (GAREAT) have unlimited guarantees. TRIA, the Australian Reinsurance Pool Corporation (ARPC), Germany's Extremus, and the Netherlands' Nederlandse Herverzekeringsmaatschappij voor Terrorismeschaden (NHT) have limited guarantees.
Public-private partnerships provide credibility and can be structured to gradually shift risk to the private sector.	The US government's terrorism backstop enabled insurers to access affordable reinsurance for terrorism coverage. Over time, federal reinsurance participation in the program has fallen from 90% in 2002 to 80% in 2020, while insurer deductibles have risen from 7% of premium in 2002 to 20% in 2020. Insurer retentions have also increased, from $5 million in 2002 to $200 million in 2020. The UK government's backing of Pool Re similarly enabled insurers to access affordable terrorism reinsurance. Over time, the Pool Re fund grew and private reinsurer confidence was restored, to the point that £2.4 billion of reinsurance cover is now purchased. As a result, a loss fund of approximately £10 billion (including member retentions) sits between the consumer and the government needing to step in.
Programs can be used to incentivize the adoption of preventive measures.	Eligibility for the US flood risk program, NFIP, requires communities to adopt and enforce strict floodplain ordinances and offers premium discounts for outstanding performance. While there is no direct requirement for risk mitigation by Pool Re stakeholders, premium discounts of up to 7.5% are available for insureds that proactively undertake such initiatives. The US crop insurance industry supports continued agronomic research to determine how farmers can best incorporate risk management best practices in their operations and the impact those practices may have on insured crops. The US SAFETY Act of 2002 was created to spur the adoption of improved security measures by offering to limit liability of companies providing anti-terrorism products and services for qualified vendors. Similar policies, coupled with a robust public-private insurance market, could incentivize private sector adoption of prophylactic measures to drive down exposures. Flood Re is intended as a temporary solution to be phased out by 2039. As such, the government has committed to major investments in preventive measures, while Flood Re has prompted insurers to work to enhance their understanding, mapping, and modeling of flood risk and their collection of data for improved underwriting.

And as you can see in the chart in Marsh's Pandemic Risk report regarding existing risk pooling structures, there are other examples: crop insurance here in the US and a variety of government-backed pools in other countries. At Marsh & McLennan we have been a party to the formation and ongoing support of most of these facilities around the world and understand the rationale as to why and how each of them have been structured and how they help policyholders.

If we create the right economic incentives for insurers, policyholders, and the government, insurance can serve its traditional function of mitigating risk. Over time, the right risk program can spur new technologies, ways of working, services, insurance products, and processes to ultimately chip away at the enormous losses associated with pandemics. That, in turn, can help make pandemic risk more manageable and enable our economy to build the necessary resilience it needs for the future.

Over the past few months, there have been a number of proposals for addressing pandemic risk.

We need the market dynamics of the private insurance sector to help promote risk mitigation strategies and actively engage policyholders through education and incentives to lower their risks.

Engaging private capital as part of a potential solution can incentivize an effective long-term outcome. For example, under TRIA the government did not assume all financial responsibility. Insurers wrote terrorism policies, businesses improved their security practices, and the country became more resilient to the threat.

For pandemics, the financial commitment from the insurance sector at first will need to be modest as capital is already committed to support other critical risk areas like hurricanes, earthquakes, terrorism and cyber. In addition, the ability to assess the frequency and severity of pandemic risk is relatively unknown and managing the accumulation of the globally correlated exposure is difficult as this exposure impacts all lines of insurance and geographies.

Over time, if the program is structured effectively with the right incentives to mitigate the risk, we would anticipate a gradual transfer of an increasing stake in this risk to the private sector.

Many people in the insurance industry believe pandemic risk is best managed through a standalone policy using what is known as a parametric trigger, which is index-based with a predetermined payout mechanism that triggers according to predefined parameters. The policy would provide a predetermined fixed limit, which would cover essential operating expenses, such as wages and/or rents for a period of one to three months following a governmental order to shut down business or a stay at home order.

The policy limits would vary by customer segment and pricing could be influenced by risk mitigation measures that insureds enact. This type of approach would enable the efficient dissemination of funds to ensure business continuity in the event of another pandemic.

A number of other proposals have been put forward by insurers, policyholders, and trade groups. For example, the recently formed Business Continuity Coalition (BCC) represents a broad range of business insurance policyholders from across the economy, employing an estimated 50 million of Americans.

The BCC advocates for the development of a public/private business continuity insurance program to help businesses protect their employees' jobs and limit future economic damage from pandemics and other national emergencies. The group consists of organizations from industries including restaurant, entertainment, film, hospitality, gaming, communications, broadcasting, health care, and the apartment, industrial, office, and retail real estate sectors. BCC's members include the American Gaming Association, American Hotel & Lodging Association, Fox Corporation, Marriott International, Motion Picture Association, National Association of Broadcasters, National Association of Realtors, Nareit, National Restaurant Association, National Retail Federation, The Real Estate Roundtable, Sony Pictures Entertainment, ViacomCBS, and the Walt Disney Company.

Marsh & McLennan agrees with the BCC that the key to building a more proactive and agile response to the next pandemic will be an insurance and risk management partnership that helps facilitate coverage, aligns the desires of both insurers and policyholders, and requires mitigation practices.

You will find a brief comparison of various proposals in the appendix to our testimony.

SECTION FOUR: The Time to Act is Now

There are some suggesting that Congress should not act on a new pandemic insurance solution until the COVID-19 crisis is over and we know its full economic fallout.

At Marsh & McLennan, we see three broad areas that make us feel strongly that now is the time for a public-private pandemic risk solution.

First, acting now will accelerate economic recovery by reducing uncertainty. Moving forward, lenders will seek assurance that companies have protection against prospective pandemic risk. The pace of recovery will depend on the nature and degree of confidence in the marketplace.

Second, it will provide financial protection against future pandemics, in part by absorbing some of the initial financial shock of a pandemic. Insurance coverage enables businesses to retain employees and meet financial obligations through the peak of uncertainty.

Third, acting now works to bend the risk curve. Insurance creates the right economic incentives to drive change in society, and acting quickly will help to harness risk management to build a more resilient US economy.

Delaying may slow the pace of recovery as lenders and investors fear the absence of a safety net for the next pandemic.

There is also a need to break the panic-neglect cycle around pandemics: A disease arises, there is a momentary flare of concern, followed by action and funding, then the disease dissipates and attention moves to other problems.

Acting now will aid economic recovery, provide confidence to businesses, and enable them to do what they do best: be entrepreneurial, take risks, and rebuild the world's economy. Our view is based on experience with past events, including 9/11, after which Congress' swift action on TRIA helped restore business.

Conclusion:

To summarize, the reality is that our world is highly and increasingly interconnected. Epidemics and pandemics are more frequent, and the potential economic ripples for our clients are truly immense, as we are seeing with COVID-19.

As we work our way through the current pandemic, there are risk mitigation steps that we can, should and, indeed, are taking.

As we manage through the financial implications of additional waves of COVID-19, we must also strengthen and better coordinate a global event monitoring system. We can't wait but must act now to help companies anticipate and plan to better manage the risks of future epidemics and pandemics.

The complex nature of pandemic risk necessitates close cooperation by the public and private sectors in managing its impacts and restoring confidence in the functioning of markets, economies, and society. The key to building a more proactive and agile response to the next pandemic will be an insurance and risk management partnership that helps facilitate coverage, aligns the desires of both insurers and policyholders, and requires mitigation practices. An efficient and effective pandemic insurance program will accelerate recovery and build resilience.

Over the past several months, we have engaged in many discussions regarding the need for a public private partnership to insure pandemic risk. Our clients and companies represented by groups such as BCC, employ tens of millions of Americans, and they've expressed to us that a solution must be implemented now to help manage future shock events.

COVID-19 made clear that we all underestimated our susceptibility to a pandemic and the toll it could take on the global economy. Like terrorism and massive cyber-attacks, pandemic risk is too big for the private sector to manage alone, and too important to ignore.

A strong pandemic insurance system can make the country more resilient to the risk and build confidence about our future.

Thank you and I look forward to taking your questions.

Appendix A

1. Marsh Infographic
2. Pandemic Proposals Comparison Chart
3. Pandemic Risk Report

MARSH

COVID-19's Effect on Commercial Insurance Markets

Considerable uncertainty about the ultimate cost of COVID-19 is making an already challenging market for insurance buyers even more difficult. The pandemic, a record hurricane season, civil unrest, and more are disrupting the industry, worrying insurers, and prompting action.

Driven by preexisting market factors and 2020 trends, insurers are:

- Restricting capacity — the amount of coverage made available to policyholders — and raising prices.
- Excluding communicable disease coverage or tightening relevant policy language, terms, and conditions.
- Scrutinizing risks in industries such as retail, health care, higher education, hospitality, restaurants, habitational real estate, and public entity.

PROPERTY AND BUSINESS INTERRUPTION

APPROX. 11K **claims** reported by Marsh clients globally.

Some policyholders are finding it difficult to demonstrate physical damage or the actual presence of COVID-19 at insured locations.

EVENT CANCELLATION

MORE THAN 25% **reduction** in market capacity over the last two years, accelerated by the pandemic.

7 leading insurers have exited the market since mid-2018 — including 4 in 2020 — and more departures are expected.

CASUALTY/WORKERS' COMPENSATION

20 **states** introduced workers' compensation laws and regulations, including some that shift the burden of proof from employees to employers for claims in select occupations.

Building large excess casualty insurance programs is becoming increasingly difficult for buyers across many industries.

DIRECTORS AND OFFICERS LIABILITY

42% OR MORE **increase*** in pricing for public companies each month since February.

Many insurers are narrowing coverage terms, including adding exclusions and taking away prior enhancements.

EMPLOYMENT PRACTICES LIABILITY

ON PACE FOR OVER 1K **employment suits** related to COVID-19 in 2020.

With litigation and claims on the rise, many insurers are restricting capacity for certain risks.

A Public-Private Pandemic Risk Solution Is Needed NOW

Commercial insurers alone cannot fully provide businesses with pandemic risk protection. A public-private partnership can:

- Enhance market capacity and coverage.
- Create incentives for government, insurers, and businesses to mitigate pandemic risk.
- Build resilience to future pandemics.

To learn more, read Marsh's report on the need for a **pandemic risk protection solution**.

*Average year-over-year pricing changes recorded each month.

Sources: Marsh, Oliver Wyman, Fisher Phillips LLC; data and information as of November 2020

COMPARISON OF PROPOSED PANDEMIC SOLUTIONS

Issue	Business Continuity Protection Program (BCPP-Plus)	Policyholder Community Proposal (BCC)	PRIA -- Rep. Maloney	Chubb – Part I, Business Expense Insurance Program (BIP) for smaller businesses; Part II, Pandemic Re, for 500+ employees organizations	Zurich Draft Concept
Product Design	Business revenue reimbursement program; not an insurance product	Creates Federal Pandemic Insurance Corporation (FPIC) that reinsures: (1) Business Expense Insurance Program – an insurance product (BIP) (2) Other covered lines including event cancellation Designed as an "amendment in the form of a substitute for H.R. 7011"	Incorporated as part of private business interruption insurance (BI)	Part I (BIP): Added to existing business owners or workers compensation insurance policy Part II (Pandemic Re): Government reinsured business interruption coverage on modified standard industry forms	Based on the Federal Crop Insurance Program. Insurance program which creates three federally backed insurance pools, with an option for insurers to offer a 100% federally guaranteed product carried on insurer paper. Insurers determine which risks to place on a policy-by-policy basis in which pool based on their risk appetite. Insurers can place all risks in 100% federal guaranteed pool. Each commercial risk would be individually placed. Ceding commissions set by reinsurance pool equally across all carriers, with the 100% ceded pool paying the lowest ceding commission and the 90% ceded pool paying the highest.
Business Eligibility for Participation	Any firm incorporated in the US or US territory w/bona fide operations in the US. For-profit	Any commercial or non-profit policyholder that accepts the	Any business policyholder that accepts the offer of BI coverage from a participating insurer	*Part I (BIP):*	Any firm incorporated in the US or US territory w/bona fide operations in the US. For-profit

Issue	Business Continuity Protection Program (BCPP-Plus)	Policyholder Community Proposal (BCC)	PRIA -- Rep. Maloney	Chubb – Part I, Business Expense Insurance Program (BIP) for smaller businesses; Part II, Pandemic Re, for 500+ employees organizations	Zurich Draft Concept
	and non-profit entities, no size limitation.	offer of BI insurance coverage from a participating insurer or BEI Pool		*Businesses with fewer than 500 employees and a valid Federal Tax ID.* *Part II (Pandemic Re): Businesses with more than 500 employees and a valid Federal Tax ID*	and non-profit entities, no size limitation.
Insurer Participation	Federal program sold on a voluntary basis by agents and brokers. Insurers and other third-party entities would provide administration services.	No policy of commercial multi-peril or similar property insurance may be issued or delivered or, renewed by any PRIA-eligible insurer unless named insured is offered coverage substantially equivalent to BIP Parametric Insurance Policy. Insurer could also satisfy this requirement by arranging affiliate to insure or by supporting BEI Pool and making available to insured.	(1) Licensed insurance companies; (2) Federally approved specialty carriers; (3) Residual market operators; (4) State WC funds Participating insurers must offer viral BI coverage on the same terms and conditions as underlying coverage in covered lines	Part I (BIP): All P&C insurers issuing business insurance coverage for the covered lines and mandatory offer (earlier documents and graphics specify that the mandatory offer would be tied to workers compensation and BOP policies) Part II (Pandemic Re): Federally reinsured program sold on a voluntary basis.	Mandatory offer by insurers providing property insurance Insurers cede policies to the federal government in one of three pools: 100%, 95% or 90%.
Program Trigger	(1) State governor requests Presidential declaration of "viral emergency" due to state-mandated closure; (2) Presidential viral emergency declaration; and (3) Closure applies to the type of business (using identified NAICS codes)	(1) States can request a federal public health emergency declaration because of viral infection (2) Presidential emergency declaration; and (3) Closure applies to the business (using identified NAIC codes)	(1) Specific outbreak of infectious disease or pandemic for which a Covered Public Health Emergency is declared by HHS Secretary under the PHSA	Part I (BIP): (1) CDC declaration of pandemic; (2) Public Health Declaration by HHS or Emergency Declaration by POTUS; and (3) State orders are in force that close and/or curtail normal business activity	Tiered parametric trigger based on state ordered business closures and a federal emergency disaster declaration. Federal emergency disaster declaration must be declared for the individual state.

Issue	Business Continuity Protection Program (BCPP-Plus)	Policyholder Community Proposal (BCC)	PRIA -- Rep. Maloney	Chubb – Part I, Business Expense Insurance Program (BIP) for smaller businesses; Part II, Pandemic Re, for 500+ employees organizations	Zurich Draft Concept
			(2) $250 million in insured losses across participating insurers	(4) Excludes COVID-19 Part II (Pandemic Re): (1) CDC declaration of pandemic; (2) Public Health Declaration by HHS or Emergency Declaration by POTUS; and (3) State orders are in force that close and/or curtail normal business activity (4) Excludes COVID-19	
Administration	Treasury	Treasury	Treasury	Treasury	Federal
Mandatory Issue	Yes – from Federal Government	Participation is mandatory for fixed property insurers, but they may satisfy requirement by supporting BEI Pool (non-recourse) through purchase of surplus notes. BEI Pool governed by subscribing insurers subject to disapproval by Treasury (also on board); Pool provided 80% quota share plus stop-loss R/I by FPIC.	Participation is voluntary for insurers, but participating insurers must offer BI covered for covered lines on the same terms and conditions as underlying non-viral coverage	Part I (BIP): Yes – by any insurer issuing business insurance coverage (again, earlier documents and graphics specify that the mandatory offer would be tied to workers compensation and BOP policies) Part II (Pandemic Re): No – Participation is voluntary.	Participation is mandatory for fixed property insurers, but they may offer a 100% federally backed product.
Guaranteed Renewal	Yes – with updated tax information.	Same as PRIA	Participating insurers must re-offer pandemic coverage annually if they are offering underlying coverage in covered lines	? – Annual renewal is contemplated, but unclear whether guaranteed.	N/A

Issue	Business Continuity Protection Program (BCPP-Plus)	Policyholder Community Proposal (BCC)	PRIA -- Rep. Maloney	Chubb – Part I, Business Expense Insurance Program (BIP) for smaller businesses; Part II, Pandemic Re, for 500+ employees organizations	Zurich Draft Concept
Time Frame	Available six (6) months after date of enactment; certificate is valid for one (1) year. Purchase must occur 90 days prior to any formal declaration of viral emergency.	14-day waiting period after qualifying event	Covers public health emergencies commencing after Treasury regulations are promulgated. Covers all claims during the period when Covered Public Health Emergency is in effect.	Part I (BIP): 14-day waiting period after qualifying event Part II (Pandemic Re): 30-day waiting period (or longer) after qualifying event	Business deductible based on an unspecified waiting period ("x days").
Private sector retention (Basic and Excess)	No private sector retention for primary protection program. Title II Designed for larger businesses which may be concerned about caps and limits in the primary program. • Participation voluntary for both insurers and purchasing businesses. Businesses would need to participate in the BCPP to participate in the excess coverage program. • Broad cross section of insurers eligible to participate including those admitted in any state and non-admitted insurers that are eligible surplus lines insurers. Treasury could apply the program to	Participating insurers could offer BIP coverage with: • 95% federal reinsurance • 90% federal reinsurance If second major event in the same calendar year, co-share re-set lower. Alternatively, if insurer subscribes to BEI Pool surplus notes, insurer may offer its insureds Pool coverage in lieu of writing directly. Title II For excess BI and other covered lines (ECI, cast insurance, WC, GL and PI), PRIA-eligible insurers will be offered FPIC reinsurance of 90% plus certain stop-loss to encourage market	Potential $47.5 billion exposure annually; • Insurers 100% responsible for events of $250 million or less (i.e. losses below Program Trigger) • Insurers also responsible for their insurer deductible = 5% of prior year's DEP in covered lines (potential $10b aggregate) • Insurers also responsible for 5% co-share of losses above insurer deductible, up to $750b aggregate loss cap (potential $37.5b aggregate) • 7-year sunset	Part I (BIP): $15 Billion in year 1. • Increases by $0.75 Billion annually until year 20. • $30 Billion over the program • Insurer pays 6% of first–dollar claims up to insurer's market share of industry limit, growing to 12% by year 20. Part II (Pandemic Re): $15 Billion in year 1. • Increases by $1.5 Billion annually until year 10. • $30 Billion over the Program • Insurer pays 5% of first–dollar claims until industry limit ($15b) is reached, growing to 10% by year 10	Creates three reinsurance pools in a private/public partnership: • 100% federally insured • 95% government co-share, 5% insurer co-share • 90% government co-share, 10% insurer co-share No minimum reinsurance placement requirements by pool/treaty. No reinsurance caps or aggregates.

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	captives and other self-insurance arrangements. • Excess coverage program protected by a 90% Federal backstop with insurers assuming 10% of annual risk for each policy. • Program subject to reauthorization with sunset in 2030.				
What is being offered?	• BCPP – Title I - Up to 80% revenue replacement for a maximum of three (3) months with the limit chosen by policyholder. Other option to be developed by director. • Title II – Excess coverage for larger businesses and must purchase basic BCPP • Title II - Contemplates Treasury Department design of event cancellation revenue replacement protection to fit within primary and excess programs.	• For SMEs: Parametric insurance coverage for up to 80% of 3-months' operating expenses (following 14 day waiting period) • For larger businesses: coverage decreasing to 50% replacement for policyholders with larger operating budgets (i.e., policyholder retentions).	Business Interruption ins., that includes event cancellation insurance or other non-property contingent business interruption insurance on same terms and conditions as underlying BI for covered lines	Part I (BIP): Up to three (3) months of payroll, based on a multiple of monthly payroll expenses Part II (Pandemic Re): Up to three (3) months of expenses, with $50 million maximum per policyholder	Up to 80% of business expenses over three months capped at $20 million per month for employers with 500 or more employees.
Eligible Expenses	Ordinary payroll and employee benefits; Payments to vendors & 3PK's;	Between 50-80% of operating expenses depending on the size of the entity. Operating expenses include:	Any loss resulting from a covered public health emergency that is covered by primary or excess BI insurance	Part I (BIP): Ordinary payroll and operating costs	Support covers business financial obligations: • Payroll • Employee Benefits

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	Rent, mortgage, other loan obligations; Equipment rental and maintenance; Taxes and insurance; Other categories promulgated by rule.	Payroll; Rent; Utilities; Insurance; Taxes; Other fixed operating costs.		Part II (Pandemic Re): Any expenses	• Interest Payment • Rent • Accounts Payable • Taxes
Conditions	• Businesses certify they will only use funds for allowed purposes (e.g., retaining employees and paying necessary operating expenses) • Program may audit post-payments	• Applicants certify they will only use funds for allowed purposes (e.g., retain employees and pay operating expenses) • Program may audit post-payments	Terms and conditions of offer of viral BI coverage must match underlying BI coverage	Part I (BIP): Standard terms and conditions of the underlying policy unless modified Part II (Pandemic Re): Standard terms and conditions of the underlying policy	Business self certifies losses to the government (e.g., via tax filings).
Partial Operations	• Presidential declarations indicate which businesses can remain open or partially open (for partial payments) based on gubernatorial request • Director to determine a formula based on partially open	• Presidential declarations indicate which businesses can remain open or partially open – and • 14-day waiting period included along with 25% revenue loss certification	Participating insurers may purchase commercial reinsurance to protect their retentions		
Application Process	(1) Form developed by director, requiring up to two years of tax returns to determine expected assistance benefit; businesses with physical locations in multiple states	(1) Form developed by director, (2) Businesses with physical locations in multiple states would specify allocation of risk at purchase (3) NAICS six-digit classification code	Treasury to develop a process by which insurers elect to participate for each calendar year.		Business works with existing property broker/agent to voluntarily select coverage level.

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	would specify allocation of risk at purchase (2) NAICS six-digit classification code (3) Attestation by owner	(4) Attestation by owner			
Payment Process	Parametric trigger starts formulaic payments. No claim adjudication necessary. Payments on day 1, day 30, and day 60 following Presidential declaration.	Parametric trigger starts formulaic payments. 14-day waiting period + 25% loss certification.	Person suffering covered loss files claim with insurer, who processes and submits to Treasury with written certifications of payments already made for insured losses. Treasury to issue additional rules and procedures for claims and payments.	Part I (BIP): Parametric trigger starts formulaic payments. No claim adjudication necessary. Insurers drawdown a line of credit for Government's share of payments from US Treasury. Part II (Pandemic Re): Company suffering covered loss files claim with insurer, who processes and submits to Pandemic Re following adjustment process.	Parametric trigger starts formulaic payments subject to applicable deductible waiting periods. No claim adjudication necessary. Insurers drawdown a line of credit for government's share of payments from US Treasury.
Oversight	Annual audit and accounting of funds; Audit and clawback capability for benefits not applied to allowable categories; Expenses must be documented; Knowing fraud results in expulsion, penalties, fines, and potential jail time.	Audit and claw-back capability for benefits not applied to allowable categories	Participating insurers must submit to Treasury: lines exposed, premiums earned, geographical location, pricing, take up rate, reinsurance, and other matters deemed appropriate. Extensive reporting to Congress by Treasury.	Part I (BIP): Policyholder certification and federal tax return filing process subject to IRS audit Part II (Pandemic Re): Insurer claims adjudication process	Federal government establishes a framework for monitoring fraud, waste, and abuse of the federal program. Any private products regulated at the federal level using a single set of rules governed at the federal level (preempting regulatory and liability state laws). Not subject to state premium tax laws.

Issue	Business Continuity Protection Program (BCPP-Plus)	Policyholder Community Proposal (BCC)	PRIA -- Rep. Maloney	Chubb – Part I, Business Expense Insurance Program (BIP) for smaller businesses; Part II, Pandemic Re, for 500+ employees organizations	Zurich Draft Concept
Mandatory Purchase	None (although some lenders may want to see protection)	Not mandatory, but policyholders that decline BIP coverage must acknowledge they will not be covered for pandemic BI losses and that they may not be eligible for Federal pandemic disaster assistance	None. Businesses may purchase with other coverage in covered lines	Part I (BIP): Not mandatory, but "strong opt-out" requirement. Businesses who do not want the coverage must decline it and acknowledge they will be ineligible for federal program benefits. Part II (Pandemic Re): None.	None
Pricing	Rate determined by Treasury, **uniform** % of revenue to be replaced plus administrative costs; director to develop minimums and payment plan options; aggregated data on prices and payments to be publicly available.	Rating handbook for participating insurers to be developed by FPIC in consultation with actuarial societies and NAIC Pricing based upon intergenerational spread of pandemic cost and to encourage participation; payroll feature to be subsidized by Federal resources Discount for risk mitigation	Rate determined by insurers subject to state regulatory rate and form approval as applicable.	Part I (BIP): "Risk appropriate" premium for insurer's share – no premium for Government's share. Part II (Pandemic Re): "Risk appropriate" premium for insurer's and Government's reinsurance share, collected by insurers. Insurers retain proportional share and cede balance to Pandemic Re for government share.	Rates set by the federal government. Premium subsidized federally and based on indexed approach by industry and region. 2% rate-on-line (ROL) for <500 employee, 3% for 500 or more. 0.5% preferred risk discount for qualifying risk mitigation programs.
Restrictions	Owner's attestation includes future compliance with CDC, OSHA, and other specified guidelines; funds must be used to retain employees and keep business viable.	Requires certification by the business that it will only use funds for operating expenses and employee retention.	None	Part I (BIP): Policyholders must continue payroll – no layoffs. Part II (Pandemic Re): None.	None

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Product Distribution	Licensed insurance agents and brokers	Licensed insurance agents and brokers and participating insurers	Licensed insurance agents and brokers and participating insurers	Licensed insurance agents and brokers and participating insurers	Licensed insurance agents and brokers
Aggregate limit	None	None?	$750 Billion annually	Part I (BIP): $750 Billion annually Part II (Pandemic Re): $400 Billion annually	None
Funding	In years without losses, funds can purchase Treasury securities; if exposure exceeds assets, the program may borrow from Treasury to pay recorded losses.	Line of credit established by the Federal Reserve Bank of New York for participating insurers and pools to access for FPIC payouts.	Appropriated funds as may be necessary for insured losses and administrative costs	Part I (BIP): Treasury establishes a line of credit facility with participating insurers as beneficiaries for government share of losses. Part II (Pandemic Re): Establishes a line of credit facility with participating insurers as beneficiaries for government share of losses.	Federal government financially supports.
Mitigation and Risk Management	• Business attests to compliance with CDC, OSHA, pandemic requirements • Leverages insurance industry capabilities with access to IBHS “Open for Business EZ” tools	None?	None	None stated	Preferred risk discount offered for qualifying risk mitigation programs. Expectation of 30% of businesses would qualify for the 0.5% discount. Risk mitigation consultation and services (e.g., resilience planning) conducted by carrier.
Claims Adjudication	None- • Parametric trigger • Formulaic payment	BIP- • 14-day waiting period	Traditional insurance claims adjustment process	Part I (BIP): None- • Parametric trigger	None- • Parametric trigger • Formulaic payment

Issue	Business Continuity Protection Program (BCPP-Plus)	Policyholder Community Proposal (BCC)	PRIA -- Rep. Maloney	Chubb – Part I, Business Expense Insurance Program (BIP) for smaller businesses; Part II, Pandemic Re, for 500+ employees organizations	Zurich Draft Concept
		• Parametric trigger • Formulaic payment		• Formulaic payment Part II (Pandemic Re): Traditional insurance claims adjustment process	Business self certifies losses to the government (e.g., via tax filings).
Cap	• 3 months expenses based on co-pay • Limited by protection % (up to a maximum of 80 percent) chosen by purchaser	• 3 months expenses based on co-pay • BIP limited by protection % (up to a maximum of 80 percent) for SMEs chosen by purchaser • BIP further limited for larger businesses up to a maximum of 50 percent	• $750b cap on industry/government combined payments • If Treasury estimates that insured losses may exceed the cap, Treasury establishes an interim pro rata loss percentage reducing compensation to policyholders who have not yet been paid by insurers; • Treasury can call a brief hiatus in insurer loss payments of up to two weeks to determine a subsequent pro rata loss percentage rate that insurers would then apply • Depending on when a policyholder files a claim and how quickly the insurer provides payment, if the cap is exceeded, the policyholder may receive full compensation partial, or none.		$20 million per month for employers with more than 500 employees. 80% of eligible expenses for all policyholders for three months.

MARSH

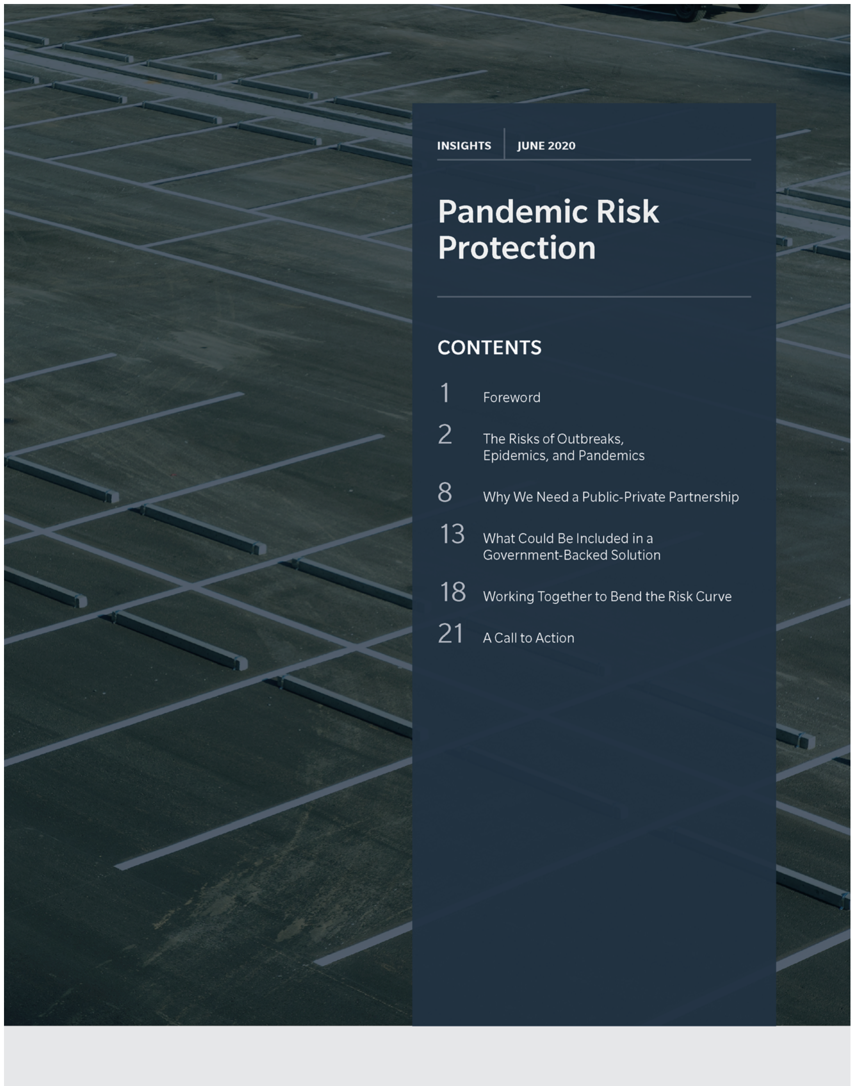
INSIGHTS | JUNE 2020

Pandemic Risk Protection

Accelerate Recovery and Build Resilience Now Through Public-Private Partnership

With contributions from:

METABIOTA®



INSIGHTS | JUNE 2020

Pandemic Risk Protection

CONTENTS

Foreword

COVID-19 has affected all of us. And while the pandemic is first and foremost a human tragedy, we are also deeply concerned about its impact on our economy. The stakes — for businesses, nonprofit organizations, workers, and the US economy — are too high to defer action.

As made clear in this report and in my recent letters to Congress and the administration, Marsh believes that creating a public-private pandemic risk solution can accelerate our economic recovery and provide much-needed protection against future pandemic risks. A pandemic risk insurance program is essential for large and small organizations alike.

The last several months have demonstrated that traditional insurance solutions — and the commercial insurance market — cannot fully provide businesses and others with the protection they need from the enormous costs of pandemics. Only the credit and power of the US government can help create the necessary risk program to harness the financial and social benefits of insurance to mitigate pandemic-related economic losses and provide greater certainty about a sustained recovery.

But the insurance industry has a role to play, too. If we create the right economic incentives for insurers, policyholders, and the government, insurance can serve its traditional function of mitigating risk. Over time, the right risk program can spur new technologies, ways of working, services, insurance products, and processes to ultimately chip away at the enormous losses associated with pandemics. That, in turn, can help make pandemic risk more manageable and enable our economy to build the necessary resilience it needs for the future.

We cannot wait until we've fought our way through COVID-19 to build a new solution. Delaying will significantly slow the pace of recovery as lenders and investors fear the absence of a safety net for the next pandemic event. A public-private pandemic risk solution is needed now, to provide confidence to businesses and enable them to do what they do best: be entrepreneurial, take risks, and rebuild the world's economy.

A public-private risk solution will:

- Facilitate access to capital from both lenders and equity markets that will require assurance against future pandemic risks.
- Limit tail risk for commercial insurers, enabling the creation of a viable, sufficiently capitalized insurance market that can offer affordable coverage for pandemic risks.
- Create greater certainty for businesses and employees in the event of a recurrence of COVID-19 or during a future pandemic.
- Enhance the resilience of the US economy and its ability to bounce back following a future pandemic.

As the COVID-19 pandemic continues, we remain committed to being there for our clients, helping to manage current impacts, and advocating for solutions to help mitigate future risks for the entire US economy.

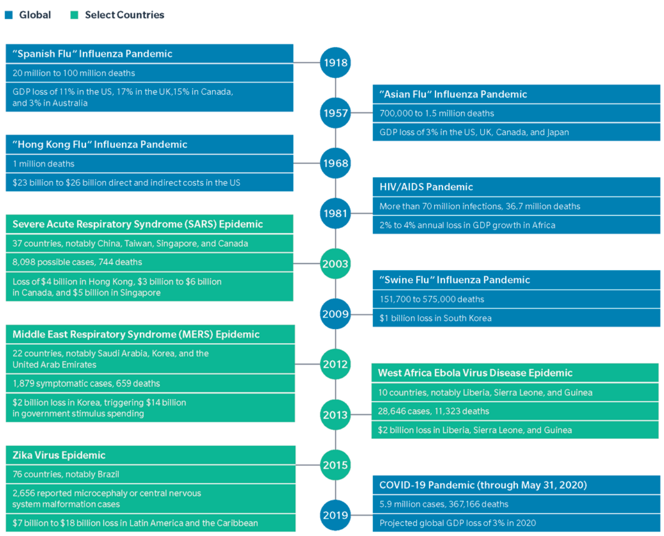
John Doyle
President and CEO, Marsh

The Risks of Outbreaks, Epidemics, and Pandemics

The global influenza pandemic of 1918 — the "Spanish flu" — infected an estimated 500 million people and killed as many as 100 million. In the century since, many pandemics and epidemics have occurred, several of which caused billions or trillions of dollars in economic losses (see Figure 1). Despite advances in medicine and health care, several intensifying trends have increased the likelihood and potential reach of infectious disease, including global travel and connectivity, urbanization, and land use changes due to commercial development.

FIGURE 1 Pandemics and epidemics have had notable impacts on human health and the economy.

SOURCE: METABIOTA, WORLD HEALTH ORGANIZATION, INTERNATIONAL MONETARY FUND



The potential economic disruptions from today's health crises may be far greater than earlier ones. Frequent, unrestricted travel and far-reaching supply chains mean that an outbreak in a single country can quickly spread, while a severe epidemic or pandemic can cause lasting damage to organizations across several industries.

Some epidemics and pandemics have caused brief, sharp declines in economic activity, but this is not necessarily the norm. A highly transmissible respiratory infection, like the virus that caused the 1918 pandemic, can continue to spread and inflict compounding economic damage for several years. COVID-19 or a future pandemic could play out similarly.

This means that public and private sector organizations should be prepared for potentially extended periods of economic disruption.

Some of the potential risks for businesses include:

- Loss of workforce due to death and illness.
- Increased employee absenteeism and lower productivity due to family care obligations, social distancing, and fear of infection.
- Operational disruptions, including interruptions and delays in transportation networks and supply chains.
- Reduced or changed production or service delivery, including higher operational costs driven by public health regulations or voluntary risk mitigation or response measures.
- Reduced customer demand.
- Reputational damage, if an organization's outbreak response is seen as ineffective or if its communications with stakeholders are seen as incomplete or misleading.

WHAT IS A PANDEMIC?

The World Health Organization (WHO) defines an epidemic as "the occurrence in a community or region of cases of an illness, specific health-related behavior, or other health-related events clearly in excess of normal expectancy." A pandemic is defined by the WHO as "an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people."

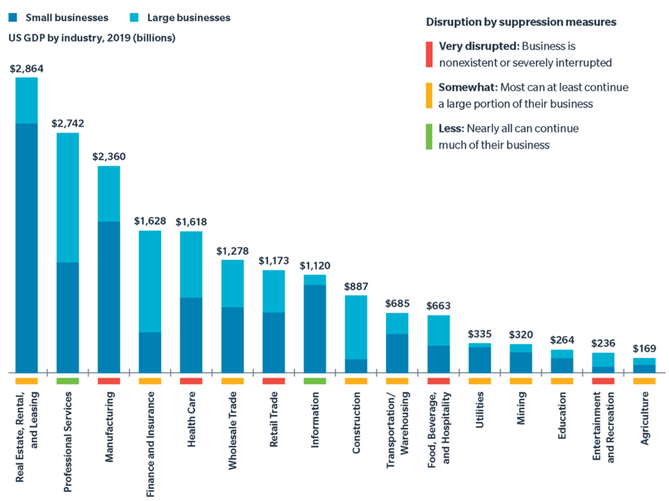
While some businesses and nonprofit organizations have focused on resilience in recent years and are prepared to withstand much of the short- and long-term damage from an infectious disease event, others are not. Over the last several months, many organizations have been forced to make difficult decisions simply to survive, including laying off or furloughing employees, canceling or delaying major projects and capital investments, and declaring bankruptcy. Even with these actions, it is apparent that many companies will not survive COVID-19.

The financial consequences can be particularly acute for organizations in industries that rely on consumer confidence and foot traffic, including retail, hospitality, entertainment, and airlines (see Figure 2). During the 2013-15 Ebola epidemic, for example, airline stocks fell as investors anticipated a sharp decline in travel after an Ebola case was reported at a Texas hospital, while several hundred airline workers did not report for work at LaGuardia Airport in New York due to concerns about their safety. And more than 80% of losses in the Caribbean from the 2015 Zika virus epidemic were tied to lower international tourism revenue, according to the United Nations Development Programme.

Public entities — including federal, state, and local governments — can also feel the economic effects of a pandemic or epidemic. For example, the decline in the economy — including a rapid rise in unemployment and lower consumer spending — and the delay of tax filing deadlines as a result of COVID-19 has "triggered a severe state budget crisis," according to the Center on Budget and Policy Priorities. Moreover, forecasting potential government revenues is difficult given the uncertainty caused by the pandemic.

FIGURE 2 Disruptions from COVID-19 vary significantly by industry.

SOURCE: US BUREAU OF ECONOMIC ANALYSIS, US SMALL BUSINESS ADMINISTRATION, MARSH/OLIVER WYMAN ANALYSIS



COVID-19's Unprecedented Nature

Past epidemics and pandemics have caused significant — and, in some cases, even greater — loss of life, both in the US and globally. But COVID-19 — and its effects on the economy — has been extraordinary in at least three ways:

1. It was sudden and spread quickly. Within 60 days of the first case being reported in late December, the virus had spread to more than 50 countries across all six populated continents, according to the WHO.
2. The ensuing economic downturn has not been driven by a reduction in supply and demand. Rather, it's mainly been the result of concerted actions by governments to curtail social interactions and other activity that would otherwise accelerate the spread of the virus.
3. The impact of various risk mitigation measures and continued uncertainty globally has been exacerbated by the interconnectivity and interdependence of global supply chains. As shutdowns spread worldwide, questions arose about the availability of raw materials, parts, and manufacturing capabilities to meet critical needs and consumer demands. Restrictions on travel and trade, a contracting workforce, and the shuttering of airports, seaports, and distribution centers has led to significant disarray and impeded economic recovery.

Even as countries and US states loosen restrictions on people and businesses, with the hope of renewed economic activity, some disruptions should be expected to continue. And as social proximity limits, herd immunity thresholds, medical treatments and vaccines, and consumer demand continue to be tested, the ultimate impact of COVID-19 will likely be severe: According to the International Monetary Fund's April 2020 World Economic Outlook, the global economy is projected to contract by 3% in 2020 — far worse than the economic decline caused by the 2008-09 financial crisis — and 5.9% in the US. Global trade, meanwhile, is expected to fall between 13% and 32% in 2020, according to the World Trade Organization.

Even as countries and US states loosen restrictions on people and businesses, with the hope of renewed economic activity, some disruptions should be expected to continue.

IN FOCUS

The Evolution of Pandemic Monitoring and Modeling

Improvements in the ability to forecast the spread of a pandemic and its economic impacts are based on the growing wealth of data and analysis from recent and historical pandemics. For future pandemics, continued advances in monitoring spread and modeling potential human and financial consequences will enable the private and public sectors to make more informed risk management decisions to protect people, ensure operational and financial resilience, and facilitate recovery.

MONITORING

Monitoring tools can allow for early warning when an epidemic or pandemic is emerging and situational awareness while it unfolds. Accurate, complete, and timely data can inform critical decision-making — for example, to determine the appropriate timing for intervention measures and to assess their effectiveness.

Monitoring epidemics and pandemics can prove challenging, however. Data often suffers from reporting delays, a lack of standardization, and limits in spatial resolution and geographic coverage. During the COVID-19 pandemic, for example, these differences have made it difficult to compare data between countries.

Experts in epidemic data monitoring can overcome such challenges by using digital surveillance methodologies that can curate, cleanse, and structure epidemic data from hundreds of reporting sources on a near real-time basis (see Figure 3). These techniques have also been applied retrospectively to construct a database of historical epidemics and further assess the availability, frequency, completeness, reliability, and accuracy of reporting sources so that different data sources can be compared. This can generate an accurate and comprehensive view of each event, and — when coupled with modeling — can provide the full view required to underwrite the risk.

MODELING

For epidemics and pandemics to be insurable, the public and private sectors will require reliable estimates of their potential frequency and severity. Historical data serves as an important starting point, but today's advanced modeling techniques can provide a fuller picture of potential losses.

Using probabilistic modeling techniques, a large catalog of realistic simulated pandemics representing a wide range of possibilities can be built. Such modeling can incorporate information about medical advances, population, and travel patterns. In fact, this approach previously identified coronaviruses as a family of viruses with high pandemic potential.

Epidemics and pandemics can be modeled through large-scale computer simulations that track how they spread globally from person-to-person and place-to-place. These models incorporate input parameters and assumptions about factors such as where epidemics could spark, how frequently they occur, how easily they could transmit, and how deadly they could be. The models start from the time when the pandemic first breaks out and follows how it would progress each day. They include important factors that can change over time, such as mitigation measures and seasonality.

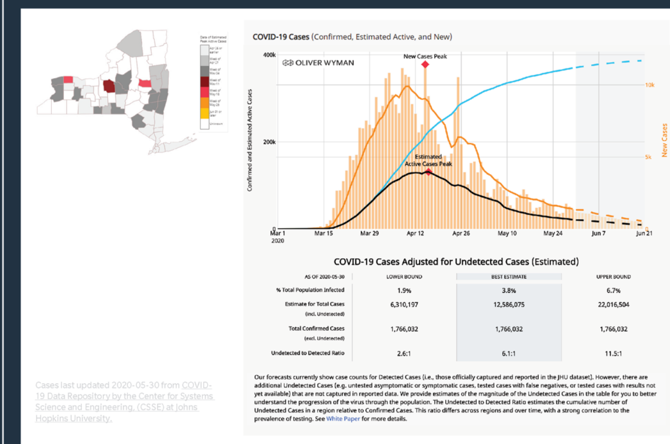
Running millions of simulations over a wide range of possible conditions can produce an event catalog that yields valuable insights about the frequency and severity of epidemic and pandemic events (see Figure 4). This approach, called "catastrophe modeling" or "extreme events modeling," is similar to the way the insurance industry understands the risks posed by low-frequency, high-severity natural catastrophe events, such as hurricanes and earthquakes.

Applying this type of modeling for epidemics and pandemics enables the public and private sectors to better prepare for, mitigate, and manage these risks and provides the insurance industry with the tools it needs to understand and transfer this risk.

FIGURE 3

New data tools can enable epidemiological monitoring on a near real-time basis.

SOURCE: OLIVER WYMAN



COVID-19 Cases Adjusted for Undetected Cases (Estimated)

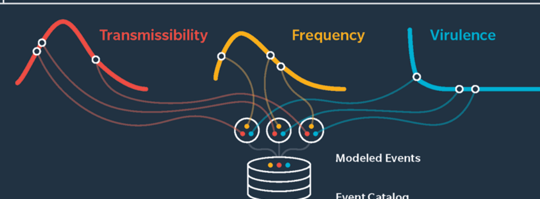
AS OF 2020-05-30	LOWER BOUND	BEST ESTIMATE	UPPER BOUND
% Total Population Infected	1.9%	3.8%	6.7%
Estimate for Total Cases (incl. Undetected)	6,310,197	12,586,075	22,016,504
Total Confirmed Cases (excl. Undetected)	1,766,032	1,766,032	1,766,032
Undetected to Detected Ratio	2.6:1	6.1:1	11.5:1

Our forecasts currently show case counts for Detected Cases (i.e., those officially captured and reported in the JHU dataset). However, there are additional Undetected Cases (e.g. untested asymptomatic or symptomatic cases, tested cases with false negatives, or tested cases with results not yet available) that are not captured in reported data. We provide estimates of the magnitude of the Undetected Cases in the table for you to better understand the progression of the virus through the population. The Undetected to Detected Ratio estimates the cumulative number of Undetected Cases in a region relative to Confirmed Cases. This ratio differs across regions and over time, with a strong correlation to the prevalence of testing. See White Paper for more details.

FIGURE 4

A modeling approach for understanding epidemic and pandemic risk.

SOURCE: METABIOTA



Why We Need a Public-Private Partnership

The enormity of the economic loss caused by COVID-19 in the US and globally, only a fraction of which will be covered by insurance, poses recovery and resilience challenges for businesses, governments, and insurers. The complex nature of pandemic risk necessitates close cooperation by the public and private sectors in managing its impacts and restoring confidence in the functioning of markets, economies, and society at large. Key to building a more proactive and agile response to the next pandemic will be an insurance and risk management partnership that helps facilitate coverage, aligns the desires of both insurers and insurance buyers to avoid losses, and incentivizes pandemic risk preparedness and mitigation efforts. Recent history provides examples of just how this has been accomplished.

The Economic Recovery Challenge

It remains to be seen how quickly the US economy will recover from COVID-19. The scenarios being considered hold lessons for future pandemic response and recovery, as well as actions to be taken jointly by the public and private sectors.

To describe their projections, economists often turn to letters of the alphabet resembling the shape of paths observed in past recessions and recoveries. They commonly use V, U, W, and L — ranging from the quickest recovery to the slowest — to describe the trajectory of GDP, employment, and other key metrics tracking economic conditions (see Figure 5).

Despite the various scenarios and potential paths to recovery, the answers to two questions will ultimately determine how quickly the US economy recovers from the current pandemic:

- How quickly can the imminent health threat be brought under control?
- How quickly can a vaccine be developed and distributed?

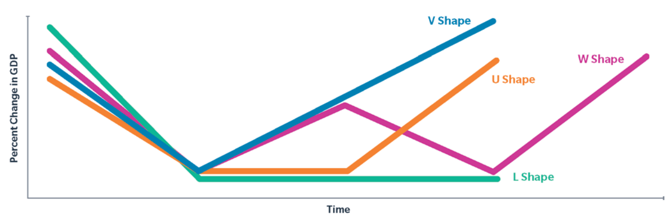
To ensure a swifter V- or U-shaped recovery, the US must get COVID-19's imminent health threat under control. The longer that shutdowns and uncertainty about a solution or a clear path persist, the more businesses will suffer and fail.

A W-shaped recovery would be characterized by a period of quick recovery followed by a second period of decline, likely attributable to a new wave of COVID-19 cases as the economy reopens or seasonality of the virus.

The actual pace of the recovery will depend on the nature and degree of uncertainty in the marketplace. In reality, no one knows when the pandemic will be behind us and when we can return to our pre-pandemic routines. And there is no certainty on the timing of a vaccine being developed. There is also the fear of other pandemics to come.

FIGURE 5 Economic recovery from COVID-19 can take many shapes.

SOURCE: MARSH



In the face of such uncertainty, businesses must make crucial decisions, such as:

- What levels of investment should be made in the business? And in what areas?
- Should employees be kept on the payroll or be laid off, which would sever employment relationships that could be difficult to rekindle when business returns to normal?
- Should idle capacity be maintained or should machinery and factories be mothballed, knowing that the eventual restart could take time?

Such decisions may be somewhat easier for those businesses with access to liquidity and the resources to pursue any claims under applicable insurance policies. However, smaller businesses lacking capital and relevant coverage are faced with a perilous gamble.

Smaller businesses lacking capital and relevant insurance coverage are faced with a perilous gamble.

The Foundation for a Rapid Economic Recovery

In consideration of the various recovery scenarios, steps can be taken to minimize the length of the economic downturn, expedite the economic recovery in the coming months and years, and bend the risk curve by improving the resilience of all stakeholders to future pandemics.

First, businesses, governments, the insurance industry, and all other stakeholders must address the imminent threats of the current pandemic. This includes ensuring the efficacy of critical care, the expansion of testing, and the development of effective therapies and vaccines. These efforts should also take into consideration the ability to reduce and mitigate the risk of future waves of COVID-19 infection and combat new pandemics.

Second, the government should ensure that risk mitigating measures are not only effective, but also minimally disruptive to the economy. After all, federal and state authorities will ultimately determine if, when, and how "shelter-in-place" restrictions are eased. Moreover, how the government responds will determine the business infrastructure that will exist when the health crisis is contained. For example, financial support of small businesses may help avoid business closures and high unemployment rates, which would allow businesses to reopen quickly with the staff they need to ensure the quick return of important goods and services.

Third, uncertainty should be reduced. Once businesses reopen, they will have to assure employees, customers, suppliers, distributors, regulators, and investors that it is safe to resume commercial operations. The effort required can affect the speed and enthusiasm with which individual businesses will decide to return to their pre-crisis levels of economic activity. Similarly, business owners may be reluctant to reopen if they are worried that the pandemic may return or if they lack the necessary resources to protect employees and customers. Uncertainty will weigh especially heavily on those businesses with highly interconnected and interdependent supply chains, where future shutdown risks — production slowdowns, distribution bottlenecks, revenue potential, and more — may complicate decisions to reopen. Uncertainty around managing these risks can filter down to employees who may be reluctant to return to work, investors who may be hesitant to invest or re-invest, and insurers who may be unwilling to cover future pandemic risk impacts.

While the true shape of recovery will only be evident in hindsight, the consensus is that its pace will be contingent upon our ability to manage the spread of the virus over the

The last several months have demonstrated that there may be significant limitations to the extent that property and liability policies respond to pandemic-related losses.

next few months and the steps taken to mitigate continued uncertainty and risk. For a quick and sustained recovery, it is not enough to have a vaccine, ease social restrictions, and maintain the nation's business infrastructure. It will be important for the public and private sectors to work together to reduce the uncertainty across the market and for individual businesses of all sizes.

Commercial Insurance Coverage Limitations

Given the far-reaching business impacts of governmental measures already taken to control the spread of COVID-19, many companies are looking to their insurance policies for potential responses to the ongoing financial loss. The last several months, however, have demonstrated that there may be significant limitations to the extent that property and liability policies respond to pandemic-related losses.

While some specialty polices may include coverage for pandemic claims, the vast majority of policies do not explicitly cover this risk. And given the specific and extensive effects of COVID-19, many insurers are expected to broadly exclude pandemic risk going forward.

The following overview of selected forms of standard coverage provides an indication of many of the challenges faced by insureds and the support and confidence that a government-backed standalone pandemic insurance solution could lend to building a better market for this risk.

Policyholders should note that the specific language in individual policies will ultimately determine any COVID-19 or future pandemic coverage. Organizations should work closely with their advisors and counsel to guide them through these various issues.

Property and Business Interruption

Standard property policies generally are triggered by insured physical loss or damage. Many include coverage for business interruption loss, other time element coverages, and extensions such as interruption by civil authority, ingress/egress, attraction or leader property, and contingent business interruption/extra expense.

If COVID-19 manifests at an insured's premises, insurers may contend that there has been no physical loss or damage. Similarly, insurers may argue that possible contamination, proximity to other contaminated premises, or fear on the part of the public does not constitute physical loss or damage for purposes of triggering coverage. If physical loss or damage is established, insurers may seek to invoke "contamination" or other exclusions in the policy.

Policyholders may look to the interruption by civil authority extension in their property policies for potential coverage — for example, arising from shutdowns and closures such as those mandated by governors in several states. There is no single version of a civil authority extension that has been incorporated across all policies, and a careful review of specific policy language will be required. Insurers may argue that shutdown orders in and of themselves do not satisfy policy requirements that physical loss or damage of the type insured by the policy has occurred, which is usually a required trigger of coverage.

A variety of arguments in favor of policyholders have been discussed since the COVID-19 outbreak began, and will likely be developed further. Among the arguments voiced to date is that policies' physical loss or damage requirements are satisfied because the virus reportedly remains on physical surfaces for some time and therefore constitutes physical damage to the property — and similarly, that government shutdown orders create a "loss of functionality" at insured locations that is equivalent to "physical loss or damage." These potential coverage arguments, and others, together with the facts of any specific loss, merit careful monitoring.

A number of coverage disputes have arisen since the pandemic began, some of which have resulted in litigation. It may be months or even years before these and future suits are ultimately resolved.

While insurers may have provided coverage in the past, many carriers are now reducing or eliminating coverage, regardless of pricing and terms. There are now fewer options for insureds.

Workers' Compensation and Employers Liability

Although workers' compensation statutes and case law can vary by state, compensability generally requires that an illness or disease be "occupational." This essentially means that the illness:

- Arises out of and occurs in the course and scope of employment, which will normally be determined by whether an employee was benefitting the employer when exposed.
- Is proven to be the result of a workplace exposure.
- Is "peculiar" to the employee's work, meaning that the disease is found exclusively among or presents greater risk for certain employees.

As COVID-19 has spread, it has become increasingly difficult to determine whether an employee has contracted the illness in the workplace. Health care professionals, first responders, airline and transportation workers, hospitality workers, and others in industries deemed essential are among those with a higher likelihood of exposure. But health care workers, for example, may be infected by patients, coworkers, family members, neighbors, and strangers, and in turn may infect each of these groups.

As the pandemic has progressed, some states have issued executive orders or taken other legislative action that would, in effect, create a rebuttable presumption that any employee or certain classes of employees who contract COVID-19 did so while working.

Whether a specific case is compensable will be determined by the facts established during an investigation of the claim, as well as the governing law in the jurisdiction where the claim is reported. Additionally, since there is no single "test" that can prove whether an illness or disease is compensable, it may ultimately come down to a decision by a court or state workers' compensation board.

Because insurers cannot explicitly exclude occupational illnesses as a result of communicable diseases from their workers' compensation policies — and because employers are required in nearly all states to purchase workers' compensation insurance — the options for buyers could become limited amid future outbreaks, epidemics, and pandemics. The introduction of rebuttable presumptions of illness in many states shifts the

PANDEMIC COVERAGE OPTIONS

Currently, pandemic coverage options for businesses are limited. Marsh, together with Metabiota and Munich Re, sought to address this gap as early as 2018 by launching PathogenRX to help organizations mitigate the risks posed by outbreaks, epidemics, and pandemics.

As epidemics and pandemics are typically excluded from business interruption policies, organizations are exposed to potentially large and sustained losses in revenue due to workplace disruption, absenteeism, sharp declines in consumer confidence and demand, or public health restrictions that limit business activity. PathogenRx provides coverage for these and other losses, helping businesses protect their balance sheets and improve their ability to weather and more quickly recover from epidemic- and pandemic-related losses.

Insurers may seek to assert a variety of potential coverage defenses.

burden of proof; employers must prove that an illness is not work-related in order to deny a claim. This will likely affect workers' compensation market capacity and pricing, especially for employers in industries that are considered essential.

General Liability and Umbrella and Excess

A claim brought by a third party for bodily injury or property damage resulting from an alleged unintentional or negligent failure to protect from the virus should fall within the basic coverage grant of a general liability policy, as well as umbrella and excess coverage. Depending on the circumstances, however, insurers may seek to assert a variety of potential coverage defenses, including:

- **Pollution exclusions:** Insurers may contend that bacteria and viruses constitute "pollutants" under the pollution exclusion. Certain policies define "pollutants" to include viruses; others specifically provide that viruses do not constitute "pollutants"; and some are silent on the issue.
- **Fungi/bacteria exclusions:** Although COVID-19 is viral, illness may occur due to secondary bacterial infections brought on by the virus.
- **Intentional act exclusion:** Depending on the circumstances, carriers may contend that coverage is excluded because the policyholder acted "intentionally." For example, if a policyholder has recently held a large event, an insurer may contend that the decision to proceed in the face of a known risk is an intentional act rather than mere negligence, and therefore excluded. Although courts often reject such defenses — restricting their applicability to situations where the insured actually intended the specific injury alleged — the merit of such a defense will depend on the facts and applicable law.
- **Communicable disease exclusions:** Removing these exclusions going forward — if possible — should be a priority for policyholders and their advisors, although insurers — driven in part by the demands of reinsurers — are likely to dig in and seek to preserve them.

The potential applicability and scope of each exclusion will likely depend on court precedent and the factual circumstances of the claim.

Event Cancellation

Event cancellation insurance coverage could respond if an event must shut down because of a confirmed COVID-19 case on a venue's premises or a ban on mass gatherings by local or state government. Prior to the start of the COVID-19 outbreak, policyholders could generally add back — via endorsement — coverage for communicable diseases that has often been excluded from standard event cancellation policies.

Other forms of event cancellation coverage — for example, those related to trade shows, conventions/expositions, and other specific types of events — have typically included communicable diseases. Following considerable losses related to COVID-19, however, most insurers are now excluding coverage going forward.

Event cancellation coverage will likely not respond if an event is preemptively cancelled due to fear of the pandemic's spread. Policies also often require that an event organizer make a good faith effort to reschedule an event before cancelling it.

What Could Be Included in a Government-Backed Solution

Although the potential risk of a severe public health crisis has been on the radars of governments and businesses for many years, the intensity of COVID-19 caught many off guard. The pandemic, however, is now the top agenda item in boardrooms, statehouses, and legislatures across the country and around the world. To manage current and future uncertainty around reopening, recovery, and resilience, it is imperative that governments, insurers, and businesses work together as they did after past events — including terrorist attacks — to develop and implement solutions that build confidence and strengthen the economy.

Prior to the attacks of September 11, 2001, terrorism was generally not a clearly defined coverage in commercial property insurance policies. Most standard property policies covered terrorism either as part of the policy or without specifically mentioning terrorism — that is, the policies did not directly address terrorism, so they effectively covered it.

In the aftermath of 9/11, reinsurance for terrorism risks was withdrawn and commercial insurers stopped covering them. Insurers' general view at that point was that the risk of loss was unacceptably high, unpredictable, and difficult to price. In November 2002, to address concerns that the lack of terrorism risk insurance could have significant effects on the economy and ensure its continued availability and affordability, Congress passed the Terrorism Risk Insurance Act (TRIA).

TRIA required the Treasury Department to administer a program through which — in the event of a certified act of terrorism — the federal government would share some of the losses with private insurers. TRIA also includes provisions for the Treasury Department to recoup the federal share of losses after a certified act of terrorism. The losses the federal government would cover before such recoupment create an explicit fiscal exposure for the government.

The federal backstop created by TRIA — and reauthorized several times since — mandates that commercial insurers offer coverage to businesses. In turn, the federal government has pledged to cover an increasing share of terrorism-related insurance losses — up to $100 billion each year, above a "deductible" for individual companies that increased from 7% of premium in 2003 to its current level of 20%. Not only did this enable the creation of a viable commercial insurance market for terrorism, it provided much-needed assurances to lenders — without which commercial property development would not be possible — and helped stabilize the overall economy.

A New Pandemic Partnership

A public-private partnership to establish a federally backed pandemic reinsurance program can offer similar benefits. As we are seeing, the economic impact of this pandemic event is enormous, with losses in the US alone projected to reach into the trillions of dollars.

The risk characteristics of a pandemic event are significantly different than those of a terrorist event, which is highly localized with expected losses within the $100 billion terrorism facility. A severe pandemic event can pose even greater losses than a nuclear terrorist event, which models estimate could result in insured losses of $800 billion or more.

Such a pandemic insurance facility is especially critical now, and commercial insurers can play a valuable role, as they do with terrorism. The US property and casualty insurance industry, however, only has an estimated $312 billion in policyholders' surplus for commercial lines, according to A.M. Best. This figure represents the industry's financial cushion to protect against unexpected or catastrophic losses — and insurers generally consider all of it necessary to underwrite other critical business risks, including hurricanes and other natural catastrophes, workers' compensation losses, and cyber-attacks.

On their own, private insurers do not have the financial resources necessary to fully underwrite the unprecedented losses suffered by businesses since the COVID-19 pandemic began — losses that may continue to mount in the months and years ahead, especially if the virus resurges and new pandemics of equal or greater severity emerge. And while many policyholders are interested in pandemic risk coverage, insurers are reluctant to accept unlimited risk on their balance sheets.

For these reasons, a new solution is required for this systemic risk.

BROAD BUSINESS SUPPORT FOR A PUBLIC-PRIVATE PANDEMIC RISK SOLUTION

The business community at large — and risk professionals, specifically — has expressed widespread support for a government-backed insurance solution to protect against pandemic risk and a willingness to buy pandemic coverage in addition to their current purchases. In an April 2020 survey by RIMS — the leading insurance and risk management trade organization — nine in ten (91%) risk professionals expressed support for a pandemic or epidemic risk solution similar to TRIA.

A number of other trade bodies have similarly advocated for a public-private partnership to address pandemic risk. These include the National Retail Federation, National Restaurant Association, National Multifamily Housing Council, and American Hotel & Lodging Association.

A pandemic risk insurance facility can help limit — but not eliminate — private sector risk, providing critical assurances to lenders and equity markets and helping to accelerate economic recovery. It can also limit the financial impact of a future pandemic by absorbing the initial shock, enabling businesses to retain employees and meet financial obligations through the peak of uncertainty.

A range of risk-pooling models — from pure private partnerships to state-financed funds for non-insurable risks — can be used to address difficult risks (see Figure 6).

Nearly two decades since its initial passage, the federal terrorism backstop should be seen as a model public-private partnership that has facilitated the creation of a viable insurance market for a risk that was previously considered unthinkable, and ensured the stability of both the insurance industry and overall economy. A federally backed pandemic risk insurance program can achieve many of the same goals today.

Lawmakers in the US and globally are currently exploring a variety of public-private risk pooling models. On May 26, 2020, the Pandemic Risk Insurance Act of 2020 (HR 7011) was introduced in the US House of Representatives, calling for a program that resembles the TRIA model but with more capacity to meet the potentially greater financial losses that can result from pandemics. In April, a steering committee of leading UK insurance industry executives announced it is exploring a model based on the country's public-private terrorism risk program, Pool Re. Also in April, a working group created by France's Ministry of Finance that includes the Association of Corporate Risk and Insurance Management, an industry trade group, and CCR, a public sector reinsurer, said it is developing a program that will include both public and private funds at risk.

Like public-private pooling programs for catastrophic perils, such as flooding, terrorism, and crop hazards, pandemic risk pooling programs will likely vary by country, based on the unique risk profiles and risk tolerance of each economy. Successful models will leverage the credit of central banks to drive affordability and create the economic incentives needed for all stakeholders to enact measures to mitigate pandemics.

FIGURE 6

A public-private insurance/reinsurance mechanism could be developed in several ways.

SOURCE: GUY CARPENTER, MARSH

Private ← → Public

SEMI-PRIVATE POOLING REINSURANCE SCHEME

- Joint entity created by insurers to pool risk and share knowledge.
- Participation may be voluntary or legally mandated.
- Financing primarily provided by the private sector, with limited (if any) initial government financing and typically no committed reserve.

PUBLIC-PRIVATE PARTNERSHIP (PPP) REINSURANCE SCHEMES

- Structured risk sharing model between policyholders, insurers, and government.
- Government explicitly provides backing to the private sector to cap exposure and drive affordability.
- Participation may be voluntary or legally mandated.

PUBLIC FUNDS FOR NONINSURABLE RISKS

- Pure government setup, without any direct private involvement (other than aligning coverage).
- Fund is created with a reserve, built up over time, that can be used to pay out claims in the event of a pandemic.
- Claims against the fund should be aimed at covering risk events that cannot be covered by existing insurance offerings.

RELEVANT OPTIONS FOR MANAGING PANDEMIC RISK

Given their global nature, pandemics are unlikely to offer insurers and reinsurers any diversification. Some form of public support will likely be required to enable viable insurance and reinsurance markets.

IN FOCUS

Public-Private Partnership Precedents

Beyond the US terrorism backstop, several other risk pooling schemes that exist globally can provide valuable lessons for both the public and private sectors (see Figure 7).

Other risk financing mechanisms for pandemic response geared towards countries on a global and regional level are also worth examining.

The World Bank's Pandemic Emergency Financing Facility (PEF) is a first-of-its-kind disaster risk financing mechanism focused on large epidemics and pandemics. The intent of PEF is to provide countries and response agencies with a rapid infusion of funds to help cover the cost of disease response activities, such as additional human resources — including clinicians and community health care workers — personal protective equipment, vaccines, and therapeutics. The COVID-19 pandemic has triggered a payout of $195 million. PEF has previously paid out smaller amounts for other epidemics, including two Ebola epidemics in the Democratic Republic of the Congo. Future iterations of PEF-like structures are likely to incorporate lessons learned from the first iteration.

One of the greatest challenges in epidemic and pandemic response is the timely identification and control of local outbreaks. Given their limited resources, low- and moderate-income countries — frequent hotspots for pandemic emergence — are often substantially slower than high-income countries to identify and control infectious disease outbreaks, and generally lack robust contingency plans and emergency financing for disease control. An innovative pilot approach to address this problem is the **African Risk Capacity** outbreak and epidemic sovereign insurance program, which will establish a pool of capital that can be rapidly deployed early in outbreaks. The program is designed to incentivize countries to improve surveillance and report events early by linking payouts to the declaration of events and linking contingency plans to coverage in a way that encourages rapid efforts to quench early outbreaks before they become epidemic or pandemics.

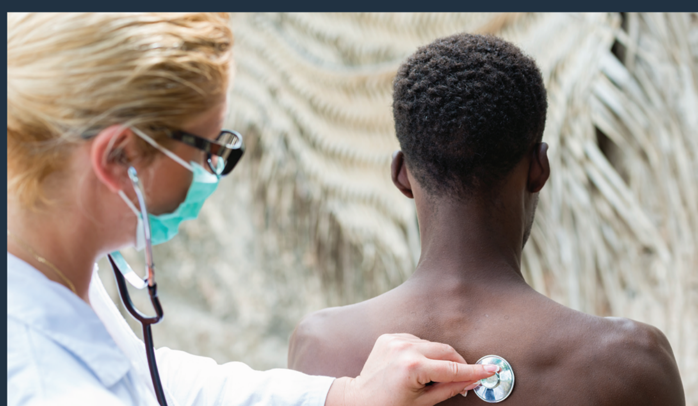


FIGURE 7 Existing risk pooling structures can offer several lessons.

SOURCE: MARSH

Significant loss events or changes in how risks are modeled can lead to market-wide capacity withdrawal.	TRIA was passed in 2002 following a widespread withdrawal of commercial terrorism cover by reinsurers after the September 11, 2001, terrorist attacks. Flood Re was developed to provide affordable flood risk cover to the approximately 3% of UK homeowners living in high flood risk areas. Industrywide improvements in flood risk modeling had made coverage unaffordable for this cohort.
Extreme risks typically require some form of government backstop.	Government treasuries are the insurer of last resort on multiple loss sharing schemes. For example, the US National Flood Insurance Program (NFIP), the UK's Pool Re, and France's CCR Cat Nat and Gestion de l'Asurance et de la Réassurance des risques Attentats et actes de Terrorisme (GAREAT) have unlimited guarantees. TRIA, the Australian Reinsurance Pool Corporation (ARPC), Germany's Extremus, and the Netherlands' Nederlandse Herverzekeringsmaatschappij voor Terrorismeschaden (NHT) have limited guarantees.
Public-private partnerships provide credibility and can be structured to gradually shift risk to the private sector.	The US government's terrorism backstop enabled insurers to access affordable reinsurance for terrorism coverage. Over time, federal reinsurance participation in the program has fallen from 90% in 2002 to 80% in 2020, while insurer deductibles have risen from 7% of premium in 2002 to 20% in 2020. Insurer retentions have also increased, from $5 million in 2002 to $200 million in 2020. The UK government's backing of Pool Re similarly enabled insurers to access affordable terrorism reinsurance. Over time, the Pool Re fund grew and private reinsurer confidence was restored, to the point that £2.4 billion of reinsurance cover is now purchased. As a result, a loss fund of approximately £10 billion (including member retentions) sits between the consumer and the government needing to step in.
Programs can be used to incentivize the adoption of preventive measures.	Eligibility for the US flood risk program, NFIP, requires communities to adopt and enforce strict floodplain ordinances and offers premium discounts for outstanding performance. While there is no direct requirement for risk mitigation by Pool Re stakeholders, premium discounts of up to 7.5% are available for insureds that proactively undertake such initiatives. The US crop insurance industry supports continued agronomic research to determine how farmers can best incorporate risk management best practices in their operations and the impact those practices may have on insured crops. The US SAFETY Act of 2002 was created to spur the adoption of improved security measures by offering to limit liability of companies providing anti-terrorism products and services for qualified vendors. Similar policies, coupled with a robust public-private insurance market, could incentivize private sector adoption of prophylactic measures to drive down exposures. Flood Re is intended as a temporary solution to be phased out by 2039. As such, the government has committed to major investments in preventive measures, while Flood Re has prompted insurers to work to enhance their understanding, mapping, and modeling of flood risk and their collection of data for improved underwriting.

INSURANCE SOLUTIONS FOR SMALL AND MEDIUM ENTERPRISES

Compared to their larger peers, small and medium enterprises (SMEs) typically have smaller balance sheets, less capital, and less access to credit that can be used to meet financial obligations during a shutdown necessitated by a pandemic or epidemic. And according to the US Small Business Administration, businesses with 500 or fewer employees account for 47% of all private sector jobs.

As they develop new and innovative solutions to pandemic risks, it's critical that insurers consider the needs of SMEs, which will play a critical role in the economic recovery from COVID-19 and could experience disproportionate effects from future infectious disease events. Insurers should consider offering policies with shorter duration deductibles and parametric triggers that enable rapid claims payments to SMEs during the early stages of a pandemic or epidemic, allowing them to maintain payroll and improve their chances of remaining operational.

Working Together to Bend the Risk Curve

A government-backed pandemic risk insurance program can provide valuable peace of mind to businesses and organizations as they recover from the effects to date and prepare for the potential reemergence of COVID-19 or another future epidemic or pandemic. But as with traditional insurance solutions for other risks, it is by no means the only way to manage infectious disease risks. Insurers, the private sector, and the government must work together to improve national and organizational resilience, bending the risk curve so that pandemic events can be better anticipated and their impacts better contained.

The Role of Insurers

Beyond their role in issuing and administering pandemic insurance policies in a new marketplace facilitated by a federally backed program and reimbursing policyholders for claims following losses, insurers can play a critical role in developing and encouraging the adoption of pandemic loss reduction measures. The insurance industry has a strong track record of helping businesses of all sizes mitigate critical risks, including natural catastrophes, workplace hazards, cyber threats, and more. That institutional knowledge and expertise can be put to use to similarly help businesses understand and manage pandemic risk.

Specifically, insurers — in concert with insurance brokers and other advisors — can help businesses:

- **Better understand their critical risks.** COVID-19 has made clear that many businesses have not fully contemplated the range of effects that an outbreak, epidemic, or pandemic can have on their people and operations, critical infrastructure, and governments. Greater investment by the insurance industry in data collection and modeling tools can help insurers, brokers, and businesses to anticipate and quantify potential risks.
- **Obtain insurance coverage to meet their unique needs.** Ideally, insurers will not offer one-size-fits-all coverage solutions to prospective buyers. As with terrorism insurance policies made available via the federal backstop, buyers should be able to customize the pandemic insurance policies they purchase — for example, selecting specific infectious disease risks to insure and adjusting limits to meet their risk tolerance and other preferences.
- **Enact practices to prevent pandemic-related losses.** Insurance buyers seek to mitigate their property, workers' compensation, and cyber risks through superior building techniques, workplace safety programs, and cybersecurity programs. Insurers reward policyholders that can demonstrate their commitment to such processes in the form of more favorable pricing and terms and conditions. A federally backed pandemic risk insurance program that encourages improvements in health and safety practices can yield similar benefits.

The Role of the Private Sector

The private sector was largely caught off guard by COVID-19. The immense costs dictate that in a post-COVID-19 world, governments, shareholders, lenders, and ratings agencies will request, and in some cases require, that corporations develop a clear view of their exposure to epidemic risk and document their mitigation plans, which will include risk assessments, response plans, and insurance coverage.

Dynamic Corporate Decision-Making

Traditional resilience measures are not necessarily suitable when contemplating pandemic risk management strategies and immediate response actions. Effectively mitigating this risk demands that corporate boards, senior management, and risk management teams evolve how they view, measure, and act on risk.

Historically, measurement has been viewed at worst as a compliance exercise and at best as a process that seeks to protect an organization's value. The immediate lesson of the pandemic is that the process itself must be dynamic and owned by boards.

Specific metrics can help organizations make critical decisions while facing uncertainty. These metrics include:

- Measures of risk aggregation and interdependencies — first-party and contingent — across the value chain.
- Resilience metrics tied to how much stress an organization can withstand — at what points in the value chain — in order to better understand how stress could reduce decision-making options.
- Intelligence layers that enable early warnings and guideposts to navigate a pandemic crisis and provide "barometers" for key decision paths.
- Evaluations of counterparty risk, which includes collecting metrics on third parties — such as suppliers and key partners — on which they depend.

The ability to construct risk forecasts that evaluate future risk is also necessary. Scenario-based stress testing methodologies allow for the investigation of different outcomes and assumption sets. Such an approach can inform and shape understanding of future risk scenarios, enable the evaluation of potential value chain shocks, and challenge assumptions in an organization's strategy. This can help organizations evaluate risk capital investments, including the tradeoff between resilience and efficiency, from a potential return on investment perspective. It also can help leaders contemplate the ways in which their organizations are most at risk and how non-correlated factors can create disruptive forces.

It also can help organizations demonstrate to underwriters and equity markets that the next pandemic will not be fatal to their balance sheets so they can continue to secure coverage and attract investments. The capacity for businesses to anticipate changes and adapt in ways that continuously build and deliver value for customers is crucial to this process.

EPIDEMIC RISK ANALYTICS

The effect of an epidemic or pandemic on every organization will be different, depending on their characteristics and circumstances, including industry, geographic footprint, supply chain structure, employee density and demographics, and product or service types and consumption. For example, companies moving people and packages by air may share a range of attributes, but their individual epidemic risk exposure could be significantly different.

Epidemic risk analytics can provide the tools needed for understanding the specific risks faced by various industries and individual organizations. Analytics can enable organizations to develop and optimize different preparedness and response strategies. Software tools can also allow organizations to aggregate and visualize historical and real-time epidemic data, which can better enable epidemic risk measurement, mitigation, and management.

Protecting People

In preparation for a possible reemergence of the coronavirus in the near future — and ahead of future outbreaks, epidemics, and pandemics — it is incumbent on organizations to build the necessary infrastructure to help protect the health of their employees, customers, and visitors to the workplace. Organizations can also help limit potential disruptions to their employees' lives and accelerate and ease their return to work following future stay-at-home periods.

Among other actions, risk professionals — working with health officials, HR staff, and others — should focus on:

- **Proactive local screening.** Epidemics and pandemics often start small, but can quickly grow. To mitigate risk and maximize containment, businesses must be able to detect disease patterns at the local level and on site. Techniques such as big data analytics and computational epidemiology can help organizations model, understand, and control the diffusion of disease. Analyzing trends in news reports and on social media, for example, can help spot the emergence of a flu epidemic before any formal declaration from the WHO or other health authorities.
- **Locating employees and contact tracing.** COVID-19 has made clear how important it is for businesses to be able to quickly locate employees and conduct rigorous contact tracing, both of which are core disease control measures and key strategies for slowing or preventing the spread of disease. While widespread monitoring will inevitably raise concerns about privacy, businesses will need to consider the tradeoffs from both a humanitarian and economic perspective.
- **Digital health and telemedicine.** If not in use already, these tools can help employers help their employees reduce their physical exposure to health care and hospital settings. This can support efforts to slow the spread of viruses, bacteria, and other pathogens in the workplace and the larger community.
- **Mental health and employee engagement.** Businesses need healthy, emotionally sound, and engaged employees in order to be productive. Efforts should be made to ensure connectivity — at formal and informal levels — between employees and with management if a pandemic forces social distancing.

Protecting Operations

Organizations cannot predict where the next pandemic will occur. Its specific impact will depend on several factors, including the virulence and transmission rate of the pathogen. But a well-tested, tiered — or phased — action plan outlining company preparedness, response, and recovery actions can help them better prepare and be more agile. Such plans should anticipate potential questions from senior leaders, employees, and others, and set precise criteria for specific policy and procedure implementation, including when and how to close or modify business operations, engage alternative suppliers, or direct employees to work from home or return to workplaces.

The Role of Government

While the private sector can and should learn lessons from the current COVID-19 crisis in order to better prepare for the next pandemic event, governments at all levels can do much to help manage and mitigate current and future pandemic risk.

COVID-19 has highlighted the need for federal, state, and local governments — in conjunction with national and global health organizations — to focus on three areas:

- **Preparedness.** Federal, state, and local governments must stockpile more equipment, including ventilators, masks, and other types of PPE that have become incredibly valuable commodities for some communities. Crisis response plans are also key, provided they are updated now, to reflect lessons learned from COVID-19 and regularly tested through tabletop exercises and other means. Governments can also encourage and facilitate data-sharing efforts by both the private and public sectors, which can aid preparedness and response efforts.
- **Mitigation.** Largely, mitigation steps — including social distancing, handwashing, wearing masks, and more — are the responsibility of individuals. Governments can support these efforts by providing guidance and education to people and businesses about how they can prevent or slow the spread of the disease. Governments can also facilitate mitigation by providing guidance on how to protect essential workers during a pandemic or epidemic.
- **Insurance.** While commercial insurers excel at allowing businesses, public entities, and nonprofit organizations to transfer the risks related to natural hazards and other critical risks, a pandemic could result in virtually unlimited losses — which, today, are largely uninsured. Historically, insurance coverage for the risks related to infectious disease has been limited or available only at a high cost. And public entities have relied largely on Federal Emergency Management Agency disaster funds or ad hoc funding measures to mitigate financial losses. A federal backstop can facilitate the creation of a viable insurance market that can offer affordable coverage for businesses, public entities, and nonprofits and provide crucial peace of mind to businesses.

Collectively, focusing on these areas can help build economic resilience and national readiness.

A Call to Action

The first half of 2020 has illustrated the potential harm that a serious infectious disease event can inflict on people, businesses, governments, and economies — and the limitations of the commercial insurance market in delivering protection from that harm. While the insurance industry clearly has a role to play in developing new solutions to outbreaks, epidemics, and pandemics that incorporate lessons we are learning today, it cannot go it alone.

Ultimately, a public-private pandemic risk solution — with participation by insurers, businesses, and the federal government — is our best option for enabling a smooth and quick economic recovery and protection from future events.

ABOUT MARSH

Marsh is the world's leading insurance broker and risk adviser. With over 35,000 colleagues operating in more than 130 countries, Marsh serves commercial and individual clients with data driven risk solutions and advisory services. Marsh is a wholly owned subsidiary of Marsh & McLennan Companies (NYSE: MMC), the leading global professional services firm in the areas of risk, strategy and people. With annual revenue over US$15 billion and 75,000 colleagues worldwide, MMC helps clients navigate an increasingly dynamic and complex environment through four market-leading firms: Marsh, Guy Carpenter, Mercer, and Oliver Wyman. Follow Marsh on Twitter @MarshGlobal; LinkedIn; Facebook; and YouTube, or subscribe to *BRINK*.

ABOUT METABIOTA

Metabiota has over a decade of experience partnering with industry and governments worldwide to build resilience to epidemics and protect global public health. Metabiota has expert capability to quantify, mitigate, and manage epidemic risk, supporting global health security and sustainable development. The company is headquartered in San Francisco, California, with additional offices in Washington, DC, Cameroon, and the Democratic Republic of the Congo (DRC). Metabiota's team includes global leaders in epidemiology, veterinary medicine, laboratory science, data science, actuarial science, social science, and political economics, and serves some of the most respected customers in the corporate, insurance, government, and multilateral sectors.

Metabiota has developed a unique data analytics platform to quantify epidemic risk, the Global Epidemic Monitoring and Modeling platform. This platform combines proprietary real-time and historical data, artificial intelligence, economic and risk modeling, and indices. Metabiota's platform houses the most extensive infectious disease modeling catalogs in the industry, as well as a structured outbreak dataset having over 2,500 outbreaks spanning more than 50 years. Metabiota uses the latest scientific understanding of disease progression to create pathogen-specific disease spread models, resulting in hundreds of thousands of realistic simulations of a disease's spread that allow for estimating the frequency and severity of potential epidemic scenarios. Metabiota has also developed an epidemic preparedness index to measure countries' capacities for epidemic detection and response, along with a sentiment score to estimate the level of fear and potential economic losses an epidemic can cause. These tools enable companies, insurers, and governments to assess risk accumulations, implement innovative risk mitigation strategies, and bring new epidemic and pandemic risk transfer products to market. For more information, visit www.metabiota.com.

ABOUT THIS REPORT

This report was prepared by Marsh and Metabiota. Other businesses of Marsh & McLennan — including Guy Carpenter, Oliver Wyman, and NERA Economic Consulting — also contributed.

For more information and insights from Marsh on pandemic risks and solutions, visit coronavirus.marsh.com or contact your Marsh representative.

John Q. Doyle

John Q. Doyle is president and chief executive officer of Marsh LLC. He also serves as vice chair of Marsh & McLennan and is part of Marsh & McLennan's executive committee. Marsh is a business of Marsh & McLennan and it is the world's leading insurance broker and risk advisor with nearly 40,000 colleagues operating in over 130 countries.

Mr. Doyle oversees Marsh's worldwide businesses and operations, including property-casualty brokerage and specialty, digital technology platforms; and consulting practices. He was named CEO of Marsh in July 2017. Previously, from April 2016 to July 2017, Mr. Doyle served as President of Marsh.

An industry veteran with over 30 years of management experience in commercial insurance and brokerage, Mr. Doyle began his career at AIG. He held executive positions at AIG, including chief executive officer of AIG Commercial Insurance, president and chief executive officer of AIG Property and Casualty in the U.S., president of National Union Fire Insurance Company, and president of American Home Assurance Company.

Mr. Doyle is a member of the board of the New York Police and Fire Widows' and Children's Benefit Fund, a trustee of the Inner-City Scholarship Fund, and a former director of the American Insurance Association (AIA). He is a graduate of the University at Buffalo.

Testimony

Brian Kuhlmann

Senior Corporate Counsel, Shelter Insurance Company

On behalf of the American Property Casualty Insurance Association and the National Association of Mutual Insurance Companies

"Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers"

Subcommittee on Housing, Community Development, and Insurance
Committee on Financial Services
United States House of Representatives
November 19, 2020

Chairman Clay, Ranking Member Stivers, members of the Subcommittee, thank you for the opportunity to testify before you today. My name is Brian Kuhlmann, and I am the Senior Corporate Counsel for Shelter Insurance Companies. Shelter is a mutual company headquartered in Columbia, Missouri. Our company was founded in 1946 primarily to serve the insurance needs of Missouri farmers. Since then, we have grown significantly and we now write auto, property, business, and life insurance in 21 states and also conduct business internationally. I am here today on behalf of the American Property Casualty Insurance Association (APCIA) and the National Association of Mutual Insurance Companies (NAMIC), which together represent more than 90 percent of home, auto, and business insurers in the country.

When the COVID-19 pandemic hit earlier this year, Shelter took prompt and strong actions to serve the needs of our policyholders. As a mutual company, we exist because of our policyholders, who have put their faith in us and expect us to be there when they have a claim. First, because many policyholders were under unprecedented stay-at-home orders and social distancing mandates, we recognized that they would be driving fewer miles and having fewer accidents. So, we voluntarily provided premium relief in the form a direct payment to policyholders of 30 percent of their personal auto monthly premium for the months of April and May. We were also among the first companies to continue to provide coverage when policyholders fell behind on their premium payments, including liberalized grace periods and working with policyholders in individual situations. Additionally, the Shelter Foundation is offering each of our nearly 1,400 Shelter agents $1,000 to designate for a charity in their areas working to respond to local COVID-19 needs. Shelter is known for doing the right thing and we will continue to evaluate this rapidly evolving situation and will do everything possible to help our policyholders, agents, and employees.

Our business is to help provide consumers with peace of mind by developing risk solutions. Unfortunately, though, not every risk is insurable. Insurance works best to help people recover when the accidental losses of a few can be broadly spread. But where losses are catastrophic, unconstrained by geography, across the entire economy, insurance is not always an option to be the means of the relief many need. Global pandemics fall into this category of uninsurable risks.[1]

As a general matter, risks must meet six tests to be broadly insurable[2]. The unique aspects of pandemics and the associated risks they pose fail to meet all six:

First, insurers must be able to spread the losses of a few across a large number of exposures. COVID-19 is affecting tens of millions of businesses simultaneously. Even if insurers had provided such comprehensive business interruption pandemic coverage, the losses of many interrupted businesses would be spread across comparatively few insurers since there are far more businesses in need of coverage than there are insurers providing business interruption coverage.

Second, losses must be fortuitous. While pandemics may be fortuitous, the losses businesses are now experiencing are not; they have been caused by decisions made by government officials in the name of protecting public health. These deliberate acts by government officials, while perhaps necessary for the larger good in their respective states, add complexities that make an insurer's ability to model, predict, and anticipate losses from an event nearly impossible.

Third, losses must be determinable and measurable. As we sit here today, we are still in the middle of our first modern day, truly global pandemic; we have no certainty on either an end date or what the ultimate losses will be. We are now seeing extensive second waves of shutdowns taking place in Europe, but cannot now know whether similar or more severe shutdowns will be ordered throughout

[1] The National Association of Insurance Commissioners (NAIC) put it best when they told Congress in May that "insurance works well and remains affordable when a relatively small number of claims are spread across a broader groups. It is therefore not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period."

[2] Principles of Risk Management and Insurance, 13th Edition-2017, George E. Rejda and Michael J. McNamara.

the U.S. Thus, it is not possible to predict whether there will be significant future losses, or if so, what the magnitude of those losses might be.

Fourth, losses must not be so catastrophic that they threaten insurer solvency. COVID-19 economic shutdowns have caused *trillions* of dollars in business continuity losses. If property casualty insurers were to assume all of those losses, they would exceed the annual industry revenues from business interruption coverage in a single day and would bankrupt the entire industry within a month.

Fifth, insurers must be able to model losses. While pandemics have occurred throughout history and are fortuitous, what has not occurred in the past are widespread government decisions to shut down entire economic regions. Risk models use data on past losses to predict future losses. But we are in the middle of our *first* data point for this type of loss, with long term impacts still unknown. Thus, traditional risk modeling techniques are not up to the task of projecting losses from future pandemics.

Sixth, insurance premiums must be affordable. Even if risk modeling could accurately predict future losses, the data related to global pandemic related business shutdowns would almost certainly dictate extremely high loss costs and premiums. With *trillions* in business continuity losses having already occurred and more possibly on the way, the premiums necessary to fund insurer coverage of such losses would inevitably be astronomical, even with an extensive government backstop. Even before COVID-19, very few businesses purchased business interruption coverage for pandemics because it was too expensive, particularly for Main Street businesses.

Because it is clear that global pandemics do not meet the requirements of insurability, an alternative mechanism will be necessary to protect businesses from future pandemics. Our industry believes that our expertise and infrastructure can play a valuable role in developing and implementing such solutions even if we cannot shoulder the financial burden of the U.S. economy.

We understand and are grateful that many of the members of Congress, on both sides of the aisle, have recognized that the magnitude of losses from this ongoing event means that the insurance industry cannot provide business interruption protection for pandemics. Observations from others have underscored this point. For example:

- The *Wall Street Journal* suggests that pandemics might cause as much as $23.5 trillion in losses over the next thirty years.[3]
- The International Monetary Fund's chief economist, Gita Gopinath, estimated that pandemic related losses will cause over $12 trillion in global economic losses over 2020-2021[4]
- In the U.S., government business continuity relief just for the past few months has run over $3 trillion[5], with more likely needed.

Even if the government were to backstop the industry for most of its indemnification obligations, this would not automatically render pandemic related closures insurable, nor would it necessarily lead to affordable premiums.

Indemnification obligations are also only a portion of the loss cost exposure for insurers. Average insurer expense ratios (which do not include loss adjustment or indemnification costs) have averaged 28.1 percent of premiums over the past decade[6]. However, business interruption claims adjustment expenses run at a much higher average because they involve sophisticated accounting forensics administered by specially trained adjusters. Insurers do not have nearly enough specialized personnel to be able to adjust millions of simultaneous business interruption claims.

This year, insurers are bearing the weight of near-record wildfire losses, hurricanes, civil unrest, and covered business interruption claims. The industry is handling those well and will continue to do so as long as its solvency is not threatened. However, the potential for additional, significant losses from a pandemic resulting in regional or nationwide non-backstopped losses could jeopardize the financial stability of a significant portion of the property casualty insurance industry.

Decades ago, our members recognized that they could only commit capital responsibly if they could accurately model and underwrite the individual risk frequency and severity and adequately diversify the potential solvency risk. Because pandemic business continuity risks cannot be accurately modeled, the industry has largely excluded coverage for losses related to viruses and communicable diseases. In 2006, those exclusions were reinforced in a manner that did not change the previously existing

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[3] The Wall Street Journal, "Global Viral Outbreaks Like Coronavirus, Once Rare, Will Become More Common", March 6, 2020
[4] International Monetary Fund IMFBlog, "Reopening from the Great Lockdown: Uneven and Uncertain Recovery", June 24, 2020
[5] In June CNN said, "Congress has already approved more than $3 trillion in coronavirus relief." https://www.cnn.com/2020/06/04/politics/coronavirus-stimulus-relief-money/index.html
[6] National Association of Insurance Commissioners, U.S. Property Casualty Underwriting Expenses (10-year average: 2010-2019)

underlying intent to exclude pandemic risks. The filing made by the Insurance Services Office® states, "While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent."[7]

The insurance industry's ability to provide coverage is also often dependent on the ability to obtain reinsurance. Reinsurers are now including broad exclusions for direct and indirect losses caused by communicable diseases. To provide the subcommittee with some insight into the breadth of these reinsurance exclusions, one of them reads ". . . this contract excludes any loss, damage, liability, claim, cost or expense of whatsoever nature, directly or indirectly caused by contributed to by, resulting from, arising out of, or in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event contributing concurrently or in any other sequence thereto." Out of necessity, insurers are filing coverage forms for approval in the states that align with the broad exclusions in their own reinsurance contracts. Because of the losses, both insured and uninsured, that we have already seen from the COVID crisis, business interruption and other forms of insurance will only be available to policyholders going forward because of these exclusions and the ability of insurers to responsibly manage their risk.

Business Continuity Protection Program (BCPP)

While the risk of government shutdowns is uninsurable, APCIA and NAMIC have worked hard on potential solutions. We strongly supported the CARES Act and the Paycheck Protection Program (PPP) and were pleased that Congress worked so quickly, in a bipartisan way, to help our country's businesses and employees. Given the unprecedented nature of this crisis, we believe Congress did a good job in developing a timely and appropriate response. At the same time, we asked ourselves what the PPP might have looked like if Congress had known the pandemic was coming and had the time to design the program in advance.

[7] ISO Commercial Property Circular, LI-CF-2006-175, July 6, 2006, © ISO Properties, Inc., 2006

Our goal has been to leverage our own risk expertise to develop solutions that help the U.S. economy manage future pandemic risk. To do so, we have met with numerous stakeholders and businesses to discuss and refine our proposal. Even now, conversations continue to take place on the best role for the insurance industry to play as we address future pandemic events moving forward. Our discussions have led us to study the various relevant catastrophic protection models, including TRIA, the NFIP, Pool Re, and state disaster funds and FAIR plans. The model that was by far the most applicable is the War Damages Insurance Corporation (WDIC), which was created by Congress during World War II because potential property damage risk from the war was too potentially widespread and severe for the private sector to protect. It was recognized that claims could be too severe in magnitude and too numerous to process simultaneously and that coverage would be too difficult to model and too expensive for consumers to afford. As a result, the government underwrote the insurance and sold it through the insurance distribution system.

The risk characteristics that were present during World War II are similar to those that we face with the COVID-19 crisis. Thus, we used the WDIC as a beginning point for discussions that ultimately led us to propose the Business Continuity Protection Program (BCPP) – a revenue replacement program to protect the business community. We have revised our proposed program several times over the past six months, in response to recommendations from other stakeholders and the policyholder community. We support passage of the BCPP for the benefit of all stakeholders, especially Main Street businesses. *We are especially pleased to say that the BCPP has the support of over 90 percent of U.S. insurance underwriters and the nation's largest insurance agent group.*

The following are some key features of the BCPP.

<u>Revenue Replacement</u>

The program would provide revenue replacement assistance to businesses, which could purchase up to three months of protection for up to 80 percent of payroll, benefits, and other necessary expenses. With so many Main Street businesses in crisis from the current pandemic, we have heard repeatedly from risk managers and the business community that this product must be affordable to achieve high take-up rates. Therefore, pricing for the product would be federally subsidized.

<u>Simple Application</u>

There would be a one-page electronic application which would establish eligibility for potential future revenue replacement payments based on historic revenue shown on previous tax returns.

<u>Parametric Trigger</u>

The program would have a "parametric" trigger. Unlike the traditional insurance claims adjustment process, the parametric trigger would provide payments *automatically* upon the occurrence of certain events, i.e., a Presidential viral emergency declaration and a state-mandated closure. Businesses would be required to establish up front what their likely revenue losses would be, but would not have claims adjusted post-event. This greatly speeds the process of getting payments into the hands of businesses to provide immediate viability payments to protect businesses and ensure economic resiliency.

<u>Resistant to Political Manipulation</u>

Rules and relief formulas will be established *in advance* thus avoiding the need for adjusting claims, awaiting federal certification of an event, etc. The protection provided will be precisely aligned with state closure orders, which appropriately emphasizes the high stakes of a closure order.

<u>Eligibility</u>

Revenue replacement assistance would be available to any interested firm in the U.S. All for profit and not-for-profit entities are eligible without regard for size. Entities must enroll at least 90 days prior to a Presidential viral emergency declaration in order to receive assistance.

<u>Distribution Channel</u>

The product would be distributed to businesses via state-regulated insurers, agents, and brokers. Businesses electing not to participate would be required to affirmatively opt out in writing and would certify their understanding that opting out bars them from eligibility for any federal assistance in the event of a pandemic-related shutdown. This feature is designed to encourage businesses to buy the product, thus providing greater protection to the economy as a whole and reducing federal disaster relief costs.

Excess Program/Event Cancellation

An "excess" program would provide optional insurance coverage to businesses for losses not covered by the BCPP (i.e., risks other than business interruption). The precise lines of business to be included are still being discussed but will likely include event cancellation coverage. The excess program would also contemplate traditional state-regulated insurance products, with the risk being carried on insurers' books but with a substantial federal backstop. For example: A restaurant with several locations could buy the 80 percent coverage under the BCPP and then purchase excess coverage through the private market for either a longer period of time (beyond the three months contemplated in the program or for the remaining 20 percent not paid under the BCPP.

Significant Insurance Industry Contributions to the Program

The insurance industry will be heavily involved in the provision of the BCPP product. In addition to playing a role in distributing the product to businesses by leveraging the industry's existing infrastructure, insurers would also bear a portion of the risk for the excess program. Commercial reinsurers could also provide reinsurance protection to the federal government to protect its obligations under the program. The BCPP can be further adjusted over time to incorporate additional private sector participation if capital providers become more open to allocating capital to broader communicable disease risks.

What Distinguishes the BCPP from Other Proposals

While one alternative proposal has been formally introduced in Congress, numerous others are being discussed informally. While all of them have some positive features, the BCPP is the only one that could cover a recurrence of COVID-19 if it is established in time. This could be critically important given what historical precedents teach us about the nature of pandemics. The 1918 Pandemic is the only one of similar magnitude to COVID-19. In the United Kingdom, the second wave in the winter of 1918 caused five times as many deaths as the original outbreak, and the third wave in 1919 caused twice as many deaths as the first. COVID-19 cases are now resurging in most areas of the U.S. and in parts of Europe as well. Finding a solution that will help protect us from the current pandemic as well as future ones is vital. Thus, Congress should be careful to ensure that any program adopted can address the extraordinary current crisis we now face.

Proposals that provide business continuity protection that mirrors the coverage provided in business interruption insurance policies are also problematic. Traditional business interruption insurance coverage requires direct physical damage to premises before claims are paid. Courts and regulators have recognized that physical damage does *not* occur with COVID-19 claims.

The BCPP is also the only current public proposal that would be affordable for Main Street businesses. If insurers are forced to cover an essentially uninsurable risk, they would have to fully price in the uncertainty of further pandemics in order to protect their solvency. Even with a federal backstop, coverage will likely be far more expensive than most Main Street businesses can afford. Because pricing for the BCPP product would be federally subsidized, the cost could be made affordable for most of Main Street businesses, thus likely providing for a high take-up rate.

An important concern in the creation of any government program is cost to the taxpayers. Taxpayer exposure under the BCPP can be limited through offsetting charges for the coverage. Under most other proposals, the government receives no offsetting revenue, but protection is artificially capped at hundreds of billions of dollars. Artificial caps are highly problematic in that they severely undermine any uncertainty in the protection provided and incentivize a rush to closure. This is because states and business that close first may be able to have a higher percentage of their losses reimbursed, while subsequent losses above the cap might not be protected.

Finally, the BCPP is the only proposal that is supported by nearly all of the insurance industry, with APCIA and NAMIC, representing over 90 percent of U.S. risk underwriters.

APCIA and NAMIC are appreciative of the ideas and proposals brought forward by congressional leaders and the business community to address pandemic risk challenges. We are committed to working with you on solutions that can achieve the support of all stakeholders and can be enacted and implemented to provide affordable protection that works for all.

ICLE International Center for Law & Economics

Testimony of R.J. Lehmann
Editor-in-Chief and Senior Fellow
International Center for Law & Economics

U.S. House Committee on Financial Services
Subcommittee on Housing, Community Development and Insurance
"Insuring against a Pandemic: Challenges and Solutions for Policyholders and Insurers"
Nov. 19, 2020

Chairman Clay, Ranking Member Stivers and members of the subcommittee,

My name is R.J. Lehmann, and I am editor-in-chief and senior fellow with the International Center for Law & Economics. ICLE is a nonprofit, nonpartisan research center that works with a roster of more than 50 academic affiliates and research centers from around the globe to develop and disseminate academic output and build the intellectual foundation for rigorous, economically grounded public policy.

I am a recent addition to the ICLE staff. My own background is that I have spent the past 17 years as a journalist and public-policy analyst specializing in the business of insurance. That includes running the insurance policy program at the R Street Institute, which I co-founded in 2012.

The COVID-19 outbreak has triggered unprecedented interruption in the operations of businesses across the country and around the world. While roughly 37 percent of U.S. businesses maintain insurance policies to cover the loss of business income due to direct physical damage to a business property, such policies are not designed to insure revenue loss resulting from a pandemic, even where closure is required by a civil authority order. Indeed, many policies contain explicit endorsements clarifying that viruses and bacteria are excluded as causes for business interruption and loss-of-use coverages.

Earlier this year, Congress sought to address the disruption caused by COVID-19 through the Payment Protection Program and there have been various efforts to extend further relief to affected employers and employees. But it is understandable that many seek a more permanent solution and look to insurance markets as offering the framework to provide it.

I agree entirely with the analysis that the pandemic has highlighted a massive protection gap in commercial insurance products. I also agree that it is a problem that almost certainly calls for a governmental solution. I would, however, raise the threshold question of whether insurance is actually the best means to accomplish the public policy goals in question.

Insurance is a system of risk transfer, not a system of economic relief. Even if private insurers could provide this coverage—on their own or with government support—it is not clear their incentives would align with public health goals or with the aims members of Congress likely have in mind.

I would urge the subcommittee and Congress generally to proceed deliberatively before erecting structures that may not prove to be well-suited to the crisis we are currently experiencing, much less unforeseen future crises whose nature and scope we cannot know. In sum, do not legislate for the next pandemic when we are still in the midst of dealing with the current one.

ARE PANDEMICS INSURABLE?

In the business of insurance, there are certain general characteristics that determine whether it is possible, in theory, to insure a given risk. These include having a large number of similarly exposed individuals and having losses that are reasonably predictable. A textbook example of an uninsurable risk would be intentional acts, such as arson. You could not transfer to an insurer the risk that you will burn down your own home, because that risk is fully within your control.

Business interruption caused by a pandemic is not uninsurable in the same sense that intentional arson is uninsurable. There were insurance products available to cover loss of business income due to viral contagion before COVID-19 hit our shores, although clients' interest in those products was reportedly fairly limited. There are still products that offer such coverage now, although the price of coverage has gone up significantly. On the micro level, for any given insurer and any given insured, viral business interruption is an insurable risk.

The problem is at the macro level. There is only a limited amount of capital that insurers would be willing to devote to a risk like pandemics. Some insurers will write some coverage. They might, for instance, cover a restaurant's risk of food spoilage resulting from an extended shutdown. But they will not and should not gamble their entire balance sheets. And the capacity that the global insurance and reinsurance industry would ever be willing to devote to this risk cannot possibly match its unique scale.

In this macro sense, for a risk to be insurable, it must be possible to manage it through careful underwriting and diversification. Global pandemics make that impossible. They hit every business sector and every geographical region simultaneously. They even degrade the invested assets insurers use to back up their promises. In a scenario where half the global economy shuts down overnight, there is no world in which the insurance industry can single-handedly carry the other half on its back.

The only entity with the financial resilience, the balance sheet and the risk tolerance to offer such assistance is the federal government itself.

MORAL HAZARD AND GOVERNMENT INSURANCE

When I have appeared before this committee in the past, it has been to warn about the dangers of moral hazard that frequently accompany government intervention in insurance markets. The 50-year-old National Flood Insurance Program is a prime example of this danger. By providing insurance coverage to all comers at rates insufficient to match the level of risk, the NFIP encourages development in disaster-prone and environmentally sensitive regions.

While I remain disposed to skepticism about government insurance programs, I do not believe any of the proposals discussed here today—such as Rep. Maloney's Pandemic Risk Insurance Act (PRIA) or the joint-trades' Business Continuity Protection Plan (BCPP)—pose much, if any, risk of moral hazard. With or without insurance and with or without government support, there is likely nothing at all a business owner could do to avoid the impact of a pandemic. Indeed, the greater threat is a business that would go out of its way to keep its doors open, despite the dangers that could result.

Which is not to say moral hazard is irrelevant to the pandemic or to how insurance responds to it. Business interruption is far from the only insurance coverage implicated by viral contagion. Most obviously, employers in nearly every state must provide, on a no-fault basis, workers' compensation coverage for illnesses contracted on the worksite or in the usual course of job duties. Businesses also obtain various commercial liability coverages that could be triggered if they breach a duty of care or otherwise recklessly cause foreseeable harm by exposing a customer or other third party to the virus.

Where a business is a potential nexus of contagion, we should want them to internalize that cost and to adjust their operations in the interest of better protecting public health. That could mean investments in mitigation, adaptation and prevention. It could mean making sure a worksite is well-stocked with personal protective equipment or that the spatial orientation is changed to reduce the risk of infection.

These casualty and liability lines of business exemplify how risk-based insurance rates can serve a regulatory function, providing price signals that encourage businesses to adopt those practices that best protect their employees and others. If Congress is to move forward with creating a federal insurance or reinsurance program to manage pandemic risk, I would strongly urge to focus tightly on the unique challenges of business interruption and not extend it to casualty and liability lines of coverage. It would be extremely unwise to extend public subsidies that could serve to encourage recklessness.

A MURKY ROLE FOR BUSINESS INTERRUPTION INSURANCE

The approach proposed by PRIA is to graft coverage for pandemic risks onto the existing structure of business interruption coverage by providing a $750 billion federal backstop for insurers who choose to participate, with the industry retaining only about 5 percent of the total risk. But only a minority of businesses—a little over a third—currently maintain business interruption coverage. Given that the program would be voluntary for insurers to offer and voluntary for insureds to purchase, it is reasonable to assume less than a third would ultimately elect to carry it.

Even for those who do, there are real questions about whether the sorts of claims we can reasonably anticipate policyholders to make would actually be paid. PRIA is a good faith attempt to extend coverage and avoid the sorts of claims disputes that have prompted hundreds of businesses to sue their insurance companies. The program may well extend coverage but there are some predictable areas of conflict that will almost certainly land policyholders back in court.

Business interruption and contingent business coverages are components of commercial property insurance policies. PRIA would ask participating insurers to vitiate standard contract language that excludes claims for viral pandemics. But that would not change a more fundamental presumption of any property insurance policy: that there must be demonstrable physical damage to the insured property.

To be sure, there are legal theories—some of them currently being tested in the courts—that business closures are necessitated by viral contamination of surfaces within the covered property. But whether that is applicable in any given case is going to depend both on the nature of the virus and the nature of the property. If contamination can be easily cured by wiping down surfaces, that is going to be an extremely limited claim. The reality is, creative legal theories aside, most business closures in this pandemic have had nothing to do with potentially contaminated surfaces. They have instead sought to avoid transmission between people. That is not a risk covered by property insurance.

There is also the question of what triggers coverage. Both PRIA and the BCPP proposal tie coverage to public health emergency orders, such as mandated shutdowns. But the experience we have had in this pandemic shows why that is almost certainly insufficient. The initial wave of business closures did not come as a result of mandated shutdowns; they were in response to customers choosing to stay home. A number of states and localities never formally "shut down" businesses at all and yet still suffered precipitous drops in economic activity. As of October, after nearly all states lifted shutdown orders, airport traffic remained down 60 percent from before the pandemic and OpenTable restaurant reservations were down nearly 40 percent.

There is no "business is bad" insurance. Without some sort of external trigger, there is no cause to make a business interruption claim for a business that has merely been depressed, not interrupted.

Again, insurance is risk transfer, not economic assistance. It should give lawmakers pause that PRIA would represent a $750 billion investment of taxpayer dollars in a program that two-thirds or more of businesses will not access, where many claims will still be denied and where the kind of loss that will be most commonly experienced by businesses does not and cannot constitute a claim.

WHY RISK-BASED COVERAGE MAY BE BAD

A central argument for a public-private partnership to support business interruption insurance for pandemics is that, while the federal government can bring its balance sheet to bear, it does not have the insurance industry's expertise in modeling, managing and mitigating risk. I find myself in the uncomfortable position of critiquing that argument, given that it is one that I myself have made for the entirety of my career in public policy, whether the subject was flood insurance or crop insurance or terrorism insurance.

But it is important to ask: modeling, managing and mitigating the risk of what, specifically? In the case of business interruption insurance, it is not the risk of viral transmission. It is not even the risk of a pandemic, not quite. It is the risk of business closure as a result of a pandemic.

I mentioned earlier that I do not believe there is anything a business owner could do to avoid the impact of a pandemic. What they could do—what risk-based insurance might encourage them to do—is to avoid making a claim by refusing to shut their doors and by pressuring local leaders not to issue mandatory shutdown orders. From a public health perspective, that is the opposite of what we want to happen. And yet, we see it has happened. It is one reason we see the incoherent outcome that, in some cities, schools are closed while bars and restaurants are allowed to remain open.

Like any efficient insurance market, a risk-based insurance market for pandemic business interruption insurance would seek to align the incentives of the insured and the insurer. Among the ways this is generally accomplished is through deductibles, which discourage policyholders from making claims for shallow losses. More broadly, it is accomplished by matching premiums to the level of risk. For example, businesses that could continue operating remotely even in the midst of a pandemic are low-risk and would be offered the most affordable coverage.

On the other hand, risk-based insurance premiums for restaurants, gyms, theatres, barbers, manicurists—any environment where you have close personal contact with strangers or indoor mass congregations of people—would be punishingly expensive. Actuarial science is notoriously complex, but the basics of risk-based premiums are fairly simple: frequency times severity. The severity of a pandemic contagion, even if it happened just once a century, is so extreme that a risk-based premium could not be affordable for the overwhelming majority of small businesses—or even churches and social groups—that rely on in-person human interaction. If they were forced to buy this coverage, many could simply no longer exist. That is not a socially desirable outcome.

The saving grace—the reason we would not likely see that outcome—is itself discouraging. Because the coverage would be voluntary, these sorts of businesses almost certainly would not take it up. Thus, the very businesses who have been hardest hit by this pandemic and would likely be hardest hit in any future one would remain the most exposed.

LEARNING FROM THE CURRENT PANDEMIC

Proposals like PRIA and the BCPP initially were put forward in the early days of the pandemic. The folly of imagining that lawmakers could have the foresight to craft structures that anticipate future pandemics is just how much has changed in the few months since those proposals were debuted.

I consulted with the insurance trades on the earliest drafts of what became the BCPP. I believe it was my idea to cap the maximum coverage the program would offer at three months of business income. Back in April, that seemed like a generous benefit. Seven months later, with caseloads breaking new records every day and a vaccine at least months away from broad distribution, it seems much less so.

PRIA was originally a $500 billion proposal. It is now a $750 billion proposal. But it is also clear that that amount, while a lot of money for a federal program, is not nearly enough for the scope of the problem. Moreover, PRIA is structured as a single pot of money. Were it in place during COVID-19, it may well have been completely depleted by the earliest phases of the pandemic, when the virus was contained largely to New York and New Jersey. By the time the second wave spread across the Sunbelt in June and July, there may have been nothing left, to say nothing of the third wave we are now encountering.

Any program that Congress does establish should follow some broad principles gleaned from our experience thus far with COVID-19. But we also should be humble about how much we still do not know even about the current pandemic, much less the next one.

The program should endeavor for broad participation, with a bias toward encouraging small businesses, nonprofits and community organizations to take part. Larger enterprises already have available to them a number of insurance options that small businesses do not, from the ability to create captive insurance companies to relatively easy access to bespoke products in the excess and surplus lines market. Indeed, our experience with the Terrorism Risk Insurance Act suggests we should be particularly skeptical of how large companies might use captives to game a structure like PRIA, including for tax-avoidance purposes, with the overwhelming majority of risk passed on to taxpayers.

If there is to be a premium or a participation fee for the program, it should be flat, not risk-based. One common concern of insurance markets is the problem of adverse selection. Because an insured has more information about their own risk than an insurer does, the riskiest businesses are also the most likely to buy coverage. While that is a problem for writing insurance profitably, the public health goals of pandemic response turn that issue on its head. The businesses most at risk of shutting down are the ones to whom we most need to extend a safety net. We want them to cooperate with shutdowns, not push back.

In the spirit of broad participation, the insurance industry should not be the sole marketing force for any federal pandemic risk program. PPP was administered primarily by banks and credit unions and that appears, on balance, to have worked pretty well. There is no reason that lending institutions, payroll processing companies or credit card issuers could not help to sign up participants.

The same applies when it comes to distributing benefits. The insurance industry's claims-adjustment force is already pushed to capacity to keep up with disasters like hurricanes and wildfires. Adjusting business interruption claims requires special training. Moreover, adjusting claims is a slow and laborious process, which conflicts with the goal of getting money out the door as quickly as possible. A parametric trigger, such as the one in the BCPP, would better accomplish that goal.

The BCPP balances the parametric structure by enumerating specific purposes for which benefits can be used, like rent and payroll. Any disbursed benefits not used for those purposes could later be clawed back. While this is how PPP worked and how the BCPP would work, it is not how business interruption insurance works. A policyholder that makes a claim for business interruption might use the money to continue paying staff, but there would be nothing requiring them to do so. Even with PRIA in place, a business owner could make a claim for interruption while simultaneously placing all his or her employees on furlough. Lawmakers should understand that.

Another question is whether it is wise to create a federal program at all. Given that public health orders are overwhelmingly the jurisdiction of state and local governments, one option would be to allow the states to create their own programs, with the U.S. Treasury partially reimbursing the cost. This would require Congress to establish some minimum guidelines for qualifying programs. But so long as the reimbursement formula was relatively transparent and applied equitably, it would permit innovation and local customization in program design, while also limiting the "run on the bank" danger that a single pot of federal money like PRIA might face.

But above all, my recommendation to lawmakers is to take your time. Perhaps more private solutions, from the insurance industry or some other source, will emerge to meet these challenges before the next pandemic. Perhaps Congress would again have to provide ad hoc assistance. It is profoundly more important that Congress do its job to get assistance to the businesses, workers and communities who need that help right now than that it is to pretend to have the answers in 2020 to a crisis of unknown and unknowable dimensions that may befall us in 2025 or 2050 or 2100.

Thank you, and I would be happy to answer any questions.

Testimony before the House Financial Services Subcommittee on Housing, Community Development and Insurance
"Insuring against a Pandemic: Challenges and Solutions for Policyholders and Insurers."
November 19, 2020

Michelle McLaughlin
Chief Underwriting Officer, Small Business & Commercial Middle Market
Chubb

Good morning Chairman Clay and members of the Subcommittee. My name is Michelle Menendez McLaughlin, and I am the Chief Underwriting Officer, Small Business & Commercial Middle Market, at Chubb. Thank you for inviting me to speak to you today on behalf of Chubb regarding pandemic risk and our ideas for creating a public-private partnership that includes risk sharing by the insurance industry. As the COVID-19 pandemic has shown, pandemics are not only tragic in their impact on peoples' health and lives but devastating in their impact on the economy and peoples' livelihoods, as well. We believe that the insurance industry has an important role to play alongside the federal government in providing assistance to businesses in order to blunt the economic impact of future pandemics by keeping businesses open and people employed. Chubb's plan creates a framework to do that, and I appreciate the opportunity to provide you with the details of our proposal.

By way of background, Chubb is the world's largest publicly traded property and casualty insurer and the largest commercial insurer in the United States. With operations in 54 countries and territories, Chubb provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, and reinsurance to a diverse group of clients. Chubb has more than $181 billion in assets and $40 billion of gross premiums written in 2019. The U.S. accounts for approximately 60% of Chubb's premium written. Chubb employs approximately 33,000 people worldwide, with over 16,500 of those employees in the 44 branches around the U.S. Chubb's core operating insurance companies maintain financial strength ratings of AA from Standard & Poor's and A++ from A.M. Best. Chubb Limited, the parent company of Chubb, is listed on the New York Stock Exchange (NYSE: CB) and is a component of the S&P 500 index.

Some risks can create losses so great that they are not insurable in the private insurance market without substantial government support, including catastrophic terrorism and pandemics. Pandemics, unlike other catastrophes like wildfires and hurricanes, are not limited to a specific geography, time period or risk class, but instead can affect entire economies and almost every business. The private insurance market cannot underwrite such massive losses. Thus, any pandemic insurance solution will require substantial involvement of the federal government: neither private sector investors nor the insurance industry has the financial capacity to underwrite a shutdown of the U.S. economy. In partnership with the federal government, however, the insurance industry can and should play a meaningful role in providing future pandemic risk coverage that would protect local and national economies and businesses small to large.

Recognizing the insurance industry's risk-taking role, Chubb has proposed a public-private partnership that can be implemented before the next pandemic. Our proposal would provide certainty to businesses so that they could keep employees on the payroll and avoid massive economic disruptions like those caused by COVID-19.

Our proposal has two elements: a program for small businesses that provides an immediate cash infusion when a pandemic is declared and a separate voluntary program for medium and large businesses with losses paid through the existing industry claims adjudication process. Both depend on the federal government assuming a substantial percentage of the risk, through direct U.S. Treasury funding for the small business program, and through a newly created government–run reinsurance entity for medium and large business losses.

Our proposal builds around five key attributes:

1. **A program that provides a meaningful role for the insurance industry to share pandemic risk with the government.**
   It is important for the industry to participate in the solution by sharing risk. Industry involvement in a public-private partnership will lead to better understanding of pandemic risk and incentivize improved risk mitigation and preparedness. A solution that commits insurance industry capital also provides an opportunity for increased risk-sharing over

time, as direct and secondary markets develop, thus helping to reduce the government's financial burden. We note that other types of risk, notably terrorism and flood, were once thought to be uninsurable, but now, with the government playing a role, private coverage capacity has become available.

2. **A program structure recognizes the immediate needs of small business.**
   Pandemics do not impact all businesses equally. Generally, small businesses are at much greater financial risk than larger businesses and may face immediate shut-down because of their more limited financial resources, less liquidity, less access to capital, credit, and risk-management mechanisms than larger businesses. For these reasons, any pandemic insurance program must recognize and respond to the different needs of small business consumers.

3. **A program that provides affordability and choice for small businesses, with strong incentives to purchase coverage and timely claim payments in crisis.**
   Purchase of pandemic coverage should not be mandated but should be strongly encouraged. Premium for a pandemic business interruption insurance policy must be affordable for small businesses, while also providing insurers with an appropriate risk-adjusted price for exposing their capital to loss. This will require significant government subsidies to take on the tail risk. While it is not mandatory for companies to purchase coverage, there would be a strong opt out and companies that choose not to purchase coverage would forgo access to future government pandemic assistance. Finally, to facilitate timely claims payments, the coverage should be based on pre-defined limits and triggers.

4. **A program that provides effective incentives for broad participation by the insurance industry.**
   A pandemic program should be structured to encourage broad participation by insurers and create incentives for a new insurance market to benefit businesses, small and large.

5. **A program that is fiscally responsible.**
   A pandemic insurance program with clearly defined mechanisms, triggers, and benefits will be less costly, more efficient, and more equitable than an ad hoc government relief program.

The Chubb Pandemic Business Interruption Program

The purpose of the Chubb Pandemic Business Interruption Program is to assist businesses and mitigate economic disruption during future pandemics through a private-public partnership that combines (i) the ability of the insurance industry to assess and absorb risk onto its balance sheet, while also using its administrative infrastructure to issue policies, collect premiums and handle claims, and (ii) the backing of the federal government (and subsidization of premium by the government) because, as we have noted, the magnitude of potential loss makes pandemic broadly uninsurable.

The Chubb proposal creates a framework with two main components in keeping with the key attributes discussed above: one component addresses the needs of small businesses and the other focuses on medium and large businesses. We have bifurcated the program because pandemics affect small businesses differently. Their needs are different and, therefore, they require a different approach than larger businesses.

Part one of the Chubb proposal is the Business Expense Insurance Program (BIP) for small businesses, which are defined as businesses with 500 or fewer employees. The BIP provides coverage for up to three months of payroll, plus other expenses such as rent and utilities for certain classes. Claims are paid under a parametric structure. That is, they are based on a pre-determined amount and paid automatically when the program is triggered (after expiration of a 14-day waiting period). This structure avoids the complexity of adjusting individual claims and provides policyholders with certainty by ensuring that small businesses know the financial assistance they will receive and that timely funding will be received after an event. The 14-day waiting period incentivizes good risk management by small businesses, which will need to maintain a level of short-term liquidity until the claims payments commence.

The trigger to determine a qualifying pandemic event is objective and uses medical and public health policy criteria. A pandemic triggers BIP payments if:

(i) The United States Centers for Disease Control (CDC) has declared a pandemic in the U.S. caused by any human disease arising from a pathogenic microorganism and with an objective measure of catastrophic medical impact;

(ii) A public health emergency has been declared by the U.S. Department of Health and Human Services (HHS) or a national emergency has been declared by the President; and

(iii) State orders are issued closing or curtailing normal business activity.

Coverage commences on the date that the Treasury Department certifies that the requirements for a qualifying event have been satisfied. Pandemics caused by bioterrorism and COVID-19 are not covered by the Chubb program.

The program limit is approximately $750 billion, split into two layers, with the private sector participating only in Layer 1. Layer 1 is a defined amount, set at $250 billion. The industry's share is 6% of that amount ($15 billion) in the first year, increasing to 12% ($30 billion) over the 20-year life of the program. Each individual insurer's retention is based on its market share. Thus, an insurer with a 5% market share would be responsible for 5% of the industry's total liability in any one year. A smaller company, with less market share would assume less liability under the program. Layer 2, which is funded solely by the government, has a floating limit that is set each year according to the government's capacity. Based on payroll statistics, a reasonable estimate for Layer 2 in the first year of the program is $500 billion.

To ensure timely payment of claims and avoid potential issues such as timing of cash-flow, allocation of limits, and post-event recoupment, a credit facility will be created. Both insurers and the federal government will provide first dollar claims payments, creating confidence and certainty to both businesses and insurers that the program will be funded and functional. The facility will be funded by the government up to the government's limit (excluding the industry's obligated amount) and will be available to draw down as needed for claims payments.

A BIP policy would be offered as an endorsement to a workers' compensation policy or a business owners policy (BOP). Insurers that offer such coverage would be required to offer their policyholders the option of purchasing a BIP policy. While not mandatory for companies to purchase coverage, there would be a strong opt out. Premiums would be affordable because policyholders would pay premium only on the insurers' portion of the risk (but not the larger government portion). Moreover, companies that choose not to purchase coverage would forego access to any federal assistance in the event of a future pandemic. We believe the reasonable rates, government subsidy, and federal assistance prohibition will lead to high take-up rates, perhaps exceeding 90%.

Part two of the Chubb proposal creates a federal reinsurance facility, Pandemic Re ("Pan Re"), for businesses with more than 500 employees. Medium and large businesses generally have more financial resources and options than smaller businesses. They may have greater liquidity, more access to capital, employ insurance risk managers, utilize captives, self-insure or use other risk management options. For these reasons, the impact of a pandemic on these businesses is not as immediate, and direct government assistance does not need to be as highly subsidized.

Chubb believes this issue can be effectively and efficiently addressed for medium and large businesses with a partnership between the private sector and the government where both parties take risk. The government would establish a reinsurance facility solely to cover pandemic risk, which would accept risks at commercial terms at a risk-adjusted price. Private insurance companies that choose to sell such coverage would write pandemic business interruption policies at market terms and retain some portion of the risk, reinsuring the rest to Pan Re. For the first five years, private insurers would cede 95% of the risk to Pan Re, retaining 5%, with a maximum industry aggregate limit of $15 billion. Thereafter, private insurers would increase their retention gradually over time and decrease their cession to Pan Re from 95% to 90%, with a maximum aggregate limit of $30 billion by year 10 of the program. Insurers could seek to reinsure or transfer the business interruption exposure to other private markets as appetite for excess limits develops, but Pan Re, when elected as reinsurer, would always accept risk. Additionally, Pan Re would be given the ability to purchase reinsurance (retrocession insurance) if a private market were to evolve over time.

Business interruption coverage would be written on modified standard industry forms, providing payment for business expenses (subject to proper claims verification) and triggered according to the same standards as described above for the BIP. Purchase would be voluntary, and insureds could elect 1-3 months of coverage, with a maximum payout of $50 million per policy. Having a policy limit is an integral feature of the Chubb program, as large insureds could otherwise buy up much of PanRe's capacity quickly, limiting the number of companies that could access the program and potentially increasing the federal government's exposure. Insurers would set rates consistent with private market pricing, and Pan Re would charge market rates for the reinsurance provided. The government would benefit from the accrual of Pan Re's earnings and growth in book value. Policy administration, servicing and claims would all be handled by participating private insurers.

Pan Re's exposure depends on the take-up of the business interruption product by businesses. Our analysis suggests approximately 20,000 U.S. businesses would qualify to purchase coverage from participating insurers. If 30% of those businesses elect to purchase business interruption coverage at a $50 million policy limit, this would equal $300 billion of total risk exposure/maximum loss. In that instance, private insurers would absorb 5-10% ($15-30 billion) and Pan Re's exposure would be $270-285 billion. Pan Re would have a finite risk aggregate limit of $400 billion representing the maximum potential obligation of the government and participating insurers.

Conclusion

The private sector cannot underwrite pandemic risk without federal government involvement. With government support, Chubb believes that the insurance industry can and should have a meaningful role in providing business interruption coverage as part of a public-private partnership. Industry's involvement will lead to greater understanding of pandemic risk, better preparedness, and improved mitigation. Chubb's Pandemic Business Interruption Program would establish a two-part program to address the unique needs of small, and medium and large businesses, with a significant risk-taking role for the industry, which will also provide its operational expertise to handle premium and claims.

We recognize that our proposal is one of several that have been suggested by policymakers, industry players, and policyholder groups in the past several months. The proposals differ in important ways, but a number of them include the essential elements of a public-private partnership and industry risk-taking. While our proposal may not answer all the questions, we hope that it encourages dialog and provides ideas for addressing future health crises that could have devastating effects on the lives and livelihoods of so many. We appreciate your interest in the Chubb program and look forward to working with you and the other stakeholders as your work on this critical issue continues.

Thank you.

AMERICAN ACADEMY *of* ACTUARIES

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Statement of

Lauren J. Cavanaugh, MAAA, FCAS
Vice President—Casualty
American Academy of Actuaries

Submitted to
U.S. House of Representatives
Committee on Financial Services
Subcommittee on Housing, Community Development and Insurance

Regarding Virtual Hearing
November 19, 2020
Insuring Against a Pandemic:
Challenges and Solutions for Policyholders and Insurers

On behalf of the Casualty Practice Council of the American Academy of Actuaries,[1] I am pleased to offer this written testimony for the hearing record regarding the topic of pandemic risk insurance.

The impact of the COVID-19 pandemic has clearly exposed the challenges that small businesses face when forced to close due to the widespread health challenges resulting from a pandemic. We note the efforts undertaken by the subcommittee to address the issue of business interruption (BI) insurance protection for future pandemics. The intent of proposed legislation, notably H.R. 7011, is to enable the expansion of commercial insurance market to include pandemic virus as one of the hazards covered by standard BI insurance policies. Currently, this hazard is excluded from almost all BI insurance policies. With this in mind, we wish to elevate some key points as follows.[2]

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[1] The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

[2] More on these points can be found in the following comment letters:
https://www.actuary.org/sites/default/files/2020-05/Pandemic_Risk_Comments_20200511.pdf;
https://www.actuary.org/sites/default/files/2020-06/Pandemic_Risk_HR_7011.pdf

What makes insuring a pandemic different
Currently, pandemics are excluded from most BI insurance policies because pandemics, by definition, impact many people or businesses across different geographies and over an extended, continuous period. Generally, property/casualty insurance works by pooling risk, taking limited and randomly occurring events (e.g., fires, automobile accidents, windstorms) and distributing the associated expected costs over a large pool of policyholders. For catastrophic events, this risk distribution is often facilitated by the reinsurance market, which spreads the risk over global financial markets. When an event is potentially very widespread, perhaps affecting millions of policyholders for a continuous extended period on a global basis, the model of distributing costs over a larger pool does not work well. Also, a commercial insurance model does not work well for events like a pandemic when the potential cost is large, has no clear maximum, and occurs very infrequently.

Existing government insurance programs may provide insights for the design of a new program
In some cases in which the private insurance market has been unable or unwilling to provide very large amounts of coverage for certain perils where the outcomes are extremely uncertain and/or very difficult to model, the federal government has established programs to facilitate insuring against such perils (e.g., terrorist attack, nuclear power plant meltdown, and flood). You may find elements of each of these programs useful as you consider pandemic BI coverage.

Business interruption insurance is complicated
BI insurance is a complex coverage. A BI policy is triggered after a physical event has occurred and the insured business has been shut down for a specified period. Depending on the terms of a policy, an insurer typically then pays the business owner an amount that represents lost profits and some ongoing operating expenses for the duration of the shutdown, up to the amount of time or dollar limits specified in the insurance contract. BI claims often take months or even years to be fully settled, as there is an initial waiting period, lost income must be determined, and the payment would typically be made after the closure of the insured business had run its course. BI is an optional coverage that businesses must elect to add to basic property insurance, and is estimated to be purchased less than half the time.

When considering the goals of a BI funding program, the complexity of the usual claim settlement process should be considered in conjunction with the need to make cash payments to businesses available quickly.

Finally, expanding BI coverage to include a new risk (e.g., pandemic virus) will increase the cost of BI insurance policies. The result could be a coverage that is available but having only a limited number of small businesses able or willing to purchase it.

Perspectives on H.R. 7011
H.R. 7011, the proposed *Pandemic Risk Insurance Act of 2020*, has become a leading vehicle for discussion of potential BI legislative options. It would provide a form of federal government backing for business interruption policies written by participating insurers. Coverage under such policies would be defined to also include event cancellation. Upon purchase of a policy from a participating insurer with a pandemic inclusion, a policyholder would pay a premium that represents the insurer's expected exposure to potential pandemic claims. When a declared pandemic generates $250 million in covered losses (across all insurers), the governmental role

would be triggered. The government's share, 95% of losses above insurers' deductibles up to a total of $750 billion, would be funded from general funds of the U.S. Treasury.

When a covered business interruption event occurs, the policyholder would submit a claim to its insurer. The insurer would aggregate its claims to see whether these types of claims meet its aggregate deductible, which would be calculated based on the insurer's total written premium. When the deductible is met, the insurer would then submit the information claim-by-claim to the federal government for the federal government to process. The federal government would pay 95% of the amounts above each insurer's deductible. The legislation is not clear on whether the governmental funds are a reimbursement to the insurer when the insurer's deductible has been met or whether these claims are paid directly to the insured businesses.

In addition, the legislation states that the participating insurer is liable only for its deductible, but in fact the liability to a participating insurer appears to be greater. The 5% that the federal government does not pay above its deductible would appear to fall to the insurer to pay. Thus insurers would be responsible for losses in their deductible layer plus 5% of losses in excess of their deductible layer (with no limit) plus potentially a portion of the remaining 95% of losses in excess of their deductible layer, to the extent these are not paid for or reimbursed by the federal government—for example, when the total losses are less than $250 million.

Considerations that would impact the effectiveness of the legislation:

1. **Participating insurers**. H.R. 7011 assumes that insurers are willing to participate in the program. The legislation is unclear on several points, raising questions that may have an impact on the willingness of insurers to participate. These include the following:
    a. Are all insurers offering business interruption insurance required to be participating insurers?
    b. Are all insurers offering business interruption insurance, even if not participating insurers, required to cover pandemic risk?

    Considerations of how much of the market is participating are important, as they affect how insurers set premiums for the pandemic coverage. Insurers need to understand what percentage of the government-capped coverage would be available and the timing of its availability.
2. **Setting premiums**. Participating insurers would be setting a premium provision related to the new pandemic coverage that would be charged to policyholders. Determining the added premium will be difficult. As a reminder, the premium would need to include the insured businesses' expected losses covered under the policy, the insurer's expenses, and a provision for uncertainty—sometimes called a risk margin.
    a. The expected loss estimates used in the pricing of pandemic BI policies would factor in the policy specifications related to what type of lost cash flows are covered—that is, whether it is revenue, income, expense, or other specified amounts—as well as the time horizon or dollar limits on these amounts. Note that business interruption policies do not provide unlimited coverage.
    b. In addition, the participating insurer would factor into the premium and its underwriting (that is, how many policies it is willing to write) scenarios when its deductible will be met. If the insurer is expected to advance payment to policyholders after its deductible is met prior to the federal government providing reimbursement, consideration for that might be made in the premium.
    c. The determination is further complicated by the specifications of the layers of coverage that are the responsibility of the insurer, as discussed earlier.

3. **Premium levels**. Participating insurers would develop models to set a premium amount, but the provision for the uncertainty or risk margin embedded in the premium could increase the premium for the coverage to levels that might be considered unaffordable. Alternatively, the amount of coverage through the adjustment of policy limits could be reduced. If the limits are reduced, that would also impact non-pandemic coverage limits, because the legislation states that the pandemic coverage is to be similar to the non-pandemic coverage on the same policy.
4. **Level of the federal cap on government participation**. While $750 billion is certainly large, it may not be a sufficiently large cap to cover all insured losses. Under a scenario where the cap does not cover the full amount of insured losses, there would need to be an approach to allocate in a fair manner the reimbursement to the policyholders. That approach would need to consider all claims from all policyholders. The impact of such an approach would be a potential delay in making payments to any policyholder to mitigate issues associated with asking for a return of a previously provided claim settlement. This assumes that neither the insurers nor the federal government would be responsible for any losses above the $750 billion cap, which is what the legislation appears to provide.
5. **Claim adjudication and settlement**. Business interruption claims inherently take time to settle. The total value of a claim may not be known until a business is ready to fully reopen and the lost revenues and expenses are tallied up and presented to the insurer. The insurer then carefully considers the justifications for these amounts and uses trained claims adjusters to review the financial documentation prior to paying a claim. This claims-handling process takes time and generally much more staffing than handling routine claims such as automobile physical damage. There are several impacts of this process to keep in mind.
    a. The cash flow back into the economy is not immediate. In addition, the amounts are not intended to keep payroll and benefit amounts flowing to individual employees. The amounts are paid to the businesses themselves as indemnification for the losses without specification on how the business is to reopen.
    b. When business interruption has been triggered under a property catastrophe event such as a hurricane, the number of businesses impacted is smaller than under a pandemic. Insurers have been able to handle the BI claims in those situations, but the BI claims may still take months or even years to reach final settlement. If pandemics are covered, the number of claims would swell. Combined with the time needed to handle these claims, additional delays in processing are likely to occur.
    c. In order to facilitate the handling of so many claims at one time, the coverage for pandemic BI may need to differ from non-pandemic BI in order to simplify the claims handling and further economic goals by more readily getting cash into circulation and preventing a bottleneck. There is more than one way that the coverage could be simplified. If simplified, that may mean that the format of the coverage would not be consistent with other business interruption insurance.

Technical matters

In addition to the items already discussed, there are other technical matters that the current version of H.R. 7011 leaves unclear. While we recognize that rulemaking procedures after legislation is passed often deal with technical matters, additional clarity related to the intent of the legislation on several of these matters could simplify the implementation process. Considerations and questions to address include:

1. The premium used in determining a participating insurer's deductible includes more than just the premium associated with the policies that include business interruption insurance. For example, the premium base includes workers' compensation and general liability, neither of which has a business interruption component. This feature could serve to discourage insurers from being willing participants if business interruption insurance is currently only an incidental coverage that they provide.
2. The trigger, insurer deductibles, and the aggregate limit in the legislation are described as being on a calendar-year basis. What if the pandemic spans more than one year?
3. Commercial insurance policies are not all effective on the same date. Their policy terms start throughout the year and can span into the following year. How would the calendar-year provisions noted above interact with these varying policy dates?
4. Would there be a specific procedure to declare that a covered public health emergency has ended?
5. What happens if there is a subsequent reoccurrence of the same communicable disease? How would it be handled if there is more than one covered public health emergency in one year?
6. There is provision in the legislation to avoid duplication of compensation for insured losses. The federal share is to be offset for payments made via other government programs. How would the participating insurers know these amounts at the time the claims are being settled?

* * *

The Academy's Casualty Practice Council has worked in the past to help the Congress and other stakeholders to better understand the actuarial implications in flood insurance, terrorism risk, and other property and casualty insurance issues. We look forward to working with this committee as you consider the challenge of providing business interruption insurance coverage in the event of a pandemic event.

Independent Insurance Agents
& Brokers of America.

Statement for the Record
Submitted to the House Committee on Financial Services
Subcommittee on Housing, Community Development and Insurance

"Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers"

November 19, 2020

Founded in 1896, the Independent Insurance Agents & Brokers of America (IIABA or the Big "I") is the nation's oldest and largest association of independent insurance agents and brokers, representing more than 25,000 agency locations united under the Trusted Choice brand. Trusted Choice independent agents offer consumers all types of insurance—property, casualty, life, health, employee benefit plans and retirement products—from a variety of insurance companies. Independent agents sell nearly 80 percent of all commercial lines insurance policies in the United States, and our expertise and experience with businesses and the commercial marketplace affords our membership a distinct perspective with which to speak on the topic of insuring against a pandemic.

The businesses and nonprofit organizations our members serve have been impacted by the COVID-19 pandemic in distressing and sometimes heartbreaking ways, and IIABA welcomes and greatly appreciates the subcommittee's examination of how to better prepare our country's economy against future pandemics. The world now recognizes that events of this nature can indeed occur, and we need to prepare for the possible occurrence of similar outbreaks in the future. Although the United States remains in the midst of the current COVID-19 pandemic, the discussion among policymakers, the business community, the insurance industry, and other stakeholders about how to address future pandemics has appropriately begun. IIABA looks forward to assisting your efforts.

The challenge with addressing pandemic risk is that these events possess unique characteristics and can have a global reach. They are unlike other types of risks that the insurance industry and private marketplace are typically able to address. As many experts and observers have noted, pandemics can produce an immense magnitude of potential financial losses, do not allow for the spreading of such risk in traditional ways, and make it challenging for the insurance industry to provide coverage to the millions of businesses and nonprofit entities in the United States. The simple and unfortunate reality is that the risk we are confronting is unique and anomalous and will require a prospective solution all its own. We can learn lessons and incorporate elements from past experiences, but there are no off-the-shelf public policy solutions.

IIABA believes any proposal for addressing future pandemics should satisfy the four principles outlined below:

- First, any legislative solution that is enacted and any product ultimately designed and offered as a result of that action must effectively meet the needs of the businesses we serve. Any action taken should ensure that businesses and other enterprises can receive timely financial assistance when their operations are disrupted as a result of a pandemic that rises to the level of a public health emergency. This type of financial protection program needs to be as efficient and seamless as possible.

- Second, any prospective solution should provide an active and relevant role for the insurance industry in the delivery of assistance for business consumers (a perspective shared by a growing universe of policymakers and industries). Businesses and nonprofit organizations look to their insurance agents to help them address and protect against risk, and any conversation about whether an entity is protected against a particular risk is almost certainly and most appropriately going to come up as part of the insurance placement process and in conversations between an owner and their agent. The product that may ultimately be developed to respond to pandemic risks may not be an insurance product, but our members want a solution that can fill the gap that traditional insurance is unable to fill and enable insurance agents to help their clients weather future pandemics.

- Third, given the unique nature of pandemic risk, it is essential that the federal government bear all or nearly all of the financial responsibility for business losses associated with COVID-19-like events. The insurance industry is simply unable to cover these potential losses. Some insurers may be able to assume very small and precise portions of the risk on their own but requiring insurers to assume that responsibility would be troubling.

- Fourth, the product or program designed to fill this protection gap must reflect the unique nature of pandemics. Among other things, this means the product must be parametric in nature and obviate the need for traditional claims adjustment. Financial assistance to businesses should be based on their existing payroll, expenses, and other factors and should begin to flow when clearly defined triggers are satisfied. Traditional claims adjustment in this sort of instance would be overwhelming and impractical and would unnecessarily delay much-needed payments to businesses.

One proposal that the Big "I" supports that satisfies these high-level principles is the Business Continuity Protection Program (BCPP). This proposal would establish a voluntary federal program within the Treasury Department that allows for the purchase of revenue replacement assistance for business interruption caused by a viral pandemic or other epidemic infectious disease that have been federally declared as public health emergencies (Please see the attached document for a detailed overview of the BCPP).

While IIABA has expressed strong support for the BCPP concept, we should also note that there may be other meaningful proposals that satisfy the principles outlined above. The Business Continuity Coalition (BCC), for example, is working on a proposal that relies heavily on the BCPP framework and envisions the same type of parametric program, and we believe their ideas possess significant merit and deserve serious consideration.

IIABA is excited to work with the Committee on this critical issue and hopes the information above provides helpful insight into how all parties can come to the table to create a pandemic risk program. IIABA is thankful for your consideration of our views.

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Business Continuity Protection Program

(Updated September 2020)

Insurers fundamentally agree that pandemic business interruption is an uninsurable risk. This proposal would establish a voluntary federal program within the Treasury Department that allows for the purchase of revenue replacement assistance for business interruption caused by viral pandemic or other epidemic infectious disease that have been federally declared as public health emergencies.

The proposal also establishes a voluntary federal excess coverage program with a federal backstop for losses beyond what is covered by the BCPP's revenue replacement assistance and provides for the design of financial protection products to address event cancellations resulting from pandemic emergencies through rulemaking requirements. This proposal contemplates the creation of the ***Business Continuity Protection Program (BCPP)*** authorizing the Secretary of the Treasury to name a director and stand up the program within Treasury with an effective date six (6) months after enactment of the legislation.

Program Purpose

- The program is designed to bolster the country's economic resilience by providing timely and efficient financial protection including payroll, benefits, and expense support to the private sector in the event of a future declared public health emergency
- To enable interested businesses and nonprofit institutions to purchase access to revenue replacement assistance, excess coverages, and event cancellation protection and thereby affordably obtain financial protection from economic shutdowns due to viral outbreaks not found in the private market

Participating in the Program

- **Eligibility** –Revenue replacement assistance will be available to any interested firm incorporated in the United States or a U.S. territory
  - All for-profit and non-profit entities would be eligible
  - Entities would not be barred from purchasing assistance due to size
  - Entities must enroll at least 90 days prior to a Presidential viral emergency declaration in order to receive assistance payments

- **Application** – The program director shall develop a simple program application process
  - An easy to complete, one-page electronic application form for participants
  - Program director would request the business' previous one to two years of annual tax returns to determine expected assistance benefit
    - IRS Form 1120 (e.g., Lines 13, 14, 16, 17, 18, 23, 24 and 26)
    - Form 990 (e.g., Lines 15, 17, etc. – similar to above 1120 lines)
    - Other official forms as the program director allows

- Businesses with physical locations in more than one state would specify the allocation of risk at time of purchase (EX: 40% of their revenues in NJ and 60% in NY)
- Provide the business categorization based on the North American Industry Classification System (NAICS) for purposes of determining assistance benefit formula based on closure status
- The business owner would be required to attest to certain things on the application
  - The facts of the application
  - Future compliance with federal CDC, OSHA, and other specified guidelines
  - That the funds would be used to retain employees and keep the business viable
- The Program should work with risk mitigation experts (e.g., the Insurance Institute for Business and Home Safety's (IBHS)Open for Business-EZ program, the International Organization for Standardization [ISO], and/or others) to develop viral risk mitigation guidelines and safety standards for businesses that would be provided at time of application and payment

- **Term of Participation** – The program would be open to participants six (6) months after the date of enactment and each certificate issued would be valid for up to one year
  - Once purchased, the program director would provide the details (amount, frequency, and other information) related to the expected assistance benefit

- **Renewal –** Once purchased the terms of participation cannot be cancelled or altered, but participation is guaranteed to be renewable on an annual basis
  - With each annual renewal participating organizations will be required to submit updated tax information to provide ongoing proof of revenue and expense information
  - Participating organizations will also be required to review, select, and purchase assistance annually

Distribution Network

- The successful support of the U.S. economy during the next pandemic will require a robust level of participation in the BCPP
- Licensed insurance agents and brokers will be authorized to act as the distribution network to market and sell the program's revenue replacement assistance
- Insurers will be required to offer the federal program product to all policyholders who purchase covered lines of commercial insurance coverage
- Businesses and non-profits declining protection must sign a declination page acknowledging they will be ineligible for BCPP benefits
- The program director will establish an administrative fee for application and enrollment servicing

Revenue Replacement Assistance

The program would provide participating entities with revenue replacement assistance based on a percentage of the participant's total payroll and expenses

- Participants could receive up to a maximum of three (3) months relief
- Assistance amount would be for up to 80% of:
    - Ordinary payroll and employee benefits;
    - Contractually obligated payments;
    - Rent or mortgage obligations for commercial property;
    - Other loan obligations;
    - Equipment rental and maintenance costs;
    - Tax and insurance payments; and
    - Other categories of acceptable expenses as the program director see fit to promulgate by rule
- No profits, extra expense, high level compensation or other costs would be considered as part of this program
- Participating entities could choose from desired levels of protection that would be pre-determined by the program director (i.e. 20%, 40%, 60% - up to a maximum of 80% of the program determined expenses)
- The program director would also develop a pre-determined formula for any partial or non-payment based on determinations of an "essential business" by closure order / presidential declaration

<u>Pricing for Assistance</u>

The program director shall from time to time provide by regulation for general terms and conditions regarding the amounts paid for access to the program's revenue replacement assistance

- Rates charged by the program will be calculated as a percentage of revenue each participating organization seeks to replace (payroll and applicable expenses)
- That percentage <u>will be uniform for all participants</u>, and will not vary based on geography or industry
    - The risk of pandemic business interruption presents a unique case in which risk-based premiums could actually induce even greater moral hazard
    - A risk-based model would require firms most likely to be vectors of viral transmission—such as restaurants or hotels—to pay higher rates
    - That would have the effect of depressing the take-up of the program protection and make it more likely that businesses would resist closing their doors
    - Aligning public health interests with policy design recommends instead pricing coverage to maximize take-up by those firms most exposed to the risk of pandemic to align incentives properly for a public health-oriented program
- The program director would set appropriate minimum amounts for assistance
- Pricing would include a charge for administrative costs
- Pricing would be designed to ensure widespread take-up and reduce moral hazards
- The program director would develop a payment plan option

Assistance Payment Trigger

Revenue replacement assistance would be parametrically triggered and disbursed automatically to those affected businesses based on a formula and the protection level selected

- Public health emergencies generally are declared by state and/or local officials, however, deferring to such declarations to trigger coverage under the BCPP could run afoul of the nondelegation doctrine
- Based on the on-the-ground situation, states would request a federal viral emergency declaration
- The contours of the presidential emergency declaration would be laid out in the authorizing legislation which would include the states and business codes of the industries impacted
- The presidential viral emergency declaration would automatically trigger payment

Assistance Payment Process

Once a presidential viral emergency has been declared and BCPP assistance triggered, payments will immediately be disbursed based on a pre-determined formula

- Provided access to assistance was purchased 90 days prior to the presidential declaration, payments would be wired electronically without waiting periods or further requirements
- Participating firms would receive the first full monthly benefit upfront, with additional payments for additional months distributed as needed at 30 and 60 days (for the maximum 90-day protection period)
- Declaration of a public health emergency in a state where a participating business is located would trigger assistance for that portion of a participating organization's expenses located in the emergency zone (as allocated in the application form)
- There would be no traditional claims or claims adjustment process
- Payments would be distributed directly from the federal government to the program participants

Program Asset Management

The program director shall be responsible for the careful management of the BCPP's accrued assets year-over-year

- In years without losses, which should be most years, collected program funds could be used to purchase Treasury securities, which would be credited under federal budget rules as program assets
- Because the program's exposure in any loss year is likely to exceed its available assets, the program should be granted authority to borrow from the Treasury to pay all recorded losses
- To the extent that demand exists for risk transfer at some price and attachment point, the program director could be authorized to retain brokerage services to leverage coverage by using participant payments to place traditional reinsurance or issue insurance-linked securities

Auditing Process / Penalties

- A final audit and accounting of all funds will be completed annually by the federal government no later than 12/31 for any fiscal year ended 9/30

- The program director will establish a post-event auditing process for beneficiaries of the BCPP to ensure the validity of application attestations
- Any participating firm found to have knowingly defrauded the program will be expelled and be subject to stringent penalties, including fines and jail time
- The program director shall be granted clawback authority to require the return of benefits not applied to allowable expense categories

Additional Excess Coverage Backstop

- The proposal would also establish a federal excess insurance backstop to facilitate additional private insurer coverage for losses beyond what is covered by the BCPP's revenue replacement assistance
- Participation in this program would be voluntary for both insurers and policyholders – insurers would not be required to offer the excess coverage and policyholders would not be required to buy it
- Insurers eligible to participate would include those that are admitted in any state, non-admitted insurers that are eligible surplus lines insurers, insurers approved for purposes of offering property-casualty insurance by a federal agency in connection with maritime, energy, or aviation activity, and state residual market entities or state workers compensation funds
- Businesses would need to first participate in the BCPP to purchase this excess product
- Insurers offering business continuity insurance related to business suspension due to an emergency pandemic closure order, including event cancellation or principal speaker cancellation coverage, would be able to utilize the federal backstop
- An insurer would pay claims directly to policyholders and submit claims for reimbursement from the federal backstop (potentially establishing a line of credit with the federal government)
- The federal co-share would be 90% and insurer co-shares 10% of each calendar year's losses (the co-share would not change for the duration of the program)
- There would be a prohibition on duplicative compensation, but insurers are expressly permitted to purchase reinsurance to cover their retained risks
- The bill includes an automatic appropriation to fund both federal claims payments under the backstop and expenses of administering the program.

Event Cancellation Protection

- The program director would also design financial protection products to address event cancellations resulting from pandemic emergencies through rulemaking requirements:
    - Requires that a parametric event cancellation product be created and integrated with the revenue replacement assistance product by the end of 2021
    - Requires that the excess backstop support private insurance coverage for event cancellation by the end of 2021

Miscellaneous

- The BCPP would be run by Treasury, with limited administrative assistance from private contractors
- Businesses purchase this protection product through state-regulated insurance entities that voluntarily participate with the BCPP

- Entities marketing the program or contracting with Treasury to administer the program would not assume any liability for the application process or the determination and payment of benefits
- Aggregated data on prices and payments would be publicly available

Business Continuity Coalition

United States House of Representatives
Committee on Financial Services
Subcommittee on Housing, Community Development and Insurance

Hearing on
"Insuring against a Pandemic: Challenges and Solutions for Policyholders and Insurers"

Thursday, November 19, 2020

Statement of the
Business Continuity Coalition

The Business Continuity Coalition (BCC) represents a broad range of business insurance policyholders—large and small—from across the American economy, employing more than 50 million workers. The group was launched earlier this year to develop a public/private program with policymakers and stakeholders to limit future economic damage from pandemics and other national emergencies that cause business interruptions.

The BCC members include the American Gaming Association, American Hotel & Lodging Association, Fox Corporation, Independent Film & Television Alliance, International Council of Shopping Centers, International Franchise Association, Marriott International, Motion Picture Association, Nareit, National Association of Broadcasters, National Association of Realtors, National Multifamily Housing Council, National Restaurant Association, National Retail Federation, The Real Estate Roundtable, Sony Pictures Entertainment, ViacomCBS and the Walt Disney Company. A more comprehensive list of member organizations as of this date appears at the end of this statement but the coalition continues to expand and the most up-to-date list of members can always be found at the BCC website here.

Executive Summary

The magnitude of the COVID-19 pandemic's financial and social impacts has exposed significant shortcomings and vulnerabilities in our country's preparedness for and resilience to systemic catastrophic events of this scale and nature. This includes coverage gaps in insurance protection for losses from business interruption occurring arguably in the absence of "physical damage" to the business location. Equally important, coverage gaps for the pandemic risk have also been revealed or developed as a result of this year's crisis in other lines of insurance, including event cancellation, film & TV production package, general liability, and employment practices liability insurance. The crisis has also put stress on workers compensation insurance.

Although overshadowed for the moment by other effects of the pandemic, if not remedied, these insurance gaps will hinder any recovery, especially impacting business lending, new leasing activity, retail and hospitality, housing construction and development, as well as media production. Private insurance alone cannot and will not remedy the gaps -- at least not in the short-term -- but private insurers need to be part of the solution. What is urgently needed is a federally-backstopped availability mechanism similar to the highly successful one which Congress put in place for terrorism following 9/11-- in short, a TRIA-style program for pandemic risk.

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Washington, D.C. 20006-5413
ph: 202-739-9400 fax: 202-739-9401

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Impacted lines of insurance need to be supported with both a “make-available” mandate and a robust federal backstop for the private insurers making the insurance available. During at least a five-year economic recovery period (subject to reset if the pandemic recurs), the federal backstop should be provided without charge (as is the case with TRIA) to ensure affordability and maximum take-up, and the economic resiliency that will foster. To effectively speed economic recovery and help limit job losses, the federal backstop should support not only business interruption coverage, but also other pandemic-impacted lines of insurance, such as event cancellation, workers compensation, production or cast insurance (for film and television productions), trade credit, and general and employment practices liability insurance.

As recognized by all other major proposals currently being vetted, the business interruption line of insurance needs a special rule given the particular gap exposed by the COVID-19 crisis. That is, the insurance product needs to be both for non-physical-damage business interruption (NDBI)[1] and provided on a parametric basis,[2] which may be the only way to ensure widespread, rapid delivery of assistance to America’s businesses in future pandemic crises. Liquidity to meet these rapid pay-outs should be guaranteed. Insurers can be given an option to satisfy their availability duty by supporting a joint underwriting facility which would itself have a federal backstop. Maximum utilization of global reinsurance capacity and capital markets should also be encouraged. Long-term program continuity is paramount given the time horizon needed for financing this risk.

Discussion

The BCC brings together more than two dozen industries and companies to develop a plan with policymakers and other stakeholders to protect American jobs and to limit future economic damage from pandemics and other national emergencies that cause business interruptions.

The BCC thanks the Subcommittee for its leadership and for holding today’s hearing to address the challenges facing our nation stemming from the coronavirus pandemic. Contributing to the severe economic and employment headwinds we face is the nation-wide business insurance crisis that has impacted all aspects of our economy.

Closures and shutdowns caused by COVID-19 have significantly impacted the employees and operations of businesses across the country, and the BCC, representing more than 50 million workers in the restaurant, entertainment, hospitality, gaming, retail, communications, broadcasting and real estate industries, encourages policymakers to take urgent steps to prepare for future risks.

[1] As a general matter, standard business interruption policies include a condition of coverage that suspension of business “must be caused by direct physical loss or damage to property” at the insured premises. While the exact extent of “direct physical loss” as it relates to COVID-19 is the subject of litigation, any physical impact caused by the virus has not typically been sufficient to sustain a claim in many jurisdictions.

[2] Parametric insurance is a type of insurance that does not indemnify the pure loss, but ex ante agrees to make a payment upon the occurrence of a triggering event. The triggering event is often a catastrophic natural event which may ordinarily precipitate a loss or a series of losses.

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Beginning in March 2020 when many sectors of the economy experienced dramatic interruptions of demand or production, often but not always as a result of government-ordered lockdowns or shelter-in-place orders, the insurance which is vital to resuming production also ceased to be available in many cases.

When COVID-19 began, insurers and policyholders initially focused on non-physical damage business interruption claims and coverage, or lack thereof. As COVID-19 has evolved over time, the availability of pandemic related insurance has greatly diminished for policyholders when their insurance contracts renew. Pandemic exclusions and related clarifications have since become commonplace in business interruption insurance policies. Similar pandemic exclusions and narrowed policy language are now being applied to many other commercial property and casualty insurance lines, including general liability, employment practices liability, and specialty lines like event cancellation and production package insurance. Like what was experienced with terrorism insurance after 9/11, policyholders are growingly finding themselves in the untenantable position of being limited to no pandemic coverage that leaves them exposed to business threatening risks.

The alarming constriction of coverage that commercial policyholders are now seeing, is presumably being caused by the financial impact of the COVID-19 crisis on the property and casualty insurance sector. While BCC is not in a position to know directly the exact dimensions of the problem, if indeed they have been determined, the evidence being offered by longtime industry spokesmen is instructive. At the September 29th meeting of the Treasury Department's Federal Advisory Committee on Insurance (FACI), an insurance industry expert estimated potential 2020 insured losses from COVID-19 across just five lines of business—workers compensation, business interruption/contingency, general liability, mortgage guaranty, and D&O—at between $3.5 billion and $146.7 billon (to be sure, an extraordinarily wide range), while also acknowledging that there was pandemic risk exposure in several other lines (event cancellation, travel, trade credit, EPL, medical professional liability), even with the patchwork of communicable disease policy exclusions which existed before the COVID-19 outbreak.[3] The same FACI presentation also noted that insurers had begun during 2020 to seek approval from State regulators for "near-absolute communicable disease exclusions" but that "many of those filings" were "not being approved" by State regulators.[4]

Imposition of "near-absolute" exclusions is no more a workable solution for the American economy now than it was after 9/11 when the immediate reaction—albeit understandable—of the insurance industry also was to seek to exclude terrorism risk from coverage across-the-board. Simply put, the ability of American businesses to secure pandemic risk insurance will be a key factor in America's economic recovery and getting our workers back on the job. Collectively we need to find a way to maintain and restore coverage in many lines of commercial property and casualty insurance. A public-private partnership is essential to achieving that objective.

The BCC is advocating for a public/private insurance program that, in the event of a government-declared pandemic health emergency, would enable employers to keep payrolls and supply chains intact, help limit job losses and furloughs, reduce stress on the financial system, and speed economic recovery when

[3] See presentation of Robert P. Hartwig to Federal Advisory Committee on Insurance, September 29, 2020, particularly slides 13 and 17 (accessed November 16, 2020 at https://home.treasury.gov/system/files/311/FACI-Presentation-Hartwig-9-20.pdf).
[4] Hartwig FACI presentation at slide 19.

1875 I Street, NW, Ste 500
Washington, D.C. 20006-5413
ph: 202-739-9400 fax: 202-739-9401

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government-imposed limitations on operations are lifted. Equally important, as with terrorism risk insurance, the value of a workable insurance program is not just the payment of losses but the confidence that adequate protection gives to businesses and their lenders and workers in the meantime—before, and whether or not there is, a crisis. As such, the plan must meet the needs of a broad range of groups: the businesses and employers directly impacted, insurers, lenders and other creditors, policymakers, and importantly, taxpayers.

Several of the initiatives which the Subcommittee will examine at today's hearing are focused on provisions of a parametric NDBI insurance product, whether to be written by private insurers or issued directly as a government benefit contract.[5] The BCC policy recommendations outlined below embrace several elements of those other proposals but also include unique provisions, such as providing coverage for other lines of insurance in addition to NDBI. While mandating availability in these lines, the BCC proposal would give insurers the option of supporting a joint underwriting facility instead of issuing the backstopped NDBI on their own paper. Important backstop support for insurers' developing workers compensation exposure would be provided.

In short, the BCC policyholder proposal seeks not only widespread availability and affordability of NDBI coverage but also restoration and expansion of pandemic coverage in other lines, including event cancellation, movie/TV production package insurance, generally liability, employment practices liability, and other lines that have been hit hard by Covid-19.

A number of successful models can provide guidance in structuring a government-backed pandemic-risk reinsurance program. Besides TRIA, perhaps two of the most salient models are the Federal Crop Insurance Corporation[6] (when the Federal entity reinsures private crop insurers at various quota share levels) and the War Damage Corporation (WDC)[7] developed during World War II (when WDC insured directly but required distributing insurers to share in its risk of loss or profit).

Recommendations for Program Features

For all these reasons, the Business Continuity Coalition urges the design of any pandemic risk insurance program adhere to the following principles:

1. **Scope:** Any Federal backstop should support not only NDBI coverage but also other pandemic impacted lines of insurance, such as event cancellation, workers compensation, production or cast insurance (for film and TV productions), building/construction insurance, and general and employment practices liability insurance. These lines may need to be supported by a robust backstop even for a recurrence of COVID-19.

2. **Private Insurer Utilization:** Insurers should be included in any pandemic insurance program to involve a number of current industry advantages: (1) determine appropriate premiums to reduce

[5] Each of these proposals envisages an NDBI parametric benefit that would compensate small- and medium-sized businesses for up to 80% of 90-days' ordinary payroll and fixed costs, such as rent, utilities, and taxes.
[6] Public Law 96-365 (Sept. 26, 1980); amended by the Federal Crop Insurance Reform Act of 1994; and by the Federal Agriculture Improvement and Reform Act of 1996 (P.L.104-127).
[7] See Appendix for brief overview of the War Damage Corporation and its interface with private insurance industry.

1875 I Street, NW, Ste 500
Washington, D.C. 20006-5413
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taxpayer outlays; (2) use existing claims-paying infrastructure to pay claims; and (3) leverage insurer expertise in risk mitigation to help businesses understand how they can reduce pandemic risk, comply with imposed requirements, and get their businesses up and running expeditiously.

3. **Availability**: Eligible insurers should be required either to share some portion of the risk in the primary NDBI coverage layer or to support other covered lines of insurance as a condition of being permitted to sell any government-supported NDBI coverage. Any pandemic program must properly balance the need to ensure participation with the reality that insurers cannot take on too much uncertain exposure.

4. **Affordability:** Premiums for the program should not aim to cover full program costs. During an initial economic recovery period, the backstop should be without premium, after which the government should charge at least some premium for the risk it bears, but policymakers should not expect premiums to cover the full cost of the program. Premium levels should be set to result in widespread take-up. Cost recovery should be premised on 50+ years.

5. **Solution Must Meet Needs of Businesses of All Sizes:** TRIA should be the template for both availability and backstop, although there are important differences to the pandemic peril that must be reflected in final design. However, the NDBI benefit and the general availability requirements should avoid an arbitrary headcount cliff (e.g., 500 employees), just as the backstop should avoid "deductibles" or co-shares tied to volume rather than risk exposure.

6. **Rapid Claims Payment/Minimum Transaction Costs:** Any primary NDBI program should be structured as parametric coverage, which would be triggered by defined external conditions (*i.e.,* national health declaration + state/local action affecting specified business categories) without recourse to usual proof-of-loss; although use of proceeds might be audited. A Federal Reserve liquidity facility should be authorized to ensure rapid pay-outs.

7. **Pooling Alternative for Offer of NDBI Coverage:** Insurers that do not wish to underwrite the primary NDBI coverage directly should be given the option to support a joint underwriting facility for that coverage which would also enjoy the Federal backstop support.

8. **Stop-Loss As Well As Quota-Share Protection:** Federal reinsurance protection for both NDBI primary program and for other covered lines should be offered, on an optional paid basis, in the form of stop-loss protection in addition to the co-share element, given the potentially extreme cumulative risk of pandemic losses.

9. **Utilization of Reinsurance and Capital Markets:** The Federal program should be encouraged to foster development and use of private reinsurance markets as well as capital markets' alternative risk-transfer mechanism to further reduce or protect taxpayer exposure.

10. **Continuity:** A Federal pandemic risk insurance program should be administered by a Federal entity housed within the Department of Treasury with continuous existence, such as the WW II-era WDC (later wound-down) or the Federal Crop Insurance Corporation.

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Conclusion

The Business Continuity Coalition and its members are grateful for the opportunity to submit these comments, and we stand ready to assist this Subcommittee and all Members of Congress and the Administration in developing a pandemic risk insurance program.

We urge Congress to move expeditiously to pass bipartisan legislation that creates a public-private insurance solution consistent with the principles offered above to share the financial risk of losses related to pandemics. This urgent task is an essential precondition to the prompt recovery of this nation's economy, and going forward will help protect jobs and reduce economic damage from further pandemics.

The Business Continuity Coalition Members

American Gaming Association
American Hotel and Lodging Association
American Institute of Architects
American Land Title Association
American Resort Development Association
Appraisal Institute
Associated General Contractors
Building Owners and Managers Association
CRE Finance Council
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National Association of Broadcasters
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NAIOP – Commercial Real Estate Development Association
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National Independent Venue Association
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1875 I Street, NW, Ste 500
Washington, D.C. 20006-5413
ph: 202-739-9400 fax: 202-739-9401

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Catastrophe Bonds, Pandemics, and Risk Securitization[1]

Steven L. Schwarcz[2]

Abstract: In theory, governments could protect against the potential economic devastation of future pandemics by requiring businesses to insure against pandemic-related risks. In practice, though, insurers do not currently offer pandemic insurance. Even assuming companies could obtain sufficient statistical data to reliably set pandemic underwriting standards and rate tables, the insurance industry is concerned that it lacks sufficient capacity to cover those risks, which are likely to occur worldwide and be highly correlated. Pandemics therefore are in the class of risks, like nuclear accidents, war, and terrorism, that are sometimes defined as "uninsurable," at least by private markets. This Article focuses on using risk securitization—a relatively recent and innovative private-sector alternative to government insurance, funded by the issuance of catastrophe ("CAT") bonds—to insure pandemic-related risks. Risk securitization would utilize the "deep pockets" of the global capital markets, which have a far greater capacity than the global insurance markets, to absorb these risks. The Article also examines how risk securitization could supplement public-private catastrophe insurance schemes, such as Chubb's recent pandemic-coverage plan, to reduce the government's shared exposure.

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[2] Stanley A. Star Distinguished Professor of Law & Business, Duke University School of Law; Founding Director, Duke Global Financial Markets Center; Senior Fellow, The Centre for International Governance Innovation (CIGI). E-mail: schwarcz@law.duke.edu. For valuable comments, I thank Mukesh Chawla, Matthew Feig, Richard Hsia, ... and participants in a faculty workshop at Duke Law School and an ABA Section on Business Law colloquium. I also thank Tristan Christopher Baker and Carson Calloway for excellent research assistance.

INTRODUCTION

Insurance is the tried-and-true strategy for protecting against infrequent but potentially devastating losses.[3] Insurers are expert third parties that expand policyholders' loss-absorption capacity and assist them, at least indirectly, to monitor risks.[4] In theory, therefore, governments could protect against the potential economic devastation of future pandemics by requiring businesses to insure against pandemic-related risks.[5]

Insurers currently cover certain of those risks. Standard health insurance policies cover much of the medical costs incurred by employees (and others) who contract diseases,[6] and most life insurance policies cover pandemic-caused deaths.[7] Many pandemic-related risks remain uninsured, though. For example, business-interruption insurance either explicitly excludes pandemic-related disruptions or has been interpreted to condition payments on physical damage

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[3] *See, e.g.*, [insert basic insurance cite]. *Cf. Disaster Risk Insurance*, UN DEVELOPMENT PROGRAMME (Dec. 2017), https://www.undp.org/content/dam/sdfinance/doc/Disaster%20Risk%20Insurance%20_%20UNDP.pdf (discussing the importance of insurance to protect against possible disasters).
[4] Howell E. Jackson & Steven L. Schwarcz, *Protecting Financial Stability: Lessons from the Coronavirus Pandemic*, HARV. BUS. L. REV. (forthcoming 2021), available at https://ssrn.com/abstract=3644417 (observing that other such third-party loss-absorption and risk-monitoring arrangements include the skin-in-the-game rules for securitization transactions, the requirement of centralized clearing for many derivatives transactions, and the imposition of bail-in-able debt instruments to increase firms' total loss absorbing capital).
[5] *See id.* (observing this mode of government protection).
[6] *NAIC Insurance Brief: Covid-19 and Insurance*, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS 1 (2020), https://content.naic.org/sites/default/files/inline-files/Insurance%20Brief%20-%20Covid-19%20and%20Insurance.pdf.
[7] *Id.* at 2.

causing the disruption.[8] Nor does insurance currently cover all of the increased unemployment[9] or pandemic-related infrastructure costs (such as installing Plexiglas barriers or reconfiguring interiors for safety).[10]

In practice, however, insurers do not currently offer pandemic insurance, certainly not at rates (i.e., "premiums") that businesses regard as reasonable.[11] Insurers fear their industry does not "have the capacity to [provide] coverage."[12] Furthermore, because a pandemic by definition is worldwide, the obligation of insurers to make payments under pandemic insurance would

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[8] Russ Banham, *Demand Soars for Parametric Insurance to Cover Pandemic Business Interruptions*, CARRIER MANAGEMENT, April 2020, at 1-2, available at https://search-proquest-com.proxy.lib.duke.edu/docview/2385329658?pq-origsite=summon. *Cf.* Leslie Scism, *Companies Hit by Covid-19 Want Insurance Payouts. Insurers Say No*, WALL ST. J., June 30, 2020 (reporting that "[m]ore than half of [business interruption] policies in force today specifically exclude viruses," and even absent that exclusion, "insurance companies have largely refused to pay claims under this coverage, citing a standard requirement for physical damage").

[9] Independent contractors, part-time workers, and self-employed individuals who lose their jobs are ordinarily not eligible for unemployment benefits. Jeremy Pilaar, *Reforming Unemployment Insurance in the Age of Non-Standard Work*, 13 HARV. L. & POL'Y REV. 327, 350 (2018). The CARES Act temporarily expanded access to unemployment benefits for these non-standard employment categories. Pamela Foohey et al., *Cares Act Gimmicks: How Not to Give People Money During a Pandemic and What to Do Instead*, U. ILL. L. REV. ONLINE 81, 86 (2020).

[10] *Cf.* Inti Pacheco, *How Much Covid-19 Cost Those Business That Stayed Open*, WALL ST. J., June 23, 2020, https://www.wsj.com/articles/how-much-covid-19-cost-those-businesses-that-stayed-open-11592910575 (explaining that some businesses spent as much as one billion dollars in "increased pay for front-line workers, expanded cleaning and sanitization protocols, and … personal protective equipment").

[11] In 2018, for example, the insurance broker and risk manager Marsh, in conjunction with Munich Re and technology firm Metabiota, offered "Pathogen Rx," an insurance policy covering pandemic-related business disruptions caused by stay-at-home orders. No policies were sold, however, possibly because businesses found the premiums unreasonably high. Banham, *supra* note 8, at 1. Possibly, too, "optimism bias" led businesses, having never experienced significant losses due to a pandemic, to discount the risk. *Cf.* Steven L. Schwarcz, *Regulating Complacency: Human Limitations and Legal Efficacy,* 93 NOTRE DAME L. REV. 1073, 1080 (2018) ("Optimism bias is the tendency to be unrealistically optimistic when thinking about negative events with which one has no recent experience, and devaluing the likelihood and potential consequences of those events").

[12] Evan Weinberger, *Chubb Pandemic Coverage Plan Exposes Industry Split*, BLOOMBERG LAW, July 14, 2020, at https://news.bloomberglaw.com/insurance/chubb-pandemic-coverage-plan-exposes-industry-split. *Cf.* Jackson & Schwarcz, *supra* note 4 (arguing the same); Chubb, *infra* note 299 and accompanying text (stating that "pandemic loss . . . is not insurable in the private sector").

likely be highly correlated, creating losses that would overwhelm the insurance markets.[13] Insurer unwillingness to offer pandemic insurance also may be due, in part, to the lack of sufficient statistical data to reliably set underwriting standards and rate tables reflecting the appropriate level of pandemic-related risks[14]—although some firms, such as Metabiota, Air Worldwide, Milliman, and RMS, claim to "combine leading epidemiological, statistical and actuarial techniques to quantify epidemic [if not also pandemic] risk."[15]

Pandemics therefore are in the class of risks that are sometimes defined as "uninsurable," at least by private markets.[16] This category includes nuclear accidents, war, terrorism, economic downturns, and various other extraordinary catastrophes such as meteor strikes and sudden shifts

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[13] *Cf.* Weinberger, *supra* note 12 (reporting that "The insurance industry says paying out virus-related claims would cost trillions and would push many companies into insolvency.").

[14] Jackson & Schwarcz, *supra* note 4. To understand this lack of sufficient statistical data, compare car accidents and hurricanes. Car accidents generate sufficient statistical data because they occur all the time. Insurers can use these data to reliably calculate how many accidents are likely to occur in a given city and in a given year, and thus can price premiums accordingly. Infrequent and catastrophic events like hurricanes are more difficult for insurers. A significant hurricane may hit a particular city, for example, only once a decade. To help solve this problem, primary insurers can turn to reinsurers—insurance companies that insure other insurance companies—to statistically diversify the risk. Although a significant hurricane may hit a particular city only once a decade, a significant hurricane almost always hits *somewhere* in the world every year. By covering much larger geographical regions, reinsurers are able to treat hurricanes like primary insurers treat car accidents. The difficulty presented by global pandemics like Covid-19 is that, unlike hurricanes and car accidents, global pandemics affect the world's entire population. In this sense, reinsuring pandemic risk for large geographic regions is more like a primary insurer providing coverage for a particular city's hurricane damage than like reinsurers offering global coverage for hurricanes.

[15] *See* https://metabiota.com/product. *See also* https://www.air-worldwide.com/siteassets/Publications/Brochures/documents/AIR-Pandemic-Model; https://us.milliman.com/en/health/coronavirus-covid-19; and https://www.rms.com/blog/2020/02/04/the-coronavirus-outbreak-part-one-modeling-spotting.

[16] *See, e.g.*, Dwight M. Jaffee & Thomas Russell, *Catastrophe Insurance, Capital Markets, and Uninsurable Risks*, 64 J. RISK & INS. 205, 206 (1997) (explaining that private insurers are reluctant to insure "low-probability high-consequence" catastrophic events, known by insurance textbook writers as "uninsurable risk"); Daniel Schwarcz & Steven L. Schwarcz, *Regulating Systemic Risk in Insurance*, 81 U. CHI. L. REV. 1569, 1611–12 (2014) (describing the risk of global pandemics as such a catastrophic risk); Weinberger, *supra* note 13 (quoting Sean Kevelighan, the chief executive of the Insurance Information Institute, that "global pandemics are largely uninsurable").

in the gulf stream caused by climate change.[17] In areas of high public interest, such as nuclear-reactor accident risk, governments sometimes provide partly privatized insurance—i.e., government insurance of otherwise "uninsurable" risks, partly paid for by private-sector entities that benefit from that insurance.[18] However, the cost to taxpayers of providing such government insurance could be huge if the premiums paid by those entities are insufficient to cover the ultimate losses.[19]

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[17] Jackson & Schwarcz, *supra* note 4. *See also Top 5 Uninsurable Risks*, RISK & INSURANCE MAGAZINE (2014), https://riskandinsurance.com/top-five-uninsurable-risks/.

[18] The Price-Anderson Nuclear Liability Act of 1957 was enacted to ensure nuclear operators were adequately insured. Pub. L. No. 85-256, 71 Stat. 576. The act required nuclear operators to have the maximum insurance available (then $60 million) and if damages exceeded that level, a second level of government-provided funds was available (up to $500 million). Michael G. Faure & Tom Vanden Borre, *Compensating Nuclear Damage: A Comparative Economic Analysis of the U.S and International Liability Schemes*, 33 WM. & MARY ENVTL. LAW & POL'Y REV. 220, 221 (2008). The act subsequently has been amended, however, to replace the government-funded level with "retrospective premiums" financed by all American nuclear operators. *Id.* at 243. FDIC deposit insurance represents another form of partly privatized insurance. Banks pay the FDIC premiums for deposit insurance, which protects the banks and their depositors from the risk of "runs." FDIC, *About FDIC: What We Do* (May 2020), https://www.fdic.gov/about/what-we-do/index.html#:~:text=The%20FDIC%20receives%20no%20Congressional,savings%20association%20in%20the%20country. The FDIC guarantees the depositors even if the premiums are insufficient. *See* 12 U.S.C § 1825(d) ("The full faith and credit of the United States is pledged to the payment of any obligation issued after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by the [FDIC]…."). The Terrorism Risk Insurance Act ("TRIA") represents another example of partly privatized insurance. Pub. L. No. 107-297, 116 Stat. 2322 (2002). Because terrorist attacks are difficult to predict and have potentially devastating losses, private insurance companies are unwilling to insure against their risk. NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, *Issue Brief: Terrorism Risk Insurance* (May 2019), https://content.naic.org/sites/default/files/inline-files/government_relations_terrorism_risk_insurance.pdf. The TRIA requires primary insurers to offer terrorism coverage, but caps their potential losses and provides government funds for losses above the cap (effectively, the government acts as a kind of reinsurer for terrorism insurance policies). Thomas Russell & Jeffrey E. Thomas, *Government Support for Terrorism Insurance*, 15 CONN. INS. L.J. 183, 187 (2008).

[19] Jackson & Schwarcz, *supra* note 4. *Cf.* Jeffrey C. Dobbins, *Promise, Peril, and Procedure: The Price-Anderson Nuclear Liability Act*, 70 HASTING L. J. 331, 334 (2019) (suggesting that the American public may be exposed to huge risk because although the Price-Anderson Act requires nuclear operators to provide $13.8 billion of insurance coverage for nuclear accidents, the nuclear catastrophes of Chernobyl and Fukushima cost as much as $500 billion each).

This Article focuses on using risk securitization—a relatively recent and innovative private-sector means of insuring otherwise "uninsurable" risks—to insure pandemic-related risks.[20] Originally developed to respond to certain natural disasters that occurred in the early-to-mid-1990's, including Hurricane Andrew and the Northbridge Earthquake,[21] risk securitization has been used to hedge catastrophic risks that insurance and reinsurance markets may be incapable or unwilling to bear alone[22]—even including terrorism.[23]

As will be explained,[24] risk securitization depends economically on investor demand[25] to purchase catastrophe ("CAT") bonds.[26] Capital market investors have shown high demand, for two reasons. First, CAT bonds provide a diversified return because natural catastrophes occur

[20] *See* Paul U. Ali, *Risk Securitization*, Chapter 12 in STEVEN L. SCHWARCZ, STRUCTURED FINANCE, A GUIDE TO THE PRINCIPLES OF ASSET SECURITIZATION & SUPPS. (3d. ed. 2002).
[21] JAN JOB DE VRIES ROBBE ET AL., INNOVATIONS IN SECURITISATION 36 (2006). In 2005, for example, a total of $1.99 billion debt securities were issued worldwide in securitizations of catastrophic risk, covering risk events such as European windstorms, Japanese earthquakes, U.S. earthquakes and U.S. hurricanes. The originators included insurance companies, such as USAA and Zurich American, and reinsurance companies, such as Munich Re and Swiss Re. *See* MMC SECURITIES, THE CATASTROPHE BOND MARKET AT YEAR-END 2005: RIPPLE EFFECTS FROM RECORD STORMS 17-19 (2006).
[22] *See* Neil A. Doherty & Harris Schlesinger, *Insurance Contracts and Securitization*, 69 J. RISK & INS. 45, at 45-46 (2002); J. David Cummins, Neil A. Doherty, & Anita Lo, *Can Insurers pay for the 'Big One'? Measuring the Capacity of the Insurance Market to respond to Catastrophic Losses*, 26 J. BANKING & FIN. 557, 557-55 (2002) (the foregoing sources observing that a series of catastrophes on the scale of Hurricane Katrina or the 9/11 terrorist attack occurring in quick succession could overwhelm the insurance and reinsurance markets, leading to the insolvency of some insurers and reinsurers and placing considerable stress on the market survivors and governments to cover the losses from those disasters).
[23] *See, e.g.*, Steve Evans, *First Terrorism CAT Bond Oversubscribed: Pool Re*, Artemis (Feb. 26, 2019), available at https://www.artemis.bm/news/first-terrorism-risk-cat-bond-oversubscribed-pool-re/.
[24] *See* Part I.A, *infra* (discussing the structure of risk securitization).
[25] Risk securitization also depends economically, of course, on there being sufficient customer demand to purchase insurance against whatever catastrophic risks are covered by the CAT bonds. This Article contemplates, however, that the government will require businesses to purchase insurance against pandemic-related risks. *See supra* note 5 and accompanying text and Part II.D, *infra*.
[26] CAT bonds are sometimes referred to as a type of insurance-linked securities.

randomly and are not correlated with standard economic risks [27]; therefore, CAT-bond returns are largely uncorrelated to the returns of equity securities and conventional corporate bonds.[28] Second, CAT bonds have "provided strong returns" to investors.[29]

As will be shown, however, CAT bonds do not represent a win-win deal for investors. If the covered catastrophe occurs, investors may lose part or all of their investment.[30] To date, however, the combination of diversified and strong returns has more than offset investor perception of that risk. The "CAT bond market has seen strong growth," and "the amount of outstanding CAT bonds more than doubled between 2010 and 2017."[31] As this Article is being written, Moody's reports that CAT bond issuance is "surging."[32]

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[27] *Cf. infra* notes 47-52 and accompanying text (explaining why even pandemic-related CAT bonds can provide a diversified return, notwithstanding that pandemics can trigger economic downturns).

[28] *See* Christopher M. Lewis & Peter O. Davis, *Capital Market Instruments for Financing Catastrophe Risk: New Directions?*, 17 J. INS. REG. 110, 114 (1998); Angelika Schochlin, *Where's the Cat going? Some Observations on Catastrophe Bonds*, 14 J. APP. CORP. FIN. 100, 102-103 (2002). In principle, therefore, catastrophe bonds follow modern portfolio theory, which focuses on optimizing investment returns through portfolio diversification. See PAUL U. ALI ET AL., CORPORATE GOVERNANCE AND INVESTMENT FIDUCIARIES 87-88 (2003). According to that theory, the extent to which an investor can optimize its returns (that is, maximize overall portfolio returns for a given level of risk or minimize the risk borne by the portfolio for a given level of returns) depends upon the extent to which the returns of the different portfolio constituents are correlated to one another. *Id.* at 87-88. In general, the addition to a portfolio of securities whose returns are negatively or weakly correlated, or uncorrelated, to the existing constituents of the portfolio should increase overall portfolio returns (while leaving the riskiness of the portfolio unchanged) or lower the portfolio's riskiness (while leaving the portfolio's overall returns unchanged). *Id.* at 88. *See generally* MORTON LANE, ALTERNATIVE RISK STRATEGIES 549-552 (2002).

[29] Andy Polacek, Senior Research Analyst, Fed. Res. Bk. Chicago, *Catastrophe Bonds: A Primer and Retrospective*, Chicago Fed Letter No. 405, 2018 (available at https://www.chicagofed.org/publications/chicago-fed-letter/2018/405). *Cf.* Partner Re, *The Drivers of Catastrophe Bond Pricing*, PARTNERREVIEWS 3 (Oct. 2015), available at https://partnerre.com/wp-content/uploads/2017/08/Catastrophe-Bond-Pricing.pdf (plotting the historic spread of CAT bonds against that of High Yield BB Corporate Bonds from 2000 to 2015).

[30] *See* Part I.A, *infra* (discussing the subordination of CAT-bond repayment to the insurer's right to indemnification).

[31] Polacek, *supra* note 29.

[32] Moody's Investors Service, *Catastrophe bond issuance surging as reinsurance pricing moves higher* (June 30, 2020) (reporting, *id.* at 1, that the CAT bond market "has already shown

This Article analyzes how risk securitization could help to socialize pandemic-related risks by allocating them to sophisticated global investors who choose to purchase the associated pandemic-related CAT bonds (hereinafter, "PCAT" bonds) and, presumably, are able to absorb those risks. The Article does not claim that risk securitization could become a panacea to solve the problem of pandemic-created economic catastrophes.[33] It merely argues that risk securitization could offer at least a partial solution to that problem.

The Article proceeds as follows. Part I examines how to structure risk-securitization transactions to cover pandemics. Subpart A analyzes, theoretically, how those transactions should be structured. Subpart B then compares that theory with actual precedents for non-pandemic risk securitizations and the one precedent, structured atypically by the World Bank using government donations, for pandemic risk securitization. Subpart C then builds on that comparison to identify future challenges for structuring risk securitization to cover pandemic-related risks. Thereafter, Part II of the Article attempts to resolve the future legal challenges, and Part III attempts to resolve the future economic challenges (and also provides a cost-benefit analysis).

I. STRUCTURING RISK SECURITIZATION FOR PANDEMICS

To examine how to structure risk-securitization transactions to cover pandemics, this Article starts by analyzing, theoretically, how those transactions should be structured.

A. Theory.

Conceptually, risk securitization could work as follows. An insurance company, reinsurer, government catastrophe fund,[34] or other entity (for simplicity, each an "insurer") that

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tremendous growth in the first half of 2020"). *Cf. infra* notes 223-226 and accompanying text (further discussing the growth of the CAT bond market).

[33] *Cf. infra* notes 352-356 and accompanying text (discussing the need for ex post mitigative measures).

[34] These include, for example, the California Earthquake Authority (Cal. Ins. Code § 10089.6 (Deering, Lexis Advance through 2020 Sess.)) and the Florida Hurricane Catastrophe Fund (Fla.

wishes to insure parties suffering the catastrophic risks of an extreme event, such as an earthquake or hurricane[35] but potentially including a pandemic, would create a special purpose vehicle ("SPV") to issue CAT bonds to capital market investors.[36] The SPV would invest the proceeds of its bond issuance in liquid and highly-rated debt securities, including U.S. Treasury money-market instruments.[37] In exchange for premium payments (also known as indemnification or guarantee fees), the SPV—acting effectively as a special purpose reinsurer[38]—would promise to indemnify the insurer[39] should the extreme event, e.g., a pandemic of specified magnitude,

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Stat. § 215.555 (LexisNexis, Lexis Advance through 2020)). The California Earthquake Authority ("CEA") is a publicly managed, privately funded, nonprofit entity that provides primary earthquake insurance coverage throughout California. *See* https://www.earthquakeauthority.com/About-CEA/CEA-History. Although the CEA does not currently sponsor CAT-bond issuance, it sometimes invests in CAT bonds. *See, e.g.*, ARTEMIS, *CEA Targets 400m of Reinsurance with first Ursa Re Cat Bond of 2019* (Nov. 7, 2019), available at https://www.artemis.bm/news/cea-targets-400m-of-reinsurance-with-first-ursa-re-cat-bond-of-2019/. The Florida Hurricane Catastrophe Fund ("FHCF") is a tax-exempt, state trust fund, funded through premiums collected from primary insurers, investment earnings, and "emergency assessments" on Florida property and casualty insurers. Richard C. Mason et al., *Recent Developments in Excess, Surplus Lines, and Reinsurance*, 43 TORT & INS. L. J. 375, 406 (2008); FLORIDA HURRICANE CATASTROPHE FUND, https://www.sbafla.com/fhcf/Home.aspx. The FHCF provides reinsurance for catastrophic hurricanes affecting Florida. Christine L. Agnew, *Come Hell and High Water: Can the Tax Code Solve the Post-Katrina Insurance Crisis?*, 11 LEWIS & CLARK L. REV. 701, 729 (2007).

[35] *Cf. infra* note 21 and accompanying text (discussing risk securitization's original application to earthquakes and hurricanes).

[36] Polacek, *supra* note 29. In the author's experience, most SPVs are organized as wholly owned subsidiaries of the sponsor—here, the insurer—so that any surplus value remaining in the SPV once the CAT bonds are paid would belong to the sponsor. *Cf.* STRUCTURED FINANCE, *supra* note 20, §§4:8–4:9. For a broader analysis of insurers using captive subsidiaries to provide reinsurance, *see Regulating Systemic Risk in Insurance*, *supra* note 16, at 1624–25.

[37] Polacek, *supra* note 29.

[38] *Cf.* National Association of Insurance Commissioners, *Reinsurance* (Feb. 26, 2020), available at https://content.naic.org/cipr_topics/topic_reinsurance.htm ("Reinsurance, often referred to as insurance of insurance companies, is a contract of indemnity between a reinsurer and an insurer.").

[39] The legal form of the indemnification could be multifold, including a surety bond or even a credit-default swap (CDS). Generically, however, the indemnification is a basic guarantee. *Cf.* Steven L. Schwarcz, *Regulating Derivatives: A Fundamental Rethinking*, 70 DUKE L.J. (forthcoming Dec. 2020), available at https://ssrn.com/abstract=3516036 (explaining why CDS derivatives are basic guarantees). If a CDS is used as the indemnification contract, the risk securitization structure would resemble a synthetic collateralized-debt obligation (CDO) transaction. *Cf.* https://www.investopedia.com/terms/s/syntheticcdo.asp (explaining that transaction).

occur.[40] The CAT bonds would bear interest based not only on the SPV's investment returns but also on its receipt of the premium payments.[41] Repayment of the CAT bonds would be subordinated, however, to the insurer's right to indemnification, subjecting the investors to a potential loss of principal and/or interest under those bonds.[42] In this way, risk securitization utilizes the "deep pockets" of the global capital markets, which have a far greater capacity than the global insurance and reinsurance markets, to absorb catastrophic risks.[43] Credit enhancement, possibly by issuing differing internal-priority classes of CAT bonds under a senior-subordinate structure, could even broaden the capital-market investor base.[44]

Schematically, a risk-securitization transaction would have the following representative elements.[45]

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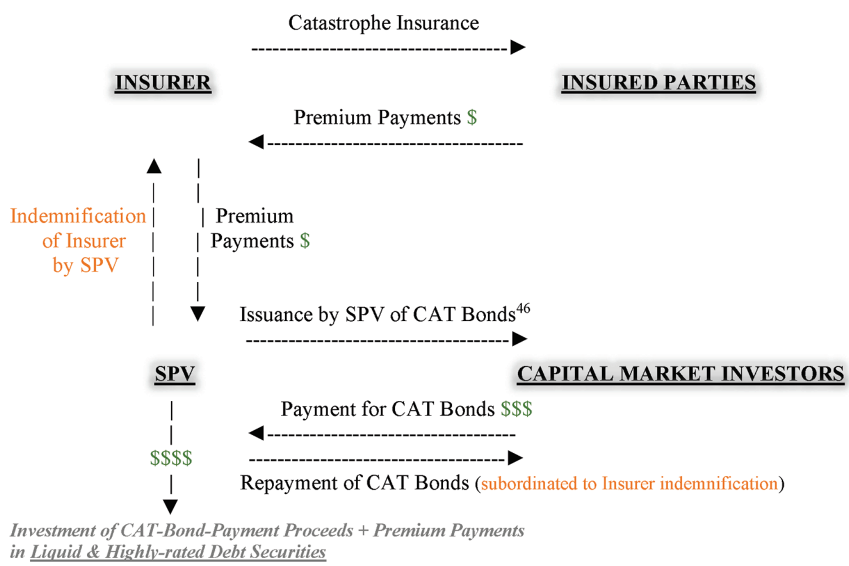
[40] Polacek, *supra* note 29.
[41] *Id.*
[42] *Id.*
[43] *See* Neil A. Doherty, *Financial Innovation in the Management of Catastrophic Risk*, 10 J. APP. CORP. FIN. 84, 84 (1997); Johannes S. Tynes, *Catastrophe Risk Securitization*, 19 J. INS. REG. 3, 7-8 (2000). *Cf.* Polacek, *supra* note 29 (observing that "By attracting alternative sources of capital (e.g., hedge funds, sovereign wealth funds, pension funds, and mutual funds) to compete with traditional reinsurance . . . , CAT bonds exert downward pressure on reinsurance prices (and price volatility) while increasing the total capital available for the transfer of insurance risks."). For instance, the global capital markets (with approximately $65 trillion debt securities outstanding as at 30 September 2006) are many times larger than the global reinsurance market (with capital of approximately $400 billion as at 31 December 2005): BANK FOR INTERNATIONAL SETTLEMENTS, BIS QUARTERLY REVIEW A85-A100 (Dec. 2006); GUY CARPENTER, THE WORLD CATASTROPHE REINSURANCE MARKET 6 (2006).
[44] *See* Part II.A.5, *infra*.
[45] The author thanks Andrew DeJoy, Duke Law Class of 2022, for help in preparing this schematic diagram.



In theory, CAT bonds should provide investors with a diversified return because natural catastrophes occur randomly and thus are not correlated with standard economic risks.[47] That certainly is true for hurricanes, earthquakes, and other natural disasters that occur within a specific geographical region and within a specific period of time.[48] For example, when stock markets plummeted and corporate bonds defaulted during the 2008 global financial crisis (the "global financial crisis"), the Swiss Re CAT bond index rose 2.5%.[49] Even in 2020, when news of the COVID-19 pandemic severely impacted the pricing of several classes of investments, CAT bonds were largely immune to the volatility.[50] Rating agency Standard & Poor's announced

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[46] As mentioned, issuing differing internal-priority classes of CAT bonds under a senior-subordinate structure could broaden the investor base. *See supra* note 44 and accompanying text.
[47] Polacek, *supra* note 29, at 3.
[48] Moody's Investors Service, *supra* note 98, at 2.
[49] Steve Johnson, *Catastrophe Bonds Prove Anything But a Disaster*, FINAN. TIMES (June 2013), available at https://www.ft.com/content/bc897de0-c7a0-11e2-be27-00144feab7de.
[50] Steve Evans, *Covid-19 Pandemic "Showcased" Value of Cat Bonds to Investors: S&P*, Artemis (May 2020), available at https://www.artemis.bm/news/covid-19-pandemic-showcased-value-of-cat-bonds-to-investors-sp/. The series of PEF PCAT bonds that covered coronavirus pandemics was severely impacted, though. *See infra* note 52.

that "The COVID-19 pandemic has showcased the value of publicly traded catastrophe bonds (cat bonds) to investors, offering a liquid asset class that was not correlated with the current volatile financial markets."[51]

These data do not, however, generally reflect the pricing of PCAT bonds because the only such bonds were those of the PEF and their outstanding principal was relatively small. Logically, the occurrence of a pandemic that is covered by PCAT bonds would negatively impact their value.[52] At the same time, the pandemic could cause a much broader and deeper financial decline than natural disasters such as hurricanes and earthquakes.

That does not mean that PCAT bonds cannot provide investors with a diversified return. Like other natural disasters, pandemics occur randomly; they certainly are not caused, for example, by stock-market declines.[53] Therefore, absent a pandemic, there would be no correlation during the normal life of PCAT bonds between their value and financial sector conditions. If there were a pandemic, there could well be a correlation. However, PCAT investors explicitly bargain to take that risk: they agree to subordinate their right to repayment of the PCAT bonds to the indemnification rights of pandemic insurers.[54]

Next, compare the foregoing theory with actual precedents for non-pandemic risk securitizations and the one precedent, structured atypically by the World Bank using government donations, for pandemic risk securitization.

B. Precedent.

[51] S&P GLOBAL, CREDIT FAQ: IN A CORRELATED MARKET, CATASTROPHE BONDS STAND OUt (May 18, 2020), available at https://www.spglobal.com/ratings/en/research/articles/200518-credit-faq-in-a-correlated-market-catastrophe-bonds-stand-out-11491720.
[52] For example, the value of the riskier tranche of the World Bank's pandemic catastrophe bonds (discussed *infra* Part I.B) was down 40% as of February 25, 2020. Tasos Vossos, *Catastrophe Bonds Signal Coronavirus Nearing Pandemic Status*, Bloomberg (Feb. 25th, 2020, 7:49 AM), https://www.bloomberg.com/news/articles/2020-02-25/catastrophe-bonds-signal-coronavirus-nearing-pandemic-status.
[53] *Cf. supra* notes 47-48 and accompanying text (discussing natural disasters).
[54] *See supra* note 42 and accompanying text.

The foregoing theoretical analysis helps to explain the structure of risk-securitization transactions, the parties involved with those transactions, and their motivations. Risk-securitization transactions, however, are not merely theoretical; tens of billions of dollars of CAT bonds are already outstanding.[55] This subpart examines representative actual transactions, starting with traditional risk-securitization transactions that insure hurricanes and earthquakes and then discussing the one pandemic risk-securitization transaction to date (and explaining how it differs from the traditional transactions).

The Citrus Re transaction sponsored by Heritage Insurance typifies a risk-securitization precedent for hurricane risk. Heritage Insurance offers property-and-casualty insurance policies within the hurricane-prone state of Florida.[56] In 2015, Heritage entered into an agreement with its SPV reinsurer, Citrus Re Ltd.,[57] wherein Citrus Re agreed to indemnify Heritage for certain insurance payments resulting from named storms affecting Florida.[58] To help provide that reinsurance, Citrus Re issued $277.5 million of 3-year maturity Series 2015-1 CAT bonds.[59] During the three-year risk period, Heritage paid Citrus Re Ltd. a periodic premium while Citrus Re held the $277.5 million proceeds of the bond issuance, which it invested in U.S. Treasury money-market instruments,[60] to indemnify Heritage should the bonds be triggered.[61] The CAT bonds covered named-storms affecting Florida, had an indemnity trigger, and were issued in

[55] *See infra* notes 225-226 and accompanying text.
[56] https://www.heritagepci.com/company/about-us/.
[57] Citrus Re Ltd. is organized under Bermuda law as a special purpose insurer, or SPI. ARTEMIS, *Citrus Re Ltd. (Series 2015-1)*, available at https://www.artemis.bm/deal-directory/citrus-re-ltd-series-2015-1/. For accounting purposes, Citrus Re appears to be a variable interest entity, in which Heritage has a controlling interest despite not having a majority of voting rights. See Heritage Insurance Holdings, Inc., SEC Quarterly Report (Form 10-Q), 19 (May 8, 2015), available at https://investors.heritagepci.com/~/media/Files/H/Heritage-IR/quarterly-results/2015/sec/hrtg-1q15-10q.pdf.
[58] ARTEMIS, *supra* note 57.
[59] *Id.* These CAT bonds were called "notes," but there is no legal distinction between notes and bonds: both are promissory notes. To avoid confusion, this Article will refer to these "notes" as bonds.
[60] Aon Benfield, *Insurance-Linked Securities: Alternative Capital Breaks New Boundaries*, 3, 60 (2017), http://thoughtleadership.aonbenfield.com/Documents/20170907-securities-ils-annual-report.pdf.
[61] *See* SEC Quarterly Report, *supra* note 57, at 19. Structurally, Citrus Re held those proceeds in a reinsurance trust account for the benefit of Heritage. *Id.*

three classes: $150 million of Class A, $97.5 million of Class B, and $30 million of Class C.[62] AIR Worldwide provided the risk modelling.[63] The Class A bonds were the least risky with an expected loss of 1.22% and were priced at 4.75%.[64] The Class B bonds had an expected loss of 2.44% and were priced at 6%.[65] Finally, the Class C notes were the riskiest with an expected loss of 5.05% and were priced at 9%.[66]

The structure of the Citrus Re transaction is consistent with the representative schematic previously discussed.[67] In return for indemnification by Citrus Re, an SPV acting effectively as a special purpose reinsurer, the insurer (Heritage) made premium payments to Citrus Re, which in turn issued CAT bonds to fund its indemnification obligation. The proceeds of the bond issuance were invested in liquid and highly-rated debt securities (in this case, U.S. Treasury money-market instruments). Citrus Re used the premium payments and the interest earned on investment to make interest payments to the CAT bond investors. The right of the investors to be repaid was subordinated to the right of Heritage to be indemnified.[68]

The Muteki Ltd. $300 million CAT-bond transaction sponsored by the Japanese insurance cooperative Zenkyoren (or JA Jyosai) typifies a risk-securitization precedent for earthquake risk. The bonds were issued by Muteki Ltd., an SPV sponsored by reinsurance giant Munich Re.[69] Muteki Ltd. indemnified Munich Re, which in turn reinsured Zenkyoren exposure

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62 *Id.*
63 *Id.*
64 *Id.* For an analysis of structuring the relative riskiness of the Class A, B, and C bonds, *see infra* note 181 and accompanying text.
65 SEC Quarterly Report, *supra* note 57, at 19.
66 *Id.*
67 *See* schematic diagram accompanying notes 44-47, *supra*.
68 Unfortunately for investors, the Class B and C bonds were both triggered by Hurricane Irma in 2017. SWISS RE, *Insurance-Linked Securities Market Update*, 10 (Feb. 2019) available at https://www.swissre.com/dam/jcr:7467c134-2803-42f3-8a2f-cc2e9e156c34/ils-market-yearend-february-2019.pdf. All $30 million of the Class C bond fund and approximately $94.5 million of the Class B note fund was paid out to Heritage Insurance to cover losses caused by the hurricane. ARTEMIS, *Catastrophe Bond Losses: Cat Bonds Defaulted, Triggered, or at Risk*, available at https://www.artemis.bm/cat-bond-losses/.
69 The World Bank, Learning from Megadisasters: Lessons From the Great East Japan Earth-Quake 260 (Federica Renghieri & Mikio Ishiwatari, eds. 2014), available at (https://www.gfdrr.org/sites/default/files/publication/Learning%20from%20Megadisasters%20%

on earthquake insurance.[70] The insurance would trigger in the event of an earthquake in Japan with a magnitude above a certain threshold.[71] The bonds were rated Ba2 by Moody's and priced at LIBOR + 4.4%.[72]

The structure of the Muteki Ltd. transaction is likewise consistent with the representative schematic previously discussed.[73] It has only two differences from the representative schematic, and neither is substantive. One difference is that whereas the SPV in the representative schematic effectively reinsures the insurer, the SPV in the Muteki Ltd. transaction effectively reinsures Munich Re which in turn reinsures the insurer. The other difference is that whereas the proceeds of the CAT bond issuance in the representative schematic were invested in liquid and highly-rated debt securities, the proceeds of the Muteki Ltd. CAT bond issuance were, consistent with many similar CAT bond transactions at that time (although no longer done), invested in a total-return-swap transaction.[74]

20Lessons%20from%20the%20Great%20East%20Japan%20Earthquake.pdf; https://www.moodys.com/credit-ratings/Muteki-Ltd-Series-2008-1-credit-rating-720846459.

[70] Moody's Investor Service, *Moody's Downgrades Muteki Ltd. Series 2008-1, a Catastrophe Bond Program Exposed to Japan Earthquake (Mar. 31, 2011), https://www.moodys.com/research/Moodys-downgrades-Muteki-Ltd-Series-2008-1-a-catastrophe-bond?docid=PR_216840*

[71] *See* ARTEMIS, *Muteki Ltd.,* available at https://www.artemis.bm/deal-directory/muteki-ltd/ (discussing the parametric payout as "triggered by the location and peak ground acceleration of earthquakes as reported by a network of seismographs"). AIR Worldwide performed the risk modelling. *Id.*

[72] *Id.* All $300 million was paid out to the sponsor Zenkyoren after a March 11, 2011 earthquake off the coast of Tohoku, Japan exceeded the payout trigger. ARTEMIS, *Muteki Ltd. Catastrophe Bond Triggered by Japan Earthquake Confirmed as Total Loss*, (May 2011) available at https://www.artemis.bm/news/muteki-ltd-catastrophe-bond-triggered-by-japan-earthquake-confirmed-as-total-loss/.

[73] *See supra* note 67 and accompanying text.

[74] Sarah Hills, *Cat Bond Market Develops New Collateral Trends*, REUTERS (Jan. 26, 2010), https://www.reuters.com/article/us-catbonds-collateral-analysis/cat-bond-market-develops-new-collateral-trends-idUSTRE60P3RC20100126 (reporting that before the global financial crisis, many SPVs issuing CAT bonds used banks as "Total Return Swap" counterparties to hold the proceeds from the bond sale). The collapse of Lehman Brothers in 2008 exposed the risk of this form of investment. ARTEMIS, *The Death of the Total Return Swap in the Cat Bond Market is Almost Upon Us* (Feb. 12, 2013), available at https://www.artemis.bm/news/the-death-of-the-total-return-swap-in-the-cat-bond-market-is-almost-upon-us/.

The only risk-securitization precedent for pandemic-related risk is the Pandemic Emergency Financing Facility ("PEF"), arranged by the International Bank for Reconstruction and Development ("World Bank") in June 2017. Spurred by the 2014 Ebola epidemic in West Africa,[75] the PEF was designed to help fund developing countries facing the risk of a pandemic.[76] The PEF was capitalized with more than $500 million, consisting of a "combination of [PCAT] bonds and derivatives [aggregating $425 million], a cash window, and future commitments from donor countries for additional coverage."[77] Three-hundred-twenty-million dollars of PCAT bonds were issued,[78] consisting of $225 million Class A bonds and $95 million Class B bonds.[79] The then-World Bank Group President Jim Yong Kim announced that the PEF "creates an entirely new market for pandemic risk insurance."[80]

The Class A and Class B bonds each had three-year maturities but differed in the types of viruses covered and therefore the amount of risk entailed.[81] The Class A bonds covered Flu and Coronavirus pandemics and offered an interest rate of six-month LIBOR plus (generally) 6.5%.[82] The Class B bonds covered Coronavirus, Filovirus, Crimean Congo Hemorrhagic Fever, Lassa Fever, and Rift Valley Fever pandemics and offered an interest rate of six-month LIBOR plus

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75 *See* World Bank Press Release, https://www.worldbank.org/en/news/press-release/2017/06/28/world-bank-launches-first-ever-pandemic-bonds-to-support-500-million-pandemic-emergency-financing-facility (discussing the need to make funds more quickly available to developing nations to combat the spread of viruses).
76 World Bank Press Release, *supra* note 75.
77 *Id.* More technically, the PEF was "supported by the Pandemic Emergency Financing Facility Trust Fund (the 'PEF Trust Fund'), which is established and administered by [the World Bank] as trustee . . . . The PEF Trust Fund will operate as a financial intermediary fund to make funds available to PEF-eligible Countries and eligible responding agencies." International Bank for Reconstruction and Development, Prospectus Supplement dated June 28, 2017 (hereinafter "World Bank Prospectus Supplement"), at PT-74, available at http://pubdocs.worldbank.org/en/882831509568634367/PEF-Final-Prospectus-PEF.pdf. Furthermore, the PEF Trust Fund was not actually funded by bond proceeds until a covered pandemic occurred. *Id.* at PT-75.
78 The relevant offering-related disclosure does not make it clear whether the issuer was the PEF itself or the World Bank.
79 World Bank Prospectus Supplement, *supra* note 77, at cover page. Technically, the Class A and Class B Bonds were labeled "Floating Rate Catastrophe-Linked Capital at Risk Notes." *Id.*
80 World Bank Press Release, *supra* note 75.
81 Prospectus Supplement, *supra* note 77, at PT-21-22.
82 *Id.* at PT-11.

(generally) 11.1%.[83] For each class, payments made by the PEF on behalf of covered pandemics would subtract from principal and interest due on the bonds of that class.[84]

Notwithstanding that risk, investor demand for the PCAT bonds was strong, evidenced by the bond issue being oversubscribed by 200%.[85] In part, that demand no doubt reflects those bonds' extraordinary yield.[86] As of the PCAT bond-issuance date, June 28, 2017, the six-month LIBOR was 1.45%,[87] while the rate for a three-year Treasury note was 1.51%[88] and the three year High Quality Market (HQM) Corporate Bond Spot Rate was 2.04%.[89] Therefore, when issued, the Class A bonds had a credit spread of approximately 6.44% over three-year Treasury notes[90] and bore interest that was 5.91% over the yield on three-year HQM Corporate Bonds.[91] The Class B bonds had a credit spread of approximately 11.04% over three-year Treasury notes[92] and bore interest that was 10.51% over the yield on three-year HQM Corporate Bonds.[93]

The PEF had two so-called "windows": an insurance window and a cash window.[94] The insurance window constituted "parametric" insurance, which does not indemnify the actual loss but, instead, pays a pre-set amount upon the occurrence of the triggering event—which is usually

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[83] *Id.* at PT-11-12
[84] *Id.* at PT-2, PT-48, & PT-75.
[85] World Bank Press Release, *supra* note 75.
[86] The yield on the PEF's PCAT bonds was comparable, however, to that of other CAT bonds. ARTEMIS, *Q3 2017 Catastrophe Bond & ILS Market Report: Parametrics Dominate an Average but Diverse Quarter*, 11 (2017) available at https://www.artemis.bm/wp-content/uploads/2018/01/q3-2017-cat-bond-ils-market-report.pdf?utm_source=ReportsPage&utm_medium=Link&utm_content=Q32017Report&utm_campaign=Report (reporting that 25% of insurance-linked securities issued in Q3 2017 offered coupon rates of 9% or more).
[87] 6-Month London Interbank Offered Rate (LIBOR), based on U.S. Dollar, https://fred.stlouisfed.org/series/USD6MTD156N.
[88] Daily Treasury Yield Curve Rates, https://www.treasury.gov/resource-center/data-chart-center/interest-rates/pages/TextView.aspx?data=yieldYear&year=2017
[89] St. Louis Fed, *3-year High Quality Market (HQM) Corporate Bond Spot Rate*, https://fred.stlouisfed.org/series/HQMCB3YR.
[90] 6.5% + 1.45% = 7.95%; 7.95% - 1.51% = 6.44%.
[91] 6.5% + 1.45% = 7.95%; 7.95% - 2.04% = 5.91%.
[92] 11.1% + 1.45% = 12.55%; 12.55% - 1.51% = 11.04%.
[93] 11.1% + 1.45% = 12.55%; 12.55% - 2.04% = 10.51%.
[94] World Bank Press Release, *supra* note 75.

a catastrophic natural event.[95] Parametric insurance is especially appropriate for pandemics because payouts need to happen quickly to make a difference to businesses trying to pay their employees in the midst of stay-at-home orders.[96]

Under the PEF insurance window, once a covered virus reached a predetermined pandemic level, the pre-set payout for that virus would be dispersed.[97] The payout amounts were estimated to approximate the loss, dispensing with the need for insured countries to prove actual losses.[98] The premiums for the PEF insurance were funded by donations, principally from Germany and Japan.[99]

The cash window was an account that could be drawn on by insured countries that were suffering covered diseases but had not yet met the requirements for a payout under the insurance window.[100] This account was also funded by donations.[101]

Because the PEF was largely funded by donations and thus not an arm's length commercial project, one might question the World Bank president's claim that the PEF creates an "entirely new market" for pandemic-risk insurance.[102] The answer is complicated. From the perspective of whether the premiums on that insurance were commercially viable, the World Bank president's claim is unjustified. Being paid by donations,[103] those premiums were not subjected to a market test. From the perspective of whether the interest rates on the Class A and Class B bonds were commercially viable, the World Bank president's claim is partly justified. It

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[95] Daniel Brettler & Timothy Gosnear, *Parametric Insurance Fills Gaps Where Traditional Insurance Falls Short*, INSURANCE JOURNAL (Jan. 9, 2020), available at https://www.insurancejournal.com/news/international/2020/01/09/553850.htm.
[96] The proposed pandemic insurance policy offered by Munich Re in collaboration with Marsh and Metabiota (*see supra* note 11), for example, was also parametric.
[97] World Bank Press Release, *supra* note 75.
[98] Moody's Investors Service, *Catastrophe Bonds Methodology*, at 4 (June 26, 2020).
[99] Pandemic Emergency Financing Facility (PEF): Operational Brief for Eligible Countries, at 3 (Feb. 2019), available at http://pubdocs.worldbank.org/en/134541557247094502/PEF-Operational-Brief-Feb2019.pdf.
[100] *Id.* at 4.
[101] *Id.* at 3.
[102] *See supra* note 80 and accompanying text.
[103] *See supra* note 99 and accompanying text.

is appropriate to the extent that arm's length investors were willing to purchase those bonds, notwithstanding the risk that any payments made by the PEF on behalf of covered pandemics would subtract from the principal and interest due on those bonds.[104] It is inappropriate to the extent that, absent the occurrence of covered pandemics, repayment of those bonds was full recourse to the World Bank—as opposed to the usual limited recourse of CAT bonds.[105] Furthermore, it is unjustified to the extent that the PEF lacked a market test of whether insureds would be willing to pay premiums high enough, coupled with investments on the bond proceeds, to pay those interest rates.[106]

Although the PEF recently had a payout experience, it does not provide a clear future direction for pandemic-risk insurance. On April 27, 2020, the insurance window paid out $195.85 million, the maximum payout allowed for a coronavirus outbreak, in response to the COVID-19 pandemic.[107] The World Bank is not planning to renew the PEF insurance window.[108]

C. Future Challenges.

Notwithstanding the relative success of CAT bonds, future challenges remain to using risk securitization to protect against pandemic-related risk. There are legal challenges and economic challenges.

1. *Legal challenges.* Certain of the legal challenges roughly parallel—but due to the inventive nature of risk securitization, are more original and complex than—the challenges of

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[104] *See supra* note 84 and accompanying text.
[105] The relevant offering-related disclosure does not clarify whether the PEF involved an SPV. If the World Bank itself, rather than an SPV, issued the PCAT bonds, they would be full recourse to the World Bank.
[106] *Cf. supra* note 103 and accompanying text (observing that those premiums were not subjected to a market test) and *supra* note 41 and accompanying text and Part I.C, *infra* (discussing how those premiums add to the amounts available to repay the investors).
[107] Fact Sheet: Pandemic Emergency Financing Facility, https://www.worldbank.org/en/topic/pandemics/brief/fact-sheet-pandemic-emergency-financing-facility. The PEF cash window paid out over $60 million to combat outbreaks of Ebola in the Democratic Republic of Congo in 2018 and 2019. *Id.*
[108] *Id.* The PEF's PCAT bonds matured on July 15, 2020. *Id.*

structuring traditional securitization transactions. These include establishing a bankruptcy-remote SPV and mandating its governance scheme; issuing the PCAT bonds in compliance with applicable law, including securities law and investment-company restrictions[109]; obtaining credit ratings for those bonds; and implementing a senior-subordinate structure to provide credit enhancement. Part II.A discusses these challenges.[110]

Other future legal challenges are even more novel. For example, the SPV's indemnifying the insurer resembles providing insurance, a regulated activity (include insurable interest and insurer licensing). It also will be critical precisely to define the insurance-payment trigger. Additionally, there could be constitutional challenges to any government requirement that businesses purchase pandemic insurance. Parts II.B, C, and D discuss these more novel challenges.

2. *Economic challenges*. The fundamental economic challenge is developing a large enough market for PCAT bonds to enable risk securitization to fund the level of pandemic insurance that businesses should be required to purchase. That challenge raises at least four questions: what level of pandemic insurance should businesses be required to purchase; what is the size of the market for PCAT bonds; what pandemic-related risks should the government share (and how should it share those risks); and would the benefits of pandemic risk securitization be likely to outweigh its costs.

Part II next examines how to resolve the legal challenges. Thereafter, Part III examines how to resolve the economic challenges.

II. RESOLVING THE LEGAL CHALLENGES

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[109] *Cf. infra* note 329 and accompanying text (arguing that CAT bonds should be publicly issued and traded in order to create more transparency and encourage a wider investor base).
[110] There also are a range of cross-border legal challenges associated with structuring traditional securitization transactions. For a detailed discussion of those issues, *see* STRUCTURED FINANCE, *supra* note 20, Chapter 7 (examining such issues as cross-border legal enforcement, currency exchange and hedging, and international taxation).

A. Legal Challenges that Roughly Parallel Traditional Securitization Transactions

Some of the legal challenges of risk securitization roughly parallel those of traditional securitization transactions. As mentioned, however, the inventive nature of risk securitization makes these challenges both original and complex.

1. *Establishing a bankruptcy-remote SPV and mandating its governance scheme*. A fundamental legal challenge is ensuring that the bond-issuing SPV does not become subject to bankruptcy. In industry parlance, this is called achieving bankruptcy remoteness. Bankruptcy remoteness is important for various reasons, including that bankruptcy law automatically would stay the SPV from repaying its bonds.[111] Rating agencies will not rate an SPV's bonds as "investment grade" absent bankruptcy remoteness,[112] and investors will be unlikely to purchase those bonds.[113]

An SPV can become subject to bankruptcy in any of three ways: by voluntarily filing for bankruptcy, by involuntarily being forced into bankruptcy, and by being substantively consolidated into the bankruptcy estate of an affiliate.[114] Consider each in turn.

The corporate governance of an entity, including an SPV, controls how the entity would voluntarily file for bankruptcy. This aspect of bankruptcy remoteness thus can be protected by establishing a governance scheme that limits the circumstances in which the SPV's directors could file a voluntary bankruptcy petition.[115] For example, an SPV's organizational documents typically require at least two independent directors to be on the board and also require a unanimous vote of all directors to authorize the filing of a voluntary bankruptcy petition.[116] [Also briefly discuss a "golden share" arrangement under Delaware corporate law.[117]]

[111] See 11 U.S.C. § 362 (the "Automatic Stay").
[112] *Cf. infra* notes 157-159 and accompanying text (discussing credit ratings).
[113] *See, e.g.*, *How Credit Ratings Affect Bond Valuations*, AM. ASS'N OF INDIVIDUAL INVESTORS (last visited Nov. 13, 2020), https://www.aaii.com/investing/article/how-credit-ratings-affect-bond-valuations?.
[114] STRUCTURED FINANCE, *supra* note 20, at §§ 3:2, 3:3, 3:4.
[115] *Id.* at § 3:2.
[116] *Id.* at § 3:11.
[117] [cite1]

An entity, including an SPV, can be forced into involuntary bankruptcy if it generally is not paying its debts as they come due.[118] Three of more creditors of the SPV then could file an involuntary bankruptcy petition.[119] Bondholders would be highly unlikely to want to force the SPV into bankruptcy because that would trigger the automatic stay and suspend their right to repayment.[120] Other creditors of the SPV, however, may well want to force the SPV into bankruptcy, thereby subjecting the SPV to the vagaries of bankruptcy law—which might increase the practical ability of those other creditors to negotiate an advantageous settlement.[121] This aspect of bankruptcy remoteness can be achieved by prohibiting the SPV, in its organizational documents, from incurring any debt or other obligations other than specifically under its bonds.[122] This means that the SPV—subject to the exception described below for risk securitization[123]—will not engage in any business other than issuing those bonds and investing the proceeds.[124] That is why the SPV is a "special purpose" vehicle.[125]

Unlike SPVs used in traditional securitization transactions, an SPV used for risk securitization indemnifies the Insurer in the event the covered event (e.g., a pandemic) occurs.[126] This indemnification obligation, if triggered, would undermine the SPV's bankruptcy remoteness by paying out cash that the SPV otherwise would have available to pay its bonds as they come due. Investors in CAT bonds implicitly accept this exception to bankruptcy remoteness because

[118] 11 U.S.C. § 303. *See also* STRUCTURED FINANCE, *supra* note 20, at § 3:3. An SPV also could be forced into involuntary bankruptcy in the unlikely event that a custodian is appointed to take control of substantially all of the SPV's assets. *Id.*
[119] *Id.*
[120] *Cf. supra* note 113 and accompanying text. *But cf. infra* notes 129-132 and accompanying text (discussing how the maturity-transformation risk could cause defaults on the SPV's bonds).
[121] *Cf.* STRUCTURED FINANCE, *supra* note 20, at § 3:2.1 (discussing how other creditors of the Days Inn Receivables Funding SPV were able to so negotiate an advantageous settlement).
[122] STRUCTURED FINANCE, *supra* note 20, at § 3:3.
[123] *See infra* notes 126-128 and accompanying text.
[124] STRUCTURED FINANCE, *supra* note 20, at § 3:3.
[125] *Id.*
[126] *See supra* notes 39-40 and accompanying text.

it drives their diversification and high rate of return.[127] Rating agencies recognize this exception by giving relatively lower credit ratings to CAT bonds.[128]

To prevent the SPV from defaulting on repaying its bonds, it also is critical to control so-called maturity-transformation—the risk of an asset-liability mismatch that results from the short-term funding of long-term projects.[129] This mismatch creates a "liquidity default risk" that borrowers will be unable to repay their lenders—a risk that was at the core of the global financial crisis.[130] Normally, SPVs control maturity transformation by [briefly compare what the CAFCO and Eureka multiseller securitization conduits did].[131] Risk-securitization transactions arguably have a lower maturity-transformation risk than traditional securitization, however, because the SPV invests in liquid and highly-rated debt securities,[132] which reduces the risk of an asset-liability mismatch.

An SPV also can become subject to bankruptcy by being substantively consolidated into the bankruptcy estate of an affiliate.[133] [Briefly discuss substantive consolidation, and also

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[127] *See supra* notes 27-29 and accompanying text.
[128] *Cf. infra* note 151 and accompanying text (observing that no issue of catastrophe bonds has been rated investment grade in over ten years).
[129] *See, e.g.*, Huberto M. Ennis & Todd Keister, *Bank Runs and Institutions: The Perils of Intervention*, 99 AM. ECON. L. REV. 1588, 1590 (2009) ("Money market funds and other arrangements perform maturity transformation by investing in long-term assets while offering investors the ability to withdraw funds on demand.").
[130] *See, e.g.*, Gary Gorton & Andrew Metrick, *Regulating the Shadow Banking System*, *in* BROOKINGS PAPERS ON ECONOMIC ACTIVITY 261 (2010), http://www.brookings.edu/~/media/projects/bpea/fall-2010/2010b_bpea_ gorton.pdf; Daniel Covitz et al., The Evolution of a Financial Crisis: Panic in the Asset-Backed Commercial Paper Market 1 (Fed. Reserve Bd. Fin. & Discussion Series, Working Paper 2009-36, 2009), http:// www.federalreserve.gov/pubs/feds/2009/200936/200936pap.pdf (arguing that maturity transformation "played a central role in transforming concerns about the credit quality of mortgage-related assets into a global financial crisis"); Viral V. Acharya & S. Viswanathan, *Leverage, Moral Hazard, and Liquidity*, 66 J. FIN. 99, 103 (2011) (observing that short-term funding of long-term projects "played an important role in the financial crisis of 2007 to 2009 and the period preceding it").
[131] [cite]
[132] *Cf. supra* note 37 and accompanying text (observing that CAT-bond-issuing SPVs usually invest in liquid and highly-rated debt securities).
[133] *See supra* note 114 and accompanying text.

examine the difference risk securitization and traditional securitization[134]: in risk securitization, the SPV's affiliates are normally insurance companies, which are not generally subject to federal bankruptcy law.[135]]

2. *Issuing the PCAT bonds in compliance with applicable laws.* In the United States, the Securities Act of 1933 and Securities Exchange Act of 1934 impose regulations and restrictions that are relevant to the issuance of securities—in this Article's example, the PCAT bonds—by the SPV.[136] The 1933 Act imposes disclosure requirements and requires the filing of registration statements with the Securities and Exchange Commission ("SEC") in connection with any public offering of a nonexempt security.[137] A public offering would have the advantage of the PCAT bonds being freely traded, and therefore can be purchased by a wider array of investors than in a private placement.[138] A public offering also would provide fully transparent and publicly available disclosures. However, such offerings can take months to implement and carry significant registration costs.[139]

[Contrast that with Rule 144A-exempt offerings. Although the eligible investors in PCAT bonds issued in such an exempt offering would be limited to qualified institutional buyers ("QIBs"),[140] most CAT bonds outstanding today have been issued under Rule 144A.[141] Tie this discussion into the importance of PCAT-bond transparency.[142]]

Additionally the Investment Company Act of 1940, subject to exemptions, requires that any entity primarily engaged in owning or holding securities must register with the SEC as an

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134 [cite1]
135 See 11 U.S.C. §§ 109(b)(2) & 109(b)(3)(A).
136 STRUCTURED FINANCE, *supra* note 20 at § 6:2.
137 *Id.* at § 6:2.1
138 STRUCTURED FINANCE, *supra* note 20 at § 6:2.1.
139 *Id.*
140 QIBs include firms that own and invest at least $100 million in securities of non-affiliated issuers. *See* 17 C.F.R. § 230.144A (2013).
141 [cite1 to the exemptions in existing CAT bond issuances]
142 *Cf. infra* note 329 and accompanying text (arguing that CAT bonds should be publicly issued and traded in order to create more transparency and encourage a wider investor base).

investment company.[143] Such registration is usually very costly due to the extensiveness of the Act's regulatory scheme.[144] As a result, transactions are typically structured to qualify for an exemption.[145] For example, SEC Rule 3a-7 provides an exemption for SPVs that meet four criteria[146]: the SPV must issue a fixed-income security or other "eligible asset,"[147] that is investment grade, acquired for a primary purpose other than recognizing gains or decreasing losses from market changes, with a trustee appointed by the issuer who takes reasonable steps to take a perfected security interest and to ensure that that cash flows from the issuer's assets make it into a segregated account.[148] Because the primary purpose of a PCAT bond-issuing SPV is other than profiting off market-value fluctuations, and the SPV is issuing a fixed-income security (the PCAT bond[149]) for which it easily could appoint a trustee, such an SPV should be able to qualify for the Rule 3a-7 exemption if the PCAT bonds are rated investment grade.[150]

Because the SPV's indemnification obligation, if triggered, would pay out cash that the SPV otherwise would have available to pay its bonds as they come due, no issue of catastrophe bonds has been rated investment grade in over ten years, however.[151] However, in the case of PCAT bonds, an investment-grade rating may be more feasible if, as this Article (and others)

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143 STRUCTURED FINANCE, *supra* note 20 at § 6:1.1
144 *Id.*
145 *Id.*
146 *Id.* at § 6:1.3.
147 "Eligible assets" are "financial assets . . . that, by their terms, convert into cash within a finite time period." *Exclusion From the Definition of Investment Company for Structured Financings*, 57 Fed. Reg. 56,250 (Nov. 27, 1992).
148 Howard Altarescu & Mark Racic, *ABS Issuers and the Rule 3a-7 Exclusion from the Investment Company Act*, ORRICK 2 (Sep. 2011).
149 *See infra* note 263 (noting that bonds are the most common type of fixed-income security).
150 [Examine the potential ratings further as a basis for the Rule 3a-7 exemption. Also, would the Rule 3a-7 exemption be available for an SPV issuing PCAT bonds in a senior-subordinated structure where only the senior bonds are investment grade? cite1.
151 *Investment Grade Catastrophe Bond Unique for ILS Market*, FITCH (Jan. 31, 2020), https://www.fitchratings.com/research/insurance/investment-grade-catastrophe-bond-unique-for-ils-market-31-01-2020. For example, Moody's rated the Muteki Ltd. earthquake CAT bonds as Ba2, which is less than investment grade. *See supra* note 72 and accompanying text. Some other offshore CAT bond issuances are unrated.

proposes, the government bears at least some portion of the pandemic-related risk.[152] Non-pandemic CAT bonds lack any government risk-sharing.[153]

[As a fallback to Rule 3a-7, compare the '40 Act private offering and related exemptions, including under §§ 3(b)(2), 3(c)(1), & 3(c)(7).[154] In that context, consider whether the federal government might legislate (Congress)/regulate (SEC) a special '40 Act exemption, especially if it agrees to share in the risk.]

3. *Obtaining credit ratings for the PCAT bonds*. Bonds and other debt securities typically are rated by so-called rating agencies, such as Moody's Investors Service, Inc. and Standard & Poor's Ratings Group.[155] Rating agencies are private companies whose business is assessing the risks associated with the full and timely payment of the rated securities.[156] The significance of the rating depends entirely on the reputation among investors of the particular rating agency. Long- and short-term debt have separate rating scales, generally reflecting the different risks associated with long- and short-term investing. The highest rating on long-term debt securities is typically AAA, with ratings descending to AA, then to A, and then to BBB and below.[157] The higher the rating, the lower the rating agency has assessed the risk associated with the securities in question.[158] Ratings below BBB- are deemed non-investment grade,[159] and indicate that full and timely repayment on the securities may be speculative.

[152] *See infra* notes 274-299 and accompanying text.
[153] *See id.* [Also, examine whether Rule 3a-7 would be applicable to an SPV issuing CAT bonds in a senior-subordinated structure, where only the senior bonds are rated investment grade. cite1]
[154] [cite1A]
[155] For a more detailed discussion of rating agencies, *see generally* Steven L. Schwarcz, *Private Ordering of Public Markets: The Rating Agency Paradox*, 2002 U. ILLINOIS. L. REV. 1.
[156] *Id.* at 3.
[157] *Id.* at 7. Long-term ratings also sometimes have "+" and "-" designations associated with the ratings.
[158] A rating usually is assigned to a particular issuance of a company's securities, and not necessarily to the company itself, because a company could issue different securities having different risk characteristics. Indeed, rating agencies view their ratings as worldwide standards, and not as relative risk standards within countries. Thus, a BBB rating on securities is intended to convey the same level of risk irrespective of the jurisdiction in which the securities are issued. *Id.* at 8.
[159] *Id.* at 7. The term investment grade "was originally used by various regulatory bodies to connote obligations eligible for investment by institutions such as banks, insurance companies

Because a high rating signals low risk to investors, an SPV that issues AAA rated securities can more easily attract investors in its securities than can an SPV that issues AA, A, or BBB rated securities. Therefore, the SPV with AAA rated securities can charge a lower interest rate on those securities, and still attract investors, than can the SPV with the lower rated securities.[160] If they find the extra risk acceptable, some investors may prefer to invest in BBB-rated securities rather than AAA-rated securities in order to benefit from the higher interest rate.[161] The rating addresses only the safety, and not the economic desirability to the investor, of the investment.[162]

In rating PCAT bonds, rating agencies will identify and evaluate the risks that could result in losses to investors.[163] In general, the risks to cat bond investors include (a) the covered peril(s); (b) counterparty risk; (c) collateral risk; and (d) documentation and legal risk.[164] The primary risk is the covered peril, in this Article's context a covered pandemic.

Other than pandemic risk, the aforesaid risks are likely to be low. Counterparty risk refers, in this Article's context, to the indemnified insurer failing to pay its premiums to the SPV when due.[165] Rating agencies themselves treat that risk as low.[166] Collateral risk refers to the risk that the SPV's investments will lose value.[167] This risk also should be low because the SPV invests in "liquid and highly-rated debt securities, including U.S. Treasury money-market instruments."[168] Documentation and legal risk refers to risks associated with the SPV's special purpose organization and bankruptcy remoteness.[169] Because those risks are "generally

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and savings and loan associations. Over time, this term gained widespread acceptance throughout the investment community." STANDARD & POOR'S, CORPORATE RATINGS CRITERIA 9 (1998).
[160] *Private Ordering of Public Markets*, *supra* note 155 at 8.
[161] *Id.*
[162] *Id.* at 6.
[163] Moody's Investors Service, *supra* note 98, at 3.
[164] *Id.*
[165] *Id.*
[166] *Cf. id.* at 9 ("Typically, counterparty risk is small . . . .").
[167] *Id.* at 9.
[168] *See supra* note 37 and accompanying text.
[169] Moody's Investors Service, *supra* note 98, at 8.

consistent with [similar risks] in all areas of structured finance,"[170] this Article also will assume these risks are low.

In contrast, the primary risk—that of a covered pandemic occurring—may not be low. In their assessment, rating agencies are likely to take into account the uncertainty of models that purport to quantify that risk.[171] Notwithstanding claims that certain firms can quantify pandemic risk,[172] pandemic risk is a "tail event," so that even if quantifications "match the historical record perfectly," that would "still provide an inadequate description of the tail of the loss distribution."[173] Rating agencies may compensate for this uncertainty "either by stressing the relevant parameters or by directly incorporating uncertainty into [their] analysis."[174]

The actual credit rating that rating agencies assign to PCAT bonds is beyond the scope of this Article. Other things being equal, however, they should assign higher ratings to senior tranches of PCAT bonds than to subordinated tranches because the former are less risky[175] and they should assign higher ratings to PCAT bonds to the extent the government shares risk on a first-loss or pari passu basis than on a second-loss basis.[176]

4. *Implementing a senior-subordinate structure to provide credit enhancement*. As discussed above, different investors have different risk tolerances. Some would prefer to take higher risk and earn a higher rate of return, whereas others, who are more risk-averse, would prefer to take lower risk notwithstanding receiving a lower rate of return.[177] Securitization

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[170] *Id.*
[171] *Cf. id.* at 7 ("A particularly important aspect of the modeling process is the treatment of uncertainty. Since no one can perfectly model natural phenomena, and the data that modeling firms use to develop these models are limited and generally imperfect, we must identify the sources and assess the level of uncertainty.").
[172] *See supra* note 15 and accompanying text.
[173] Moody's Investors Service, *supra* note 98, at 7.
[174] *Id.*
[175] *See infra* notes 177-186 and accompanying text.
[176] *See infra* Part III.C.
[177] *Risk Aversion of Investors and Portfolio Selection*, FINANCE TRAIN (last visited September 9, 2020), https://financetrain.com/risk-aversion-of-investors-and-portfolio-selection/.

transactions often utilize so-called credit enhancement to lower the risk for such risk-averse investors. Senior-subordinate structures provide the dominant method of credit enhancement.

To create a senior-subordinate structure to credit enhance PCAT bonds, the SPV would issues two or more classes (sometimes called "tranches") of PCAT bonds, with any reduction of the SPV's assets being absorbed by the different classes in sequence—with the most senior-priority bonds being paid first out of the remaining assets, and the most subordinated-priority (sometimes referred to as "junior") bonds being paid last.[178] The goal of this structure is to protect payment of—by effectively overcollateralizing—the senior PCAT bonds.[179]

For example, consider an SPV with $1,000 of assets and $900 of PCAT bonds consisting of $700 of senior bonds and $200 of subordinated bonds. If the SPV is required to pay $150 of the assets to indemnify the insurer for pandemic-related payments, the remaining $850 of assets would be available to repay the $700 senior bonds in full, leaving only $150 (*i.e.*, $850 minus $700) to pay the subordinated bonds (ignoring the time value of money). Investors in the subordinated bonds would thus be paid only 75 cents on the dollar (*i.e.*, $150 on their $200 of claims), whereas investors in the senior bonds would be paid in full.[180]

Although SPVs issuing CAT bonds sometimes use senior-subordinate structures to provide credit enhancement, they tend to refer to them using insurance industry terminology for allocating insurer risk, typically by assigning different "attachment" and "exhaustion" points.[181] Assume, for example, that an SPV issues two classes of bonds to allocate the insurance risk

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[178] Steven L. Schwarcz, *Regulating Complexity in Financial Markets*, 87 WASH. U. L. REV. 211, 220 (2009).
[179] *Id.* & 220 n. 46. *Cf.* Joshua Coval, Jakub Jurek, & Erik Stafford, *The Economics of Structured Finance*, 23 J. ECON. PERSP. 3, 6 (2009) ("The degree of protection offered by the junior claims, or overcollateralization, plays a crucial role in determining the credit rating for a more senior tranche, because it determines the largest portfolio loss that can be sustained before the senior claim is impaired.").
[180] *Cf.* Adam J. Levitin & Susan M. Wachter, *Explaining the Housing Bubble*, 100 GEO. L. J., 1177, 1237–38 (Apr. 2012) (explaining the senior-subordinated structure).
[181] *See, e.g.*, https://www.artemis.bm/deal-directory/citrus-re-ltd-series-2015-1/ (using those terms to discuss insurer risk allocation in the Citrus Re transaction, and calling it a "reinsurance tower").

among bondholders, enabling bonds of the less risky class to obtain a higher credit rating than would otherwise be achieved by issuing a single class of bonds.[182] If and when a triggering event occurs, requiring an insurance-indemnification payout,[183] the money used by the SPV to make that payout will first be drawn from the funds allocated to repay the more subordinate class of bonds. That first loss is the attachment point of those bonds.[184] The SPV will continue to make payouts from the funds allocated to repay the more subordinate class of bonds until those funds are exhausted, and thus there is no money left to repay those bonds. That is the exhaustion point for those bonds.[185] Any money thereafter used by the SPV to make insurance-indemnification payouts necessarily will be drawn from the funds allocated to repay the more senior class of bonds—and that is that class's attachment point.[186]

Thus, if an SPV issues $500,000 of Class B (i.e., more subordinated) CAT bonds and $500,000 of Class A (i.e., more senior) CAT bonds, the Class B CAT bonds would have an attachment point of $1 and an exhaustion point of $500,000, and the Class A CAT bonds would have an attachment point of $501,000 and an exhaustion point of $1,000,000. Regardless of the attachment point/exhaustion point terminology, this first-loss, second-loss structure is functionally identical to the standard senior-subordinate structure used to provide credit enhancement.

Subparts B, C, and D next discuss even more novel legal challenges of risk securitization.

B. Regulating SPVs as Reinsurers.

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[182] Joshua D. Coval, et al., *Economic Catastrophe Bonds*, Harvard Bus. School Working Paper No. 102 at 6 (2007).
[183] *Cf. supra* note 95 and accompanying text (describing a CAT-bond triggering event). CAT bonds can carry different types of triggers such as an indemnity loss, industry loss, or parametric loss. CAT Bonds Demystified: RMS Guide to the Asset Class at 5, https://forms2.rms.com/rs/729-DJX-565/images/cm_cat_bonds_demystified.pdf (2012).
[184] Insurance Linked Strategies Glossary, Credit Suisse, available at https://www.credit-suisse.com/ch/en/asset-management/solutions-capabilities/insurance-linked-strategies/ils-glossary.html#:~:text=The%20difference%20between%20the%20attachment,liability%20for%20any%20further%20losses.
[185] *Id.*
[186] *Id.*

Recall that by indemnifying the insurer, the SPV effectively is providing reinsurance.[187] Insurers rely extensively on reinsurance to mitigate their catastrophe risk.[188] Although governments regulate both insurers and reinsurers, the purposes of that regulation are different. The purpose of regulating primary insurers is to protect policyholders, whereas the purpose of regulating reinsurers is to assure their solvency—and thus their ability to reimburse payments made by the primary insurer.[189]

[Analyze the potential consequences of regulating SPVs as reinsurers to assure their solvency, and thus their ability to indemnify insurers that issue pandemic-related catastrophe insurance.[190] Also, analyze whether the National Association of Insurance Commissioners (NAIC) would recommend regulating, or U.S. domestic (i.e., state, including New York) insurance regulators would regulate, these SPVs as reinsurers—and in any event, whether they should.[191] To what extent, if any, would (or should) that depend on whether the SPV is reinsuring a primary insurer (reinsurance) or reinsuring a reinsurer (retrocession) or reinsuring a government catastrophe fund?[192]]

[In that context, compare the regulation of monoline insurers, the beneficiaries of whose policyholders are sophisticated institutional bondholders rather than consumers who more typically are insurance policyholders. Monoline insurers guarantee that investors will receive future scheduled payments of principal and interest on bonds issued in securitization and municipal finance transactions.[193] Investors normally assess the creditworthiness of their bonds by taking into account the credit rating of the monoline insurer.[194] Similarly, businesses

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187 *See supra* note 38 and accompanying text.
188 See American Academy of Actuaries Catastrophe Management Work Group, *Catastrophe Exposure and Insurance Industry Catastrophe Management Practices* 15 (2001); Dwight M. Jaffee & Thomas Russell, *Catastrophe Insurance, Capital Markets, and Uninsurable Risks*, 64 J RISK & INS. 205, 215 (1997).
189 U.S. Gov't Accountability Off., GAO-90-82, *Insurance Regulation – State Reinsurance Oversight but Problems Remain* 4 (1990).
190 [cite1A]
191 [cite1A]
192 [cite1]
193 J.M. Pimbley, *Bond Insurers*, 22 J. APPLIED FINANCE 1, 1 (2012).
194 *Id.* at 4.

purchasing pandemic insurance would likely assess the insurer's ability to pay by taking into account the credit rating—or lacking a rating, the creditworthiness—of the indemnifying SPV.[195] Insurance regulation failed to protect the monoline insurance industry from the devastation caused by the global financial crisis; all but two monoline insurers, Assured Guaranty and BHAC, failed and had to undergo liquidation or other resolution.[196] Examine what lessons, if any, that could teach for future regulation.[197]]

A final question is which jurisdictions should regulate SPVs as reinsurers, to assure their solvency. U.S. domestic reinsurers are regulated by the state in which they conduct their operations.[198] Most monoline insurers, for example, have been regulated by the New York State Insurance Department because they have conducted their operations in that state.[199] Similarly, most SPVs would be likely to issue their PCAT bonds in New York, or at least under New York law-governed transactions, because bondholders view New York law as providing the most

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[195] *Cf. supra* note 13 and accompanying text (observing that losses under pandemic insurance would likely overwhelm the ability of insurers to pay, absent further protection—in this case, the SPV indemnifications provided through risk securitization).

[196] Tima Moldgaziev, *The Collapse of the Municipal Bond Insurance Market: How Did We Get Here and is There Life for the Monoline Industry Beyond the Great Recession,* 25 J. OF PUB. BUDGETING, ACCT. & FIN. MGMT. 1 199, 200 (2013).

[197] [cite1. In this context, consider the reasons proposed in *Regulating Financial Guarantors*, 11 HARV. BUS. L. REV. (forthcoming issue no. 1 (2021)), available at https://ssrn.com/abstract=3431345. Also, compare the argument that regulation of the monoline-insurance industry did not adapt to reflect changes in the industry itself. *Cf.* Moldgaziev, *supra* note 196, at 199 (making that argument). Although historically, monoline insurers primarily guaranteed low-risk municipal and other public finance bonds, by the time of the financial crisis they primarily guaranteed riskier structured finance bonds, especially those backed by residential mortgage loans. *Id.* at 227–228. The regulatory capital requirements for monoline insurers, however, had not increased to cover the increasing risk of those new exposures. *Id.* at 199, 216–217.]

[198] John Pruitt, *Insurance and Reinsurance in the United States: Overview*, THOMSON REUTERS PRACTICAL LAW, https://uk.practicallaw.thomsonreuters.com/9-501-3187?transitionType=Default&contextData=(sc.Default)&firstPage=true (last visited Oct. 2020).

[199] [cite] Article 69 of New York's Insurance Law regulates "financial guaranty insurance," defined in relevant part as "an indemnity contract . . . under which loss is payable, upon, proof of occurrence of financial loss, to an insured claimant, oblige or indemnitee. N.Y. Ins. Art. 69 (2010).

commercial certainty to their investments.[200] Hence, those SPVs would likely be regulated by the New York State Insurance Department.[201]

In practice, however, some SPVs might be organized outside the United States, given the reality that reinsurance today is an international business.[202] Foreign reinsurers, which in many cases are licensed and supervised overseas, provide a substantial portion of U.S. domestic reinsurance.[203] This multi-jurisdictional international regulation could create a lack of uniformity.[204] More significantly, it might foster regulatory opacity, making it difficult to monitor whether SPVs acting as reinsurers are in fact adequately regulated.[205] To facilitate monitoring and help ensure SPV solvency, any government requirement that businesses purchase

[200] Larry Schiffer, *Reinsurance and Ever-Expanding Regulation and Oversight*, INTERNATIONAL RISK MANAGEMENT INSTITUTE (2013), https://www.irmi.com/articles/expert-commentary/reinsurance-and-ever-expanding-regulation-and-oversight; *Reinsurance*, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (last updated Feb. 2020), https://content.naic.org/cipr_topics/topic_reinsurance.htm.

[201] [Develop that analysis-cite1]

[202] *Cf.* Schwarcz & Schwarcz, *supra* note 16, at 1615-16. In many CAT-bond transactions, the SPV appears to be an offshore-domiciled entity (e.g., in Bermuda or the Cayman Islands). Robert Klein & Shaun Wang, *Catastrophe Risk Financing in the United States and the European Union: A Comparative Analysis of Alternative Regulatory Approaches*, 76 J. RISK & INS. 607, 622–23 (Sep. 2009). *Cf. supra* note 57 (noting that Citrus Re Ltd. is organized under Bermuda law). In the author's experience, however, at least U.S. investors tend to prefer bonds issued by U.S.-domiciled SPVs. Furthermore, rating agencies might limit the rating of PCAT bonds issued by a foreign-domiciled SPV to the foreign jurisdiction's sovereign-debt rating (the so-called sovereign rating ceiling). Heitor Almeia et al., *The Real Effects of Credit Ratings: The Sovereign Ceiling Channel*, 47 CFA INSTITUTE 9 (Sep. 2017).

[203] *The Breadth and Scope of the Global Reinsurance Market and the Critical Role Such Market Plays in Supporting Insurance in the United States*, FEDERAL INSURANCE OFFICE (FIO) 18 (2014).

[204] *Id.* at 1616. *Cf.* Marie-Louise Rossi & Nicholas Lowe, *Regulating Reinsurance in the Global Market*, 27 GENEVA PAPERS RISK & INS. 122, 127–29 (2002) (arguing that the reinsurance industry would benefit from more cohesive standards).

[205] Schwarcz & Schwarcz, *supra* note 16, at 1616-18. *Cf.* GROUP OF THIRTY, REINSURANCE AND INTERNATIONAL MARKETS 6, 13 (2006) (Explaining that "[t]he risk information published by reinsurers varies significantly across firms in both frequency and scope" resulting in a "widespread perception that publicly available information about both the financial state and the risk profile of reinsurance companies is in many cases inadequate.").

pandemic insurance should include a requirement about where the underlying risk-securitization transactions should be conducted.[206]

C. Defining the Insurance-payment Trigger.

[It will be critical precisely to define the insurance-payment trigger. This will entail determining how to define the pandemic, when it occurs, and how it impacts the priority of the SPV's obligations to pay (a) principal and interest to CAT bond investors and (b) indemnification to the insurer. That also raises the question of the enforceability of the CAT bond payment subordination. Note that Chubb's Pandemic Business Interruption Program proposes several possible insurance-payment triggers: U.S. Centers for Disease Control and Prevention medical criteria, Declaration of Emergency by U.S. Department of Health and Human Services or President, and federal, state, or local lockdown in force.[207]]

D. Enforcing Government Insurance Mandates.

There also could be legal challenges to any government requirement that businesses purchase pandemic insurance.[208] In concept, such a requirement would resemble the individual mandate of the Affordable Care Act ("ACA"). That mandate requires individuals either to purchase health insurance or to opt out by paying a penalty in the form of a tax.[209]

In addressing the constitutionality of the individual mandate, the U.S. Supreme Court reasoned that the Commerce Clause of the Constitution allows Congress only to regulate actions of those participating in a market, not the inactions of those choosing not to participate in the market.[210] The Court rejected the Government's temporal argument—that because sickness and

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[206] Although this Article focuses on SPV indemnification as a means to diversify risk to the capital markets to enable insurers to issue pandemic insurance, insurers also may want that indemnification to provide the financial statement credit that insurers normally receive from reinsurance. [Finish this footnote, including citing to Peter Rogan-cite1]
[207] PANDEMIC BUSINESS INTERRUPTION PROGRAM, *infra* note 294, at 6.
[208] This discussion also benefited from the valued research of Leila Hatem, Duke Law Class of 2021.
[209] See Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 539 (2012) (summarizing the individual mandate of the Affordable Care Act).
[210] *Id.* at 520–21.

injury are inevitable, the uninsured will, at some point, become active in the healthcare market[211]—holding that Commerce Clause precedent does not permit Congress to regulate present conduct on the basis of "prophesized future activity."[212]

Nonetheless, the individual mandate was able to survive under Congress's power to tax.[213] Designed to incentivize the purchase of health insurance, the individual mandate constituted a tax to promote certain behavior, not unlike a tax on cigarettes to reduce the use of nicotine. The Court reaffirmed that Congress can achieve regulatory goals via its taxing power, so long as the mandated payment functions as a "tax," turns on "practical characteristics," and should dampen or deter the behavior in question.[214] The Court found that the individual mandate satisfied these requirements because the opt-out payment was determined by an individual's income level and, like a tax, was paid into the U.S. Treasury.[215] Furthermore, despite being called a penalty, the Court found that the mandate's opt-out payment was not technically a penalty because it did not punish an illegal action and was generally less expensive than actually getting healthcare insurance.[216] Importantly, the Court found it acceptable that the mandate was "plainly designed to expand health insurance coverage."[217]

A federal mandate requiring businesses to purchase adequate pandemic insurance, tailored to the business's income level, or to make an opt-out payment to the U.S. Treasury should similarly be likely to be construed as a tax and thus survive a constitutional challenge. Any opt-out payments could ultimately be used by the government to create a pandemic catastrophe fund or even to purchase PCAT bonds that could not be sold to capital market investors.

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[211] *Id.* at 555–57.
[212] *Id.*
[213] Id. at 575 (holding that the federal government has the power to impose a tax on the uninsured).
[214] *Id.* at 573.
[215] *Id.* at 575.
[216] *Id.* at 574. *Cf. id.* at 566 (finding the opt-out payment to be reasonable because it is significantly cheaper than purchasing healthcare insurance).
[217] *Id.* at 567 ("None of this is to say that the payment is not intended to affect individual conduct. Although the payment will raise considerable revenue, it is plainly designed to expand health insurance coverage.").

Furthermore, in contrast to the ACA's individual mandate, a federal mandate requiring businesses to purchase adequate pandemic insurance may well be within Congress's power to regulate commerce.[218] The Commerce Clause gives Congress general authority to regulate business.[219] Unlike individuals,[220] most businesses are involved in interstate commerce, and a pandemic can close down businesses and seriously harm the national economy. The Court has been more willing to use the Commerce Clause to uphold Congressional regulation of activities that have a substantial impact on interstate commerce.[221]

III. RESOLVING THE ECONOMIC CHALLENGES

Recall that the fundamental economic challenge is developing a large enough market for PCAT bonds to enable risk securitization to fund the level of pandemic insurance that businesses

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[218] The Necessary and Proper Clause of the Constitution may provide even further authority for Congress to require businesses to purchase pandemic insurance. *Cf.* McCulloch v. Maryland, 17 U.S. 316, 357 (1819) (interpreting that Clause to support Congress's power to charter a national bank). That Clause underpins Congress's power to enact the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811, 1814 (1913), under which banks are required to insure deposits as a condition of their operation. MICHAEL S. BARR, ET. AL., FINANCIAL REGULATION: LAW AND POLICY 173 (2d ed. 2018). Under that Act, banks must pay insurance premiums, adjusted for each bank's size, complexity, and risk profile, to the FDIC. *Id.* at 252–53. A pandemic insurance requirement could mirror the deposit-insurance requirement. Businesses would pay premiums, calculated based on a business's riskiness and the losses it could inflict on the insurance fund, to a federal agency tasked with collecting and distributing funds during a pandemic.

[219] *See* Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 536 (2012) (citing U.S. v. Morrison, 539 U.S. 598, 609 (2000)) ("Congress may regulate 'the channels of interstate commerce,' 'persons or things in interstate commerce,' and 'those activities that substantially affect interstate commerce'"). *See, e.g.*, 42 U.S.C. § 2000(a), (c) (1964) (prohibiting businesses engaged in commerce from discriminating based on race, color, religion, or national origin); 21 USC § 603 (2016) (regulating the meat products" to be used in commerce); 21 U.S.C. § 331(k) (1938) (barring the "introduction into interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded").

[220] *Cf. id.* at 572 (the Court's primary concern with upholding the ACA's individual mandate under the Commerce Clause was that individuals generally do not participate in interstate commerce).

[221] *See, e.g.,* Gonzalez v. Raich, 545 U.S. 1 (2005) (holding that Congress may regulate a local activity that is not itself economic if it is a part of a "class of activities" that has a substantial impact on interstate commerce).

should be required to purchase.[222] As discussed, capital market investors have shown strong demand for CAT bonds.[223] $9.1 billion of new CAT bonds were issued in 2018, and $10.3 billion (a record high) were issued in 2017.[224] The risk-capital outstanding under CAT bonds increased during that same period from $25.2 billion to $28.7 billion,[225] and CAT bond issuance is surging in 2020.[226]

That might seem like a lot, but it is tiny compared to the U.S. government's $2.2 trillion bailout package for COVID-19 or its $750 billion bailout package during the global financial crisis.[227] Moreover, the foregoing data on CAT-bond issuance and risk-capital outstanding only minimally, at best, take PCAT bonds—which, to date, only have been issued as part of the World Bank's PEF Facility[228]—into account.[229]

Developing a large enough market for PCAT bonds therefore almost certainly will require the federal government to purchase a significant amount of those bonds.[230] This parallels

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222 *See* Part I.C.2, *supra*.
223 *See supra* notes 24-29 and accompanying text.
224 Insurance Information Institute, "Facts + Statistics: Catastrophe Bonds," available at https://www.iii.org/fact-statistic/facts-statistics-catastrophe-bonds (visited May 28, 2020) (reporting data from GC Securities, a division of MMC Securities Corp.). *See also How Record Catastrophe Bond Issuances Are Changing The Alternative Investment Landscape,* The One Brief (2018), https://theonebrief.com/how-record-catastrophe-bond-issuances-are-changing-the-alternative-investment-landscape/.
225 Insurance Information Institute, *supra* note 224. The "majority" of CAT bonds issued in 2018 covered U.S.-based catastrophe risks. *Id.*
226 *See supra* note 32 and accompanying text.
227 Larisa Yarovaya, John W. Goodell, & Brian Lucey, "Financial Contagion during the COVID-19 Pandemic," FIN. REG. BLOG (June 16, 2020), available at https://sites.law.duke.edu/thefinregblog/2020/06/16/financial-contagion-during-the-covid-19-pandemic/.
228 *See supra* notes 75-79 and accompanying text.
229 It is unclear if the above data include the World Bank's PCAT bonds. *Cf.* https://www.iii.org/insuranceindustryblog/tag/catastrophe-bonds/ (referencing the World Bank's PCAT bonds but not stating whether those bonds were included in the Insurance Information Institute's data).
230 *See supra* note 5 and accompanying text.

the widespread insight that pandemic-risk protection may not be commercially feasible without the government bearing some portion of the risk.[231]

That calls into question what level of pandemic insurance businesses should be required to purchase. In part based on the experience with COVID-19, subpart A examines factors relevant to estimating that level. That estimate also will indicate the principal amount of PCAT bonds that will need to be issued to fund that level of insurance. Subpart B then attempts to estimate what portion of those bonds could be sold to capital market investors. That estimate will depend, in part, on the credit rating of, and the interest rate payable on, those bonds.[232] The interest rate payable on those bonds will influence, in turn, the premiums that businesses must pay to insurers for the pandemic insurance, and thus the premiums that insurers must pay to the SPVs for their indemnifications; these amounts are correlated because the premiums are passed through to help pay interest on the SPV's PCAT bonds.

Because the federal government almost certainly would have to purchase any shortfall between the principal amount of PCAT bonds that would need to be issued to indemnify the insurers and the principal amount of those bonds that could be sold to capital market investors, subpart C analyzes government risk-sharing in purchasing that shortfall—including whether the

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[231] *See, e.g.*, INSURANCE COUNCIL OF AUSTRALIA, INSURING FOR PANDEMICS STUDY 5 (July 2020), concluding that because pandemic "risk violates most principles of insurability," especially insofar as the "magnitude of the losses is significant, well in excess of insurance sector capital," global "aggregation of loss means risk cannot be diversified (a key tenet of insurance mathematics)," the "premiums would be high, and most likely unaffordable," and the "losses are hard to define" and "(at least currently) are not calculable prior to a pandemic occurring," a "traditional private sector insurance risk transfer solution to address pandemic risk [is] effectively impossible at this time." "Government policy [therefore] plays an important role in structuring solutions" because "principles of insurability are not satisfied." *Id. Cf.* Weinberger, *supra* note 13 (reporting that the "federal government is likely going to have to provide some sort of global [pandemic risk] coverage, most insurers say" and also observing that both a federal congressperson proposing legislation and a leading private insurer "envision a program where insurers offer pandemic coverage policies to businesses with the federal government bearing most of the coverage costs"). Whether the federal government feasibly would purchase those PCAT bonds is a political question that is beyond this Article's scope.

[232] That, in turn, would depend on whether investors take a first-loss, second-loss, or pari passu position.

government-purchased bonds should be pari passu or subordinate in priority to the capital-market-investor-purchased bonds.

Finally, subpart D engages in a cost-benefit analysis to try, among other things, to assess the fairness of the PCAT-bond interest rates. Given the unpredictability of both the occurrence and duration of pandemics, some have questioned whether fair pricing is realistic.[233]

A. Estimating the Level of Pandemic Insurance that Businesses Should Purchase

Although this Article contemplates the federal government requiring businesses to purchase some minimum level of pandemic insurance, it does not yet estimate that level. In part based on the COVID-19 pandemic, consider what factors should be relevant to making that estimate.

The full extent of the economic fallout from the COVID-19 pandemic is still being felt by businesses, but the size of that impact is beginning to take shape. While pandemic insurance might be required to cover the full amount of that impact, the more critical—and, given the scale of trying to cover a pandemic's full impact, arguably more pragmatic—level would appear to be the amount of liquidity needed to help firms survive during a pandemic. In this context, liquidity means the amount of cash that firms need to pay their obligations as they come due.[234] An inability to pay such obligations as they come due is the principal reason that businesses fail.[235]

[233] *Cf.* Dror Etzion *et al.*, *Employing Finance in Pursuit of the Sustainable Development Goals: The Promise and Perils of Catastrophe Bonds*, 5 ACADEMY OF MANAGEMENT DISCOVERIES 530 (2019) (arguing that using CAT bonds to insure losses caused by extreme climate events makes bond investors richer by systematically overestimating risks and artificially inflating bond returns).

[234] *Working Capital Basics: Liquidity and the Cash Cycle*, American Bankruptcy Institute (ABI) (July 2001), https://www.abi.org/abi-journal/working-capital-basics-liquidity-and-the-cash-cycle.

[235] *See, e.g.,* Jean Murray, *Common Reasons Why Companies Go Bankrupt*, THE BALANCE (July 2019), https://hbr.org/2020/04/managing-the-liquidity-crisis; Mike Harmon & Victoria Ivashina, *Managing the Liquidity Crisis*, HARVARD BUS. REV. (Apr. 2020), https://hbr.org/2020/04/managing-the-liquidity-crisis.

Conversely, enabling businesses to pay those obligations on a timely basis would enable economic recovery and protect employment.[236]

The amount of liquidity needed to help a firm survive during a pandemic depends in large part, however, on the length of the pandemic and its impact on the ability of the firm to continue operating during its continuance.[237] As COVID-19 has shown, it is difficult ex ante to predict the length of a pandemic. Furthermore, the impact on a firm's ability to continue operating during a pandemic depends not only on the severity of the pandemic but also on the nature of the firm and applicable government public-safety measures. During the COVID-19 pandemic, for example, pharmacies, grocery stores, and gas stations were deemed essential and allowed to operate whereas restaurants and bars were closed or allowed only limited operations.[238] Even businesses deemed to be essential suffered some interruption due to the need to satisfy government health and safety requirements and customer expectations, including purchasing additional cleaning

[236] *Cf.* Letter to Senators Mitch McConnell and Charles Schumer and Representatives Nancy Pelosi and Kevin McCarthy from the Bankruptcy and COVID-19 Working Group (July 10, 2020) (observing that liquidity is essential for distressed companies to survive, and explaining that illiquidity "would imperil the ability of the economy to recover quickly and adversely affect employment and the country as a whole"). One of the primary goals of the Dodd-Frank Act, for example, was to ensure that systemically important financial institutions maintain sufficient liquidity to enable them to survive economic downturns. Congressional Research Service, CRS Report for Congress: Bank Systemic Risk Regulation: The $50 Billion Threshold in the Dodd-Frank Act 2 (Dec. 6, 2017).

[237] Among small businesses surveyed in the early days of the COVID-19 pandemic, 72% responded they would be able to reopen if there was only one month of disruption. Alexander W. Bartik et al, "The Impact of COVID-19 on Small Business Outcomes and Expectations," PNAS (Proceedings of the National Academy of Sciences), at 1 (July 28, 2020). However, only 47% responded they would be able to reopen if the disruption continued for four months. *Id.* Six months into the pandemic, 55% of small businesses surveyed expected recovery to take at least another six months with another 6% believing they would never fully recover financially. *Small Business Coronavirus Impact Poll*, US CHAMBER OF COMMERCE (June 3, 2020), https://www.uschamber.com/report/small-business-coronavirus-impact-poll-june. Furthermore, recovery remains uncertain for many businesses given that they likely face reduced demand, altered expectations from customers, and operational challenges borne from government mandates meant to promote public health and welfare.

[238] *See, e.g.*, N.Y. Exec. Order No. 202.6 (March 7, 2020), https://www.governor.ny.gov/news/no-2026-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency.

supplies and sufficient quantities of masks and gloves for employees and providing appropriate store signage.[239]

Given these and other potentially indeterminate variables, this Article does not independently attempt to calculate the amount of liquidity that pandemic insurance should be required to cover. Rather, the Article looks in the first instance to pandemic-insurance coverage numbers that others have proposed. The most notable example is the $1.150 trillion program of pandemic business-interruption insurance recently proposed by Chubb,[240] the world's largest publicly traded property-and-casualty insurance company.[241] Chubb explains this number as the sum of small business liquidity needs (estimated at $750 billion, based on a 14-day waiting period and a multiple of three-month payroll expenses[242]) plus large and medium business liquidity needs (estimated at $400 billion[243]). The discussion below initially will use that number,[244] without necessarily implying it is correct.

B. Estimating the Market for PCAT Bonds.

Assuming that businesses should be required to purchase at least $1.150 trillion of pandemic insurance, at least $1.150 trillion principal amount of PCAT bonds would need to be

[239] *See, e.g.,* Nathaniel Meyersohn & Sara Ashley O'Brien, *Stores are scrambling to get marks for their workers. It's no easy task*, CNN (last updated April 5, 2020), https://www.cnn.com/2020/04/05/business/masks-workers-amazon-instacart-walmart-lowes/index.html; Daniella Diez et al, *Protective equipment costs increase over 1,000% amid competition and surge in demand*, CNN (last updated April 16, 2020), https://www.cnn.com/2020/04/16/politics/ppe-price-costs-rising-economy-personal-protective-equipment/index.html.

[240] *See infra* notes 292-297 and accompanying text. By comparison, the proposed "Black Swan Re" program from Lloyd's of London calls for a broader government and insurance industry reinsurance pool for business interruption insurance that goes beyond pandemics. *See* LLOYD'S OF LONDON, *infra* note 262, at 30. It would cover non-damage business interruption arising from a variety of systemic and catastrophic events. *Id.* Under such a plan, industry pooled capital would cover future systemic events, with government guarantees to pay out if the pool ever had insufficient funds. *Id.*

[241] *See* https://www.chubb.com/us-en/about-chubb/.

[242] PANDEMIC BUSINESS INTERRUPTION PROGRAM DEVELOPED BY CHUBB 3 (July 8, 2020).

[243] *Id.* at 4. For Chubb's distinction between these types of businesses, *see infra* note 294.

[244] The discussion also considers a much smaller pilot project. *See infra* notes 275-277 and accompanying text.

issued to indemnify the providers of that insurance. This subpart B attempts to estimate what portion of those bonds could be sold to capital market investors.

As mentioned, that estimate will depend, in part, on the credit rating of, and the interest rate payable on, those bonds.[245] That, in turn, will depend on whether investors take a first-loss, second-loss, or pari passu position with respect to other bondholders, including the government.[246] The interest rate also will depend on the premiums that businesses pay to insurers for the pandemic insurance,[247] and thus the premiums that insurers pay to the SPVs for their indemnifications.[248]

All things being equal, investors naturally will want the most senior priority with respect to other bondholders as well as the highest interest rate. There is a market balance, though: the higher the priority (and thus the higher the credit rating, which should correlate with the priority), the lower the repayment risk and thus the lower the relative interest rate that the bonds need to bear to attract investors.[249]

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[245] *See supra* note 232 and accompanying text.
[246] *See supra* note 232. *See also infra* note 281 and accompanying text.
[247] Although the calculation of those premiums is beyond the scope of this Article, it should be noted that small and medium-sized businesses are more subject to pandemic-related risk than large businesses. Jackson & Schwarcz, *supra* note 4. *Cf.* James Kwak, *The End of Small Business*, WASH. POST (July 9, 2020), https://www.washingtonpost.com/outlook/2020/07/09/after-covid-19-giant-corporations-chains-may-be-only-ones-left/?arc404=true (arguing that large businesses like Amazon and Walmart have a competitive advantage in pandemics over small businesses, which do not have the resources to build new systems for curbside pick-up and safe delivery of goods). At least on a relative basis, therefore, small and medium-sized businesses should be subject to paying higher premiums. Alternatively, premiums could be sized on an ability-to-pay basis, with the largest firms being better able to afford, and thus being required to pay, the highest premiums. That alternative, however, might be interpreted under *Sebelius* as the forced consumption of unwanted goods rather than a tax. *Cf. supra* notes 213-217 and accompanying text (discussing the *Sebelius* case).
[248] Recall that these amounts are correlated because the premiums are passed through to help pay interest on the SPV's PCAT bonds. *See supra* note 232 and following text.
[249] *Senior Debt*, CORPORATE FINANCE INSTITUTE (last visited Oct. 10, 2020), https://corporatefinanceinstitute.com/resources/knowledge/finance/senior-debt/.

Because of the inherent uncertainty over the occurrence, severity, and length of future pandemics,[250] some capital market investors may demand a relatively high interest rate—perhaps even compared to similarly rated corporate bonds[251]—to induce them to purchase PCAT bonds. Although some firms claim to be able to quantify pandemic risk,[252] that quantification almost certainly falls short of the rigorous statistical and actuarial data that customarily underlies insurance.[253] Countering that, however, is the fact that PCAT bonds would provide investors with a diversified return because pandemics occur randomly and are not correlated with standard economic risks.[254]

Furthermore, investors may—and arguably, should—discount pandemic-related risk on the basis that society is learning from COVID-19. The economic impact of future pandemics could be relatively low, for example, because COVID-19 has exposed the myriad ways that businesses and individuals were unprepared for a pandemic. Most businesses did not have clear protocols for operating safely in the midst of a pandemic,[255] and most Americans had never even

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[250] *See supra* notes 237-239 and accompanying text.
[251] Theoretically, credit-rating agencies view their ratings as universal indicators of risk, such that an A-rated PCAT bond and an A-rated corporate bond should have the same risk. *See, e.g.*, *Bond Ratings*, FIDELITY (last visited Oct. 8, 2020), https://www.fidelity.com/learning-center/investment-products/fixed-income-bonds/bond-ratings. In practice, though, capital market investors often further differentiate risk based on the nature of the bond. *Understanding Bonds and their risks*, MERRILL (last visited Oct. 8, 2020), https://www.merrilledge.com/article/understanding-bonds-and-their-risks.
[252] *See supra* notes 14-15 and accompanying text.
[253] *Cf.* Charles Nyce, *Predictive Analytics White Paper*, AM. INST. FOR CPCU/INS. INST. OF AM 1, 3 (2007) (demonstrating the use of predictive analytics by insurance companies and explaining that proprietary data, as well as data from "numerous third party sources," allow insurance companies to develop predictive models by which to determine premiums). On the other hand, the relatively abstract nature of a pandemic might cause some investors to view their risk-taking more abstractly, causing them to underestimate the risk. *Cf.* Steven L. Schwarcz, *Regulating Financial Guarantors*, 11 HARV. BUS. L. REV. forthcoming issue no. 1 (2021) (examining how abstraction bias can distort the assessment of risks that lack rigorous statistical and actuarial data).
[254] *See supra* notes 53-54 and accompanying text.
[255] *See* Pacheco *supra* note 10 (explaining the changes businesses have had to make in the face of COVID-19 as well as the cost of those changes).

worn face masks.[256] In response to COVID-19, businesses have been required to adopt, and individuals have begun to adapt to, pandemic-safety strategies.[257] Arguably, that will make society better prepared to endure the next pandemic with less severe disruption. If so, that might limit the payout under pandemic-risk insurance, and hence the loss of value to CAT bond investors.[258]

To increase the market for PCAT bonds, this Article already has discussed implementing a senior-subordinate structure to provide credit enhancement.[259] Such a structure would help to increase capital market investor demand by allocating the most senior (albeit low yield) bonds to more risk-averse investors and the more junior (albeit high yield) bonds to high-risk investors.[260] Also, if the federal government were to purchase subordinated (especially, the most deeply subordinated) PCAT bonds to make up the shortfall, that itself would create a second senior-subordinate structure—in this case, between the capital market investors and the government—which would further credit enhance the capital market investors and increase their willingness to invest.[261]

As the foregoing discussion shows, any estimate of the principal amount of PCAT bonds that capital market investors would be likely to purchase would depend on a range of variables. Without holding those variables constant, this Article is unable to make that estimate. In theory, though, capital market investors potentially could purchase a significant portion of the $1.150 trillion of the contemplated PCAT bonds. The capital markets are estimated at roughly $180

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[256] Uri Friedman, *Face Masks Are In*, THE ATLANTIC, (Apr. 2, 2020), https://www.theatlantic.com/politics/archive/2020/04/america-asia-face-mask-coronavirus/609283/.
[257] *See* CENTERS FOR DISEASE CONTROL AND PREVENTION, *Interim Guidance for Businesses and Employers responding to Coronavirus Disease 2019 (COVID-19), May 2020,* (May 6, 2020) https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html (outlining strategies and recommendations for safely operating a workplace during the pandemic).
[258] For parametric payouts, however, there would be no difference if the economic impact triggers the payout. *Cf. supra* notes 54-55 & 95-98 and accompanying text (explaining parametric insurance payouts).
[259] *See supra* notes 177-180 and accompanying text.
[260] *See supra* note 177 and accompanying text.
[261] *See infra* note 280 and accompanying text.

trillion,[262] with the "fixed income" portion—the portion representing bonds[263]—estimated at roughly $106 trillion.[264] The contemplated PCAT bonds would represent just one percent of outstanding bond investments. It appears that investors in a post COVID-19 world would be interested in purchasing PCAT bonds.[265] Rating agency Standard & Poor's observes, for example, that "The COVID-19 pandemic has showcased the value of publicly traded catastrophe bonds (cat bonds) to investors, offering a liquid asset class that was not correlated with the current volatile financial markets."[266]

Even if capital market investors fail to purchase a significant portion of the $1.150 trillion of the contemplated PCAT bonds, any portion they purchase would contribute, pro tanto, to reducing the government's share of risk in controlling pandemic-related harm. That could help, for example, to facilitate Chubb's proposed public-private insurance partnership.[267] Chubb proposes that the federal government assumes approximately $1 trillion dollars of pandemic-related risk under that partnership.[268] Every $300 million of PCAT bonds—the amount of a single standard CAT-bond issuance[269]—that capital market investors purchase would reduce the federal government's pandemic-related risk-sharing by $300 million. Similarly, if capital market investors purchase $5 billion of PCAT bonds, which is merely half of recent yearly new CAT-

[262] LLOYD'S OF LONDON, SUPPORTING GLOBAL RECOVERY AND RESILIENCE FOR CUSTOMERS AND ECONOMIES 24 (2020).
[263] Bonds are "the most common type of fixed-income security." *See* https://www.investopedia.com/terms/f/fixed-incomesecurity.asp.
[264] SIFMA, available at https://www.sifma.org/resources/research/research-quarterly-fixed-income-issuance-and-trading-second-quarter-2020/. The U.S. fixed-income portion alone was estimated as $41 trillion. *Id.*
[265] Evans, *supra* note 50.
[266] *Id.*
[267] *See supra* note 240 and accompanying text.
[268] Chubb proposes that the federal government covers, for small businesses, at least 88% of the first $250 billion layer of losses and all of the next $500 billion layer of losses; and, for large and medium businesses, Chubb proposes that the federal government covers $400 billion of losses less the losses covered by private insurers, which would be limited to $15 billion in the first year and $30 billion by year 10 of the program. *See infra* notes 296-298 and accompanying text. That could be as much as 0.88 x $250 billion + $500 billion + $400 billion - $[15/30] = $[220 + 500 + 400 – {15/30}] = between $1.090 trillion and $1.105 trillion.
[269] *See supra* notes 59 & 69 and accompanying text.

bond issuance[270] and only a miniscule fraction—1/2-percent of one percent[271]—of outstanding capital market bond investments,[272] that would reduce by $5 billion the government's pandemic-related risk-sharing. Whether or not significant on a relative basis, $5 billion is real money.[273]

C. Analyzing Government Risk-sharing.

As discussed, pandemic-risk protection may not yet be commercially feasible without the government bearing at least some portion of the risk.[274] To that end, the federal government almost certainly would have to purchase any shortfall between the principal amount of PCAT bonds that would need to be issued to indemnify the insurers and the principal amount of those bonds that could be sold to capital market investors.[275] If insurers were to fully cover pandemic-related risk, the analysis in subparts A and B above suggests that the high end of that shortfall might be in the hundreds of billions of dollars.

A more limited pilot project, however, could start with lower pandemic-related risk coverage and thus a much lower shortfall that the government would need to cover. If, for example, a pilot project requires businesses to purchase $10 billion, rather than $1.150 trillion, of pandemic insurance, at most $10 billion principal amount of PCAT bonds would need to be

[270] *See supra* notes 224-226 and accompanying text.
[271] One-half percent of one percent is 0.005 x 1%.
[272] See *supra* notes 262-264 and accompanying text.
[273] [Consider establishing one versus multiple SPVs, and the potential of the latter to maximize PCAT-bond issuance. One SPV, perhaps sponsored by a governmental pandemic catastrophe fund, would reduce transaction costs related to organization, staffing, and (if applicable) bond rating. Multiple SPVs—for example, each applicable insurer could sponsor its own SPV—might vary the terms of the PCAT bonds to appeal to a more diversified, and thus larger, group of investors; although that theoretically could be accomplished by a single SPV issuing different classes of PCAT bonds under a master trust structure. On October 23, 2020, the author discussed, confidentially, with senior officers of a major rating agency whether it would be better to have one large statistically integrated PCAT-bond offering, where private investors ratably take on the pandemic risk, or a separate PCAT-bond offering for each specific pandemic risk. In response, they observed that although diversification can reduce tail risk statistically, PCAT-bond issuances should not be diversified solely for the sake of diversification. In other words, the answer would be fact-specific. cite1]
[274] *See supra* note 231 and accompanying text.
[275] *See* text accompanying notes 232 and 231, *supra*. If multiple SPVs issue the PCAT bonds, this shortfall would be the sum of each such's SPV's shortfall.

issued to indemnify the providers of that insurance.[276] Capital market investors might well purchase at least half of those bonds,[277] leaving only a $5 billion shortfall of PCAT bonds that the government would need to purchase.[278] The World Bank's PEF project represents a precedent for issuing PCAT bonds in a pilot project of limited scope.[279]

Whatever the shortfall, should the federal government's priority in PCAT bonds purchased to make up the shortfall be pari passu with, or senior or subordinated to, the priority of PCAT bonds purchased by capital market investors? Answering that question depends not only on political factors but also on how a lower government priority could improve the credit rating on more senior PCAT bonds,[280] and thus the willingness of the private sector to invest in those more senior bonds. Also, by making the private sector more willing to invest in those bonds, the answer could reduce the shortfall that the government would have to purchase.[281]

In this context, the federal government would have pari passu priority if its purchased bonds were payable equally and ratably with other investor-purchased bonds[282]; senior priority if its (i.e., the federal government's) purchased bonds were payable before other investor-purchased bonds were payable—in which case those other investors would be taking a first-loss risk and the government would be taking a second-loss risk; and subordinated priority if its purchased bonds were payable only after the other investor-purchased bonds were payable—in which case the government would be taking a first-loss risk and the other investors would be taking a second-loss risk.

[276] *Cf. supra* notes 240-245 and accompanying text (calculating the amount of PCAT bonds that would need to be issued).
[277] *See supra* notes 270-272 and accompanying text.
[278] *See supra* notes 275-277 and accompanying text.
[279] Discussion between the author and Mukesh Chawla, World Bank Group Senior Adviser to the PEF program, Sep. 22, 2020, at virtual annual meeting of the ABA Section on Business Law.
[280] If the government purchased bonds with a lower priority, that would effectively credit enhance the more senior bonds in the same way that subordinated bonds in a senior-subordinate structure would credit enhance the more senior bonds. *See supra* notes 177-180 & 261 and accompanying text.
[281] *See supra* note 232 and accompanying text.
[282] *Cf.* Rodrigo Olivares-Caminal, *The pari passu clause in sovereign debt instruments: developments in recent litigation*, BIS Papers No. 72, 121 (2013) (discussing the meaning of pari passu).

There are precedents for pari passu, senior (second-loss), and even subordinated (first-loss) risk-sharing by the federal government in order to facilitate socially important projects. The CARES Act's $600 billion Main Street Lending Program represents a pari passu risk-sharing precedent.[283] Main Street is intended to fund small and medium-sized enterprises (SMEs). It contemplates lending, on otherwise commercially reasonable terms, to otherwise eligible businesses that would be viable but for the COVID-19 pandemic. Thus, it is intended to fund SMEs that were in sound financial condition prior to the onset of the COVID-19 pandemic, in order to maintain their operations and payroll until conditions normalize. Also, it is intended to be fully repayable by the borrowers. Main Street program loans are made by Eligible Lenders, which at the outset are limited primarily to FDIC-insured banks. Eligible Lenders are expected to assess the financial condition and creditworthiness of their borrowers and to approve only loans they believe will be repaid.

After each loan is made, the Eligible Lender will sell an 85% or 95% (depending on the type of loan[284]) undivided interest, or "loan participation," in that loan to a special purpose vehicle (the "Main Street SPV") established and operated by the Federal Reserve Bank of Boston. The Department of the Treasury has made a $75 billion equity investment in the Main Street SPV (appropriated under section 4027 of CARES Act). These sales of loan participations are to be structured as true sales. So long as the Main Street SPV has any liability on a loan, the Eligible Lender must retain its 15% or 5% (as the case may be) risk on that loan. The Eligible Lender and the Main Street SPV—and thus the federal government, to the extent of its $75 billion equity—would share loan losses pari passu, according to their relevant percentages.[285]

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[283] Coronavirus Aid, Relief, and Economic Security Act.

[284] The Main Street program includes three facilities, each authorized by the Fed under § 13(3) of the Federal Reserve Act. These facilities use the same Eligible Lender and Eligible Borrower criteria and have many of similar features, including for loan maturities (including one-year payment deferrals on principal and interest) and interest rates.

[285] FEDERAL RESERVE BANK OF BOSTON, *Main Street Lending Program Frequently Asked Questions: For-Profit Frequently Asked Questions*, 13, 14, 17 (2020), available at https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm#term-sheet.

The Affordable Care Act[286] represents an arguably first-loss government risk-sharing precedent in order to facilitate a socially important project. As part of that Act, Congress approved a Risk Corridor program designed to "cabin the risks" of health insurers by obligating the federal government to compensate those insurers for unexpectedly unprofitable plans during the first three years of the Act's effectiveness.[287]

The Price-Anderson Act represents a second-loss government risk-sharing precedent, in order to facilitate nuclear energy development. Under that Act, the federal government provided up to $500 million of protection for nuclear-reactor accident risk, payable only after the industry-provided $60 million first-loss position would become depleted.[288] However, once government risk-sharing was no longer needed because nuclear-reactor accident risk became commercially insurable,[289] the government terminated its risk-sharing:

> The [nuclear energy] industry in its early stages of development . . . was not capable of assuming [the] unique risk [associated with nuclear incidents,] which has generally been considered to have extremely low probability but potentially large consequences. . . . The industry is just now reaching the point where the government's role can be phased out without the possibility of unduly disrupting the industry's development or of leaving the public with inadequate provision for relief from the highly improbable severe nuclear incident which the Act is designed to protect against.[290]

More recently, Chubb[291] has raised the possibility of the U.S. government sharing risk—what Chubb calls a "public-private partnership"[292]—in order to motivate insurers to extend

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[286] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).
[287] Me. Cmty. Health Options v. United States, 140 S. Ct. 1308, 1315 (2020).
[288] *See supra* note 18 and accompanying text.
[289] *Cf. supra* note 18 (observing that The Price-Anderson Nuclear Liability Act of 1957 subsequently was amended to replace the federal government's second-loss position with privatized nuclear-accident-risk insurance).
[290] S. Rep. No. 94-454, at 10 (1975) (the Senate Report for the 1975 amendment to the Price-Anderson Act which started gradually phasing out federal government risk-sharing).
[291] Recall that Chubb is the world's largest publicly traded property-and-casualty insurance company. *See supra* note 148 and accompanying text.
[292] https://www.chubb.com/us-en/?gclsrc=aw.ds&&gclid=EAIaIQobChMIgsX_xY_f6gIVBJyzCh29WgtHEAAYASAAEgKXN_D_BwE&gclsrc=aw.ds (visited July 21, 2020).

business-interruption insurance to pandemics.[293] Although Chubb's proposal differentiates how that insurance would cover small businesses, on the one hand, and large and medium businesses on the other,[294] the basic principle is "[i]nsurance industry risk-sharing with the federal government,"[295] with the federal government taking the lion's share of the risk.[296] For small businesses, Chubb proposes two layers of pandemic-risk insurance: first, a $250 billion layer, for which private insurers would cover 6-12% of losses and the federal government would cover the remainder on a pari passu basis; and second, a $500 billion layer covered entirely by the federal government (effectively, therefore, first-loss risk-sharing with respect to that layer and a form of second-loss risk sharing with respect to the entire $750 billion of coverage).[297] For large and medium businesses, Chubb proposes $400 billion coverage, for which private insurers would cover the first 5% of claims with a $15 billion limit in the first year, rising to the first 10% of claims with a $30 billion limit by year 10 of the program, with the federal government covering the remainder of the claims.[298] The rationale, according to Chubb, is "that only the federal government has sufficient resources to meet the full extent of pandemic loss, which is not insurable in the private sector."[299]

To inform how the federal government might share risk when purchasing PCAT bonds to make up the capital-market-investment shortfall[300]—on a first-loss, pari passu, or second-loss basis—consider how it shared risk in the three congressionally enacted precedents. The Main Street Lending Program implemented a pari passu risk-sharing scheme to motivate bank lending

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[293] *Cf. supra* note 8 and accompanying text (explaining why business-interruption insurance does not currently cover pandemics).
[294] Chubb defines small businesses as having no more than 500 employees. PANDEMIC BUSINESS INTERRUPTION PROGRAM DEVELOPED BY CHUBB, *supra* note 242, at 3. In the event of a pandemic, Chubb predicts that small businesses are going to have the most urgent need for cash flow and liquidity while larger businesses are generally going to have more resources and better access to outside capital. *The Essential Components of a Successful Pandemic Business Interruption Program*, CHUBB 1 (July 8, 2020), https://www.chubb.com/us-en/_assets/doc/essential-components-of-a-successful-pandemic-bi-program-july-2020.pdf.
[295] PANDEMIC BUSINESS INTERRUPTION PROGRAM DEVELOPED BY CHUBB, *supra* note 242, at 2.
[296] *Id.* at 3.
[297] *Id.*
[298] *Id.* at 4.
[299] *Id.* at 3.
[300] *See supra* notes 274-275 and accompanying text.

to businesses that were otherwise in good financial standing prior to the COVID-19 crisis.[301] First-loss risk-sharing, in which the federal government bore the initial losses, may have over-protected banks, motivating them to lend to marginal businesses.[302] Second-loss risk-sharing, in which private lenders bore the initial losses, may have under-protected banks, insufficiently motivating them to lend to otherwise healthy businesses affected by pandemic uncertainties.[303]

The temporary first-loss protection provided by the Risk Corridor program of the Affordable Care Act was intended to help protect the insurance market against adverse selection and reduce premiums.[304] Without that program, insurers may have charged higher-than-necessary premiums in order to help offset the uncertain expense of high-cost enrollees, who previously were seen as either uninsurable or unattractive for insurance.[305] The temporary first-loss protection effectively subsidized insurers until sufficient information was generated to reduce that uncertainty and enable more accurate pricing of premiums.[306]

The Price-Anderson Act provided second-loss risk-sharing as an economic fallback. Given the uncertainties of nuclear-reactor accident risk, the insurance industry was only willing to provide coverage up to $50 million per policy.[307] Congress believed that additional public

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301 William B English & J. Nellie Liang, *Designing the Main Street Lending Program: Challenges and Options* (Hutchings Ctr. Paper No. 64, 2020), https://www.brookings.edu/wp-content/uploads/2020/06/WP64_Liang-English_FINAL.pdf.
302 [cite1]
303 [cite1]
304 77 Fed. Reg. 17,219 (Mar. 23, 2012) (to be codified at 45 C.F.R. pt. 153).
305 Cynthia Cox et al., *Explaining Health Care Reform: Risk Adjustment, Reinsurance, and Risk Corridors*, KAISER FAM. FOUND. (Aug. 2016), https://www.kff.org/health-reform/issue-brief/explaining-health-care-reform-risk-adjustment-reinsurance-and-risk-corridors/.
306 *Id.*
307 *Government Indemnity and Reactor Safety*, *Hearing on S. 715 and H.R. 1981 Before the Joint Comm. On Atomic Energy*, 85th Congress. 10–11 (1957) (statement of Lewis L. Strauss, Chairman).

protection against that risk would be needed.[308] To provide that protection, the Price-Anderson Act established a $500 million second-loss indemnity pool.[309]

Of the above precedents, a pandemic insurance risk-sharing scheme would be most analogous to sharing risk for nuclear reactor accidents if—like insurers provided for nuclear-reactor-accident coverage[310]—the private sector were willing to provide some level of first-risk pandemic liability coverage.[311] (In the case of pandemic liability coverage, this Article's vision of the private sector would include not only insurers but also capital market investors in PCAT bonds.) The government then could provide second-loss protection above the risk not covered by the private sector. Ultimately, however, whether the private sector were willing to provide a meaningful level of first-risk pandemic coverage will be an empirical question.[312]Absent that willingness, the government may need to consider sharing in the risk pari passu or, possibly even, on a first-loss basis to induce sufficient private sector coverage.[313]

[308] *Id. Cf. Liability for Nuclear Damage*, WORLD NUCLEAR INST. (last updated August 2018) (detailing how the Price Anderson Act now requires at least $450 million in liability coverage for each nuclear reactor), https://www.world-nuclear.org/information-library/safety-and-security/safety-of-plants/liability-for-nuclear-damage.aspx.
[309] *See supra* note 288 and accompanying text.
[310] *See supra* note 277 and accompanying text.
[311] *Cf. Responding to the Covid-19 and Pandemic Protection Gap in Insurance*, OECD (last updated Sep. 9, 2020) ("There may limited private sector appetite for pandemic risk."), https://www.oecd.org/coronavirus/policy-responses/responding-to-the-covid-19-and-pandemic-protection-gap-in-insurance-35e74736/.
[312] Indeed, the level of government risk-sharing would generally affect the amount of capital market investment. Private investors would prefer, in order, that the government engage in first-loss, pari passu, and second-loss risk-sharing. First-loss government risk-sharing, for example, would create a senior-subordinated structure as between capital market investors and the government, with the government holding the subordinated bonds. *Cf.* Part II.A.5, *supra* (describing such a structure as between senior and subordinated capital-market investors).
[313] The Chubb proposal includes government risk-sharing, but it is somewhat ambiguous as to the priority of risk that the federal government would take on for each "layer" of risk. *Cf. supra* note 268 (proposing that the federal government cover, for small businesses, at least 88% of the first $250 billion layer of losses and all of the next $500 billion layer of losses; and, for large and medium businesses, that the federal government cover $400 billion of losses less the losses covered by private insurers, which would be limited to $15 billion in the first year and $30 billion by year 10 of the program) and *supra* notes 297-298 and accompanying text (further explaining that risk-sharing). That appears to suggest that the federal government shares pari passu for its 88% of the $250 billion layer, on a second-loss basis up to $500 billion for the $750 billion of small-business coverage, and on a second-loss basis for the $400 billion layer.

As a fallback to purchasing PCAT bonds to make up the capital-market-investment shortfall, the government might consider guaranteeing the PCAT bonds to the extent necessary to motivate capital market investors to purchase all of the bonds, thereby obviating a shortfall. Government risk-sharing through a guarantee might be more politically acceptable because it would not require an initial outflow of funds. Risk-sharing under the Price-Anderson Act, for example, effectively took the form of a federal government guarantee.[314] A guarantee might also be more politically acceptable because guarantors are influenced by abstraction bias, a type of cognitive bias. Unlike investors, they do not actually transfer their property at the time they make a guarantee. This can cause them to view their risk-taking more abstractly and to underestimate the risk, even after discounting for the fact that payment on a guarantee is a contingent obligation.[315]

In addition to the guarantee provided under the Price-Anderson Act, there is significant precedent for the federal government to offer guarantees in order to facilitate socially important projects. For example, the federal government routinely guarantees overseas investments that advance U.S. security and foreign policy through the Overseas Private Investment Corporation ("OPIC"), a federal agency recently "transformed" into the U.S. International Development Finance Corporation ("DFC"), which self-styles itself as "America's development bank."[316]

Because any government guarantee of PCAT bonds would be tailored to motivate private investment, it would not necessarily need to be a full guarantee of those bonds. A partial guarantee—for example, covering only a set percentage (such as the first 10%) of losses on each

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[314] *See supra* note 288 and accompanying text (explaining that the government $500 million of protection for nuclear-reactor accident risk would be payable only on the contingency that the industry-provided $60 million first-loss position would become depleted).
[315] *See Regulating Financial Guarantors*, *supra* note 253 (discussing abstraction bias and providing empirical evidence that it is real and can influence even sophisticated financial guarantors).
[316] *See* https://www.opic.gov/ & https://www.dfc.gov/.

bond[317]—might be sufficient to provide that motivation.[318] This could become complicated, however, for parametric insurance.[319] Recall that parametric insurance does not indemnify the actual loss but, instead, pays a pre-set amount upon the occurrence of the triggering event.[320] To motivate private investment, any partial guarantee should be calibrated to the pre-set amounts and their triggering events. If, for example, the parametric insurance paid only $115 billion (that is, $10% of $1.150 trillion) for the occurrence of a flu pandemic that, statistically, was shown to be the only pandemic likely to occur during the term of the insurance, investors might well be attracted by a 10% partial government guarantee of their bonds. A government guarantee also could be time limited, falling away after a specified period such as two or three years. That would help to address possible investor concerns about a second-wave COVID pandemic.[321] In

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[317] *Cf.* Michael J. Rowan, et al., MOODY'S, *Rating Methodology*, at 6 (Aug. 2006), https://care-mendoza.nd.edu/assets/152347/loss-given-default-rating-methodology.pdf (discussing rating-agency assessment of loss severity on corporate bonds). *But cf.* Rebecca Lake, *How Does an SBA 7(a) Loan Work?*, U.S. NEWS & WORLD REP. (Oct. 2019), https://loans.usnews.com/articles/how-does-an-sba-7a-loan-work (reporting that the U.S. Small Business Administration provides partial guarantees of up to 75-85% to encourage small business loans). Partial guarantees might, as suggested in the text above, cover an investor's first losses up to the set percentage limit, or they might share in those losses pari passu up to that set limit. *Cf. supra* notes 279-282 and accompanying text (analyzing the several possible priorities of government risk-sharing).

[318] Partial guarantees are common for debt claims because an obligor's default on its debt does not normally result in its failure to pay all of that debt. *See supra* note 317 (discussing rating agency assessments of loss severity). *Cf. Govt eases norms of partial credit guarantee scheme to help NBFCs, HFCs,* ECON. TIMES (last updated May 2020), https://economictimes.indiatimes.com/news/economy/policy/govt-eases-norms-of-partial-credit-guarantee-scheme-to-help-nbfcs-hfcs/articleshow/75848244.cms?from=mdr (reporting that during the COVID-19 pandemic, India provided partial guarantees of up to 20% of first losses to banks that purchased bonds and other notes of non-banking financial companies).

[319] *Cf. supra* notes 94-96 and accompanying text (discussing parametric insurance).

[320] *See id.*

[321] *See, e.g.*, Camilla Hodgson et al., *Markets fall on fears of second wave of Covid infections,* FINAN. TIMES (Sep. 2020), https://www.ft.com/content/3f4fcb0f-0895-4abc-a12c-97489e9786c2. Alternatively, the guarantee could be given by a government-sponsored SPV. Used in other public-private partnerships, this strategy would allow the government to keep the liability off its balance sheet (thereby, not subtracting from the government's borrowing authority and potentially protecting the credit rating on full-recourse government bonds). *Public Private Partnerships and the Private Finance Initiative in the United States,* Travelers Insurance 1, 3 (last visited Oct. 13, 2020), https://suretybonds-california.com/wp-content/uploads/Private-Public-Partnerships.pdf.

other contexts, short-term government guarantees have proved successful in strengthening investor confidence.[322]

D. Cost-benefit Analysis.

Although cost-benefit analysis "has a variety of meanings and uses,"[323] its traditional and common use is to assess the desirability of proposed regulation,[324] focusing on whether the benefits of implementing that regulation would exceed its costs.[325] This subsection examines whether the benefits of using risk securitization and the issuance of CAT bonds to help insure pandemic-related risks would be likely to exceed its costs.

1. *Fairness of the pricing.* Fairness requires the pricing of PCAT bonds to be transparent to both issuers and investors and as fully informed as possible.[326] Some might question that, however, in light of a recent study purporting to show that the pricing of CAT bonds used to insure losses caused by extreme climate events makes bond investors richer by systematically

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[322] *Cf.* Giuseppe Grande et al., *Public Guarantees on Bank Bonds*, 2 OECD JOURNAL: FINANCIAL MARKET TRENDS 1, 3, 8 (2011) (reporting that in the wake of the global financial crisis, a number of countries, including the United States, the United Kingdom, and France, provided government guarantees to comfort investors about the risk of default on bank fixed-income debt and other non-cash deposit-based liabilities; these guarantees so successfully strengthened investor confidence that they were able to be discontinued after a few years).
[323] RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 396 (6th ed. 2003).
[324] *See, e.g.*, *Cost-Benefit Analysis,* BLACK'S LAW DICTIONARY (10th ed. 2014) (defining cost-benefit analysis as "[a]n analytical technique that weighs the costs of a proposed decision"); BOUVIER LAW DICTIONARY 1151 (Stephen Michael Sheppard ed., Compact ed. 2011) (observing that federal agency cost-benefit analysis for determining whether a new regulation is promulgated "must demonstrate that the benefits to society outweigh the costs that the regulation will impose"); MAEVE P. CAREY, CONG. RES. SERV., R41974, COST-BENEFIT AND OTHER ANALYSIS REQUIREMENTS IN THE RULEMAKING PROCESS 1 (2014) ("Cost-benefit analysis, in [the federal rulemaking] context, involves the systematic identification of all of the costs and benefits associated with a forthcoming regulation . . . .").
[325] *Cf.* CAREY, *supra* note 324 (observing that a "proposed regulatory requirement is judged to pass the 'cost-benefit test' if the sum of its anticipated benefits outweighs, or otherwise justifies, the sum of its present and future costs in present value terms").
[326] Elizabeth Cava & Gokul Sudarsana, *Fair Valuing Insurance-Linked Securities*, Deloitte (2018), https://www2.deloitte.com/content/dam/Deloitte/bm/Documents/about-deloitte/2017-factsheets/ARA_bm_FairValuing-InsuranceLinkedSecurities-23July2018_FINAL.pdf.

overestimating risks and artificially inflating bond returns.[327] One of the study's authors said that "CAT bond models cannot forecast accurately extreme climate events. Their predictive power turned out to be low and is showing no sign of becoming any better over time. . . . The interesting thing is however, that market actors are entirely aware of modeling inaccuracy, yet still continue to be active in the market."[328] At least in the context of using CAT bonds "to tackle the [UN Sustainable Development Goals] SDGs . . . to truly create social value," he suggested that CAT bonds should not, as has been customary, issued in private placements; instead, he proposed that they be publicly issued and traded in order to create more transparency and encourage a wider investor base.[329]

This Article certainly applauds the call to increase transparency and encourage a wider investor base for CAT bonds. To that end, other things being equal, it would be desirable to publicly issue and trade PCAT bonds.[330] However, modeling pandemic risk should be much more calculable than modeling extreme climate events.[331] The potential spread of an infectious disease into a global pandemic largely depends on network effects and government border controls.[332] Major risk-management firms, such as Metabiota, Air Worldwide, Milliman, and Risk Management Solutions (RMS), claim they can quantify pandemic risk.[333] RMS's modeling

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[327] Etzion *et al., supra* note 233. *See also* https://bdaily.co.uk/articles/2020/01/30/catastrophe-bonds-are-not-contributing-to-sustainable-financial-markets. The authors of this study—Bernard Forgues, Professor of Strategy at emlyon business school, in collaboration with Dror Etzion from McGill University and Emmanuel Kypraios from Maynooth University—compiled a list of all CAT bonds issued from their conception in 1996 to March 2016. In total, they established a database of 383 deals, of which they assessed the forecast accuracy. They compared that data with those of the 10 CAT bonds that have been triggered and thus caused capital losses to investors.
[328] Press Release, EMLYON BUS. SCH., *Can Financial Markets Contribute to Make the World More Sustainable?* (Jan. 1, 2020) (quoting Professor Forgues), https://www.em-lyon.com/en/Press-Room/Folder/press-releases-management-school-france/Can-financial-markets-contribute-to-make-the-world-more-sustainable.
[329] *Id.*
[330] [Tie this back to the discussion of SEC registration versus privately placing those bonds, and also to the '40 Act discussion. cite1]
[331] *See supra* note 15 and accompanying text.
[332] Robert Muir-Wood, *The Coronavirus Outbreak: Part One – Modeling "Spotting,"* RISK MAN. SOLUTIONS (Feb. 04, 2020), https://www.rms.com/blog/2020/02/04/the-coronavirus-outbreak-part-one-modeling-spotting.
[333] *See supra* note 15 and accompanying text.

"innovation" uses a form of model spotting to anticipate the spread of coronavirus.[334] AIR Worldwide has introduced its Air Pandemic Model which claims to "go beyond traditional epidemiological modeling" by accounting for a wide array of government health interventions and human travel patterns.[335]

Admittedly, the infrequency of pandemics raises doubts about the accuracy of any such risk modeling. The AIR Worldwide model acknowledges, for example, its informational limitations.[336] The risk modeling of PCAT bonds thus may well be as fully informed as possible,[337] but not necessarily fully informed. It therefore is possible that the models overestimate or underestimate pandemic-related risk. In the former case, investors in PCAT bonds may become richer; in the latter case, they may become poorer. But that generally reflects the deal made by investors in any new product.

2. *Moral hazard*. A government requirement for businesses to purchase pandemic-risk insurance, as this Article proposes, should reduce moral hazard.[338] Absent such a requirement, businesses that otherwise view pandemic insurance as economically desirable might forgo paying for such insurance because they expect federal bailouts in the event of a major pandemic.[339]

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[334] *Id.*
[335] *The AIR Pandemic model*, AIR WORLDWIDE 2 (2020) https://www.air-worldwide.com/siteassets/Publications/Brochures/documents/AIR-Pandemic-Model
[336] *Id.*
[337] *Cf. supra* note 326 and accompanying text (observing that fairness requires the pricing of PCAT bonds to be as fully informed as possible).
[338] Moral hazard generally refers to "loss-increasing behavior that arises under insurance." David Rowell & Luke B. Connelly, *A History of the Term "Moral Hazard"*, 79 J. RISK & INS. 1051, 1051 (2012). Moral Hazard can arise *ex ante* as when an insured engages in risky behavior or fails to take precautions because he knows any loss will be covered by insurance. *Id.* Moral hazard also can arise *ex post* as when an insured exaggerates her losses to receive a higher insurance payout. *Id.* at 1052.
[339] *Cf.* Veronique Bruggeman *et al.*, *Insurance Against Catastrophe: Government Stimulation of Insurance Markets for Catastrophic Events*, 23 DUKE ENVTL. L. & POL'Y F. 185, 208-209 (2012) (discussing the propensity for private actors to forgo insurance counting on government compensation). Furthermore, if a significant percentage of businesses fail to purchase pandemic-risk insurance, in hopes of free riding on future bailouts, risk-securitization transactions may be too small to statistically diversify pandemic-related risks.

A requirement to purchase pandemic-risk insurance should be especially beneficial because constructive ambiguity, the traditional strategy for reducing moral hazard and the expectation of government bailouts,[340] would not plausibly work for pandemics. Constructive ambiguity refers to a deliberate effort to cultivate uncertainty as to the availability, timing, or terms of a bailout by use of imprecise or ambiguous language or policies.[341] Historically, central banks have employed constructive ambiguity by refusing to adopt any explicit policy guaranteeing bailouts for financial institutions.[342] Constructive ambiguity would not plausibly work for pandemics because, absent bailouts (or pandemic insurance), there would be widespread business failures that could devastate the economy.[343] A government is unlikely to let that happen.[344]

A requirement for businesses to purchase pandemic-risk insurance might inadvertently foster some moral hazard by making businesses less motivated to take the proper precautions to halt the spread of the disease. Virtually all insurance, however, creates this type of inadvertent

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[340] *See generally* Frederic S. Mishkin, *Financial Consolidation: Dangers and Opportunities*, 23 J. BANKING & FIN. 675, 683 (1999) (providing a general overview of constructive ambiguity as a strategy for mitigating moral hazard in the financial sector).
[341] Dan Awrey, *The Puzzling Divergence of the Lender of Last Resort Regimes in the US and UK*, 45 J. CORP. L. 597, 614 (2020).
[342] Mishkin, *supra* note 340, at 680-81.
[343] *Cf.* Robert Hartwig, "Uninsurability of Mass Market Business Continuity Risks from Viral Pandemics," American Property Casualty Ins. Association (APCIA) 2 (2020) (discussing the widespread effect that a pandemic can have on mass markets). Models of the economic fallout of the COVID-19 pandemic absent government bailout suggest that had the U.S. government not intervened, a sharp decline in macroeconomic activity would have led to skyrocketing corporate defaults, which in turn would have led to a massive increase in bank failures. *See, e.g.*, Vadim Elenev et al., *Can the Covid Bailouts Save the Economy?*, 25 (Nat'l Bureau of Econ. Research, Working Paper No. 27207, 2020) available at https://www.nber.org/papers/w27207.
[344] *Cf.* Alison M. Hashmall, *After the Fall: A New Framework to Regulate "Too Big to Fail" Non-Bank Financial Institutions*, 85 N.Y.U. L. REV. 829, 839 (2010) (arguing that for a policy of constructive ambiguity to be at all successful, it must be possible for businesses to fail without causing a financial crisis). Many believe that the U.S. government's failure to bail out Lehman Brothers, then the fourth largest investment bank, caused the panic that triggered the global financial crisis, and that the government would be reluctant to take similar future risks. *Id.*

moral hazard risk, which the industry controls by setting appropriate deductibles.[345] Pandemic-risk insurance likewise should be subject to a deductible. Uncertainty over whether a business's pandemic insurance will be high enough to cover all pandemic-related losses also should help to control this moral hazard.[346]

The requirement for businesses to purchase pandemic-risk insurance might also inadvertently foster governmental moral hazard by making governments less likely to mandate protections. For example, a government might be less likely to issue politically difficult stay-at-home orders, to require residents to wear face masks, or to close borders. A government might even have an incentive to let a pandemic worsen to trigger insurance payouts. The World Bank's PEF insurance mitigates governmental moral hazard by having the cash window make funds accessible for countries combating pandemics that are not yet sufficiently severe to trigger the insurance window.[347] Governmental moral hazard is also limited by the significant backlash that a government could face by mishandling an epidemic.[348]

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[345] Car insurance deductibles provide a familiar example. If a driver purchases comprehensive car insurance and has no deductible, he has relatively little reason to drive carefully because any damage resulting from an accident will totally covered by the insurance company. However, if the insurance policy has a $2,000 deductible, then the driver will have to pay for a portion of his car accidents and is thereby incentivized to drive more carefully. The deductible realigns the interests of the driver and the insurance company and therefore mitigates moral hazard.

[346] Pandemic costs can be huge. Some estimate, for example, that the long-term economic impact of COVID-19 could be as high as $15.7 trillion dollars. Letter from Phillip L. Swagel, Dir., Congressional Budget Office, to Charles Schumer, Senate Minority Leader, U.S. Senate, Comparison of CBO's May 2020 Interim Projections of Gross Domestic Product and Its January 2020 Baseline Projections, 2 (June 1, 2020) available at https://www.cbo.gov/system/files/2020-06/56376-GDP.pdf. The risk of illness or death provides another brake on moral hazard; businesses should have an incentive to make their workplaces safe for their employees and customers. *Cf.* CENTERS FOR DISEASE CONTROL AND PREVENTION, *Cases in the U.S.*, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (discussing the risk of illness or death).

[347] PEF Operational Brief for Eligible Counties, *supra* note 99, at 5.

[348] *Cf.* Justin Sink, *President Obama's Ebola Problem*, THE HILL, Oct. 16, 2014, available at https://thehill.com/news/administration/220922-president-obamas-ebola-problem (criticizing the Obama administration for its alleged mishandling of the Ebola outbreak in West Africa); Jessie Hellmann, *Trump Downplaying Sparks New Criticism of COVID-19 Response*, July 6, 2020, https://thehill.com/policy/healthcare/506075-trump-downplaying-sparks-new-criticism-of-covid-19-response (criticizing the Trump administration for its mishandling of Covid-19).

3. *Possible unintended consequences*. Although no article can predict all "unintended" consequences, one such potential consequence is that the occurrence of a pandemic could jeopardize the solvency of systemically important financial institutions that invest heavily in PCAT bonds. This potential consequence parallels the concern that post-global-financial-crisis regulation requiring systemically important financial institutions ("SIFI"s) to issue a portion of their debt as contingent-convertible ("CoCo") bonds might jeopardize the solvency of investors in those bonds. CoCo bonds are intended to convert from debt claims to equity interests if the issuer faces certain financial problems.[349] That conversion would significantly reduce the value of those bonds as investments, thereby reducing the asset value of investors—who may themselves be SIFIs.[350] A possible way to minimize SIFI conversion risk is to limit the amount of CoCo bonds that any given SIFI could hold.[351] That same approach—limiting the amount of PCAT bonds that any given SIFI could hold—should similarly help to mitigate this concern.

4. *Ex ante versus ex post pandemic preparation*. Using risk securitization and the issuance of CAT bonds to help insure pandemic-related risks would be an ex ante, or before-the-event, approach to controlling pandemic costs. Some have asked whether the cost-benefit balancing of that approach would be more optimal than addressing pandemics ex post, as and when they occur.[352] After all, it has been 100 years since the Spanish Flu—the last pandemic with the severe impact of COVID-19—occurred, and it may be another century or so until the next one occurs.

That question, however, is inapposite because this Article does not suggest that its ex ante proposal should obviate the need for ex post responses. To the contrary, the Article cautions that risk securitization is not a panacea.[353] We do not yet know enough about pandemic-related risk to

[349] Steven L. Schwarcz, *Systematic Regulation of Systemic Risk*, WIS. L. REV. 1, 9 (2019).
[350] *Id.*
[351] *Id.* at 9-10.
[352] *Cf.* Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 DUKE L.J. 557, at 568–71 (1992) (asking whether social welfare is maximized through the promulgation of ex ante or ex post approaches, and describing the social objectives of law to be the maximization of benefits net of costs).
[353] *See supra* note 33 and accompanying text.

design perfect ex ante protections.[354] For example, pre COVID-19, nationwide and subnational shutdowns and shelter-in-place orders on a massive scale, and their accompanying economic impacts, were largely unheard of. Future pandemics could also raise economic and other challenges that only become apparent ex post.[355] Lacking the ability to prevent future pandemics, ex ante approaches to controlling pandemics must be coupled with ex post approaches that take into account the insights gained by responding once more information becomes known.[356] This strategy also takes inspiration from chaos theory, which holds that in complex systems where failures are inevitable,[357] remedies should also focus on breaking the transmission of these failures and limiting their harmful consequences.[358]

Furthermore, the public cost of using risk securitization and the issuance of CAT bonds to help insure pandemic-related risks should be relatively small compared to the cost of dealing

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[354] *Cf.* Michael Osterholm & Mark Olshaker, *Why We are So Ill-Prepared for a Possible Pandemic Like Coronavirus*, TIME MAGAZINE (last updated Feb. 5, 2020), https://time.com/5777923/america-prepared-pandemic-coronavirus/ (observing that despite explicit warnings that the world was ill-equipped to respond to a severe pandemic, governments and private businesses alike were caught off guard by the global emergence of COVID-19).
[355] *See generally Reimagining the post-pandemic economic future*, MCKINSEY & CO. (August 2020), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/reimagining-the-postpandemic-economic-future.
[356] *Cf.* Iman Anabtawi & Steven L. Schwarcz, *Regulating* Ex Post*: How Law Can Address the Inevitability of Financial Failure*, 92 TEX. L. REV. 75 (2013) (arguing that effective regulatory regimes should rely on a combination of ex ante and ex post approaches). Also, ex ante approaches may not even respond to the potential severity of future pandemics because, as time passes, memories of past pandemics tend to fade. Sean Donahue, *As Collective Memory Fades, so will Our Ability to Prepare for the Next Pandemic*, THE CONVERSATION (May 20, 2020), https://theconversation.com/as-collective-memory-fades-so-will-our-ability-to-prepare-for-the-next-pandemic-137370.
[357] *See* Steven L. Schwarcz, *Regulating Complexity in Financial Markets*, 87 WASH. U. L. REV. 211, 248-49 (2009/2010). One aspect of chaos theory is deterministic chaos in dynamic systems, which recognizes that the more complex the system, the more likely it is that failures will occur. Thus, the most successful (complex) systems are those in which the consequences of failures are limited. In engineering design, for example, this can be done by decoupling systems through modularity that helps to reduce a chance that a failure in one part of the system will systemically trigger a failure in another part.
[358] *Id. Cf.* National Institute for Health, *The Neglected Dimension of Global Security: A Framework to Counter Infectious Disease Crises*, THE NAT. ACADEMIES PRESS 19 (2016) (observing “there is a powerful case for investing more to mitigate the frequency and mitigate the impact of potential pandemics”).

with a full-blown pandemic. This Article contemplates federal government risk-sharing of hundreds of billions of dollars.[359] That is much lower than the federal government's current COVID-19 related costs, estimated at nearly $6 trillion.[360]

For these reasons, the benefits of using risk securitization and the issuance of CAT bonds to help insure pandemic-related risks would be likely to exceed its costs.[361]

CONCLUSIONS

Although governments could protect against the potential economic devastation of future pandemics by requiring businesses to insure against pandemic-related risks, the insurance industry currently lacks the capacity to insure those risks. This Article analyzes how the issuance of catastrophe bonds in risk-securitization transactions could utilize global capital market funding to make pandemic insurance a reality. The Article also explains how risk securitization could be used to supplement public-private catastrophe insurance schemes, such as Chubb's recently proposed pandemic-coverage plan,[362] to reduce the government's shared exposure.

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[359] *See supra* notes 266-276 and accompanying text.

[360] *See, e.g.*, Andrew Van Dam, *The U.S. has thrown more than $6 trillion at the coronavirus crisis. That number could grow*, WASH. POST (Apr. 2020), https://www.washingtonpost.com/business/2020/04/15/coronavirus-economy-6-trillion/. While certainly some of that money, such as additional funding for testing, contact tracing, and PPE equipment, would have to be spent regardless, it only accounts for about $500 billion of that total. *See https://www.covidmoneytracker.org/*.

[361] Even absent that conclusion, this Article's cost-benefit analysis should consider the possibility of taking into account a precautionary principle because the occurrence of a pandemic could have massively harmful consequences. Precautionary principles generally direct "regulators to err on the side of regulating an activity when the outcome of that activity is uncertain, but potentially irreversible and catastrophic." Hilary J. Allen, *A New Philosophy for Financial Stability Regulation*, 45 LOY. U. CHI. L.J. 173, 191 (2013). Although precautionary principles have different forms, its semi-strong form, which is applied to "activities [that] can pose great harm" (*id.* at 195), appears most applicable to protecting against pandemics. Under this principle, "precautionary regulation should be employed that effectively shifts the burden to prove that the activity should be permitted to the proponent of that activity, rather than forcing the regulator to make the case for why regulation is necessary." *Id.*

[362] *See supra* notes 267-272 and accompanying text.

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CAT Bonds

November 17, 2020

Chairman William Lacy Clay, Jr.
The United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

We write you today in advance of the hearing in the House Financial Services Subcommittee on Housing and Insurance titled "Insuring against a Pandemic: Challenges and Solutions for Policyholders and Insurers." The country is in the midst of one of the worst economic crises in our history resulting from a global pandemic that we know was predictable and caught our economy flat footed. While we work to protect the health of Americans, equip our heroic frontline workers, and help companies weather the economic turmoil, it is equally important to prepare our economy against the next pandemic.

The Council represents the largest and most successful employee benefits and property/casualty agencies and brokerage firms. Council member firms annually place more than $300 billion in commercial insurance business in the United States and abroad. In fact, they place 90 percent of all U.S. insurance products and services and they administer billions of dollars in employee benefits. Council members conduct business in some 30,000 locations and employ upward of 350,000 people worldwide, specializing in a wide range of insurance products and risk management services for business, industry, government, and the public.

The Council thanks you for your efforts and leadership in attempting to build a prospective program that would mitigate the economic disruption from another pandemic. To that end, The Council of Insurance Agents & Brokers supports a prospective federal pandemic program by outlining a set of "guiding principles" as follows:

- The Council supports establishment of a federal forward-looking risk transfer solution to address future pandemic scenarios like COVID-19. If or when another global pandemic of this magnitude occurs, we strongly favor having a program already in place with no new enactment of law required.
- Several different models exist or have existed to address risk transfers and consumer protections in times of widespread losses and massive social and economic disruption, including the Terrorism Risk Insurance Act (2002), National Flood Insurance Act (1968), Price-Anderson Act (1957), War Damage Insurance Act (1942), and the War Risk Insurance Act (1914).
- Any solution put in place to address future pandemics deserves careful study and stakeholder engagement, and should not be based on an assumption that any one model from the past is wholesale appropriate for, or transferable to, this very different set of risks and circumstances.

- The Council is uniquely positioned to help advise on insurance-related aspects of any forward-looking federal solution, and would welcome the opportunity to participate in those discussions as a policy is formulated.

Thank you for your leadership on this critical issue. We stand ready to support your efforts. If you have any questions, please feel free to reach out to Joel Kopperud at (202) 662-4311 or joel.kopperud@ciab.com.

Thank you,

Ken Crerar
President and CEO

CC: Members of The House Financial Services Committee

events industry council

2001 K Street, NW
3rd Floor North
Washington, D.C. 20006 USA
eventscouncil.org

18 November 2020

The Honorable Maxine Waters, Chair
The Honorable Patrick McHenry, Ranking Member
House Financial Services Committee
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Waters and Representative McHenry:

The Events Industry Council is a global federation based in Washington, D.C. We represent 33-member organisations with 105,000 individual members worldwide.

We strongly urge you to support H.R. 7011 by Congresswoman Carolyn Maloney. The Pandemic Risk Insurance Act (PRIA) is a critical and necessary element to help the global events and exhibitions industry recover from the COVID-19 health pandemic.

The economic impact of the global events industry is significant. According to a study by Oxford Economics that we commissioned in 2018, this industry contributed $1.5 trillion to the global economy and employed an estimated 26 million worldwide. In North America, the impact is just as compelling:

- 3.2 million direct jobs
- $222 billion in GDP
- $381 billion direct spending
- $1,157 average spending per participant
- 330 million business event participants

PRIA will help set the stage for our industry to return to this pre-pandemic level of economic activity. It provides a framework for insurance companies to offer business interruption insurance policies that cover pandemics and creates a reinsurance program with a federal backstop to ensure the insurance industry has the capacity to insure losses caused by pandemics. The federal backstop will make sure that these business interruption policies are widely available and affordable for small businesses and maintain market stability.

As chairwoman and ranking members of the Financial Services Committee, you have an important role to play in the passage of PRIA. We hope that the hearing on Thursday of this week will help you and your staff understand the essential nature of PRIA and lead you to support H.R. 7011.

Thank you very much for your consideration.

Sincerely,

Amy Calvert

Amy Calvert
Chief Executive Officer
Events Industry Council

ICSC

Tom McGee
President & CEO

November 19, 2020

Chairman William Lacy Clay
U.S. House of Representatives
Financial Services Subcommittee on Housing,
Community Development and Insurance
2129 Rayburn House Office Building
Washington, DC 20515

Ranking Member Steve Stivers
U.S. House of Representatives
Financial Services Subcommittee on Housing,
Community Development and Insurance
4340 O'Neill House Office Building
Washington, DC 20024

Dear Chairman Clay and Ranking Member Stivers:

On behalf of the International Council of Shopping Centers (ICSC) and our nearly 50,000 member network, representing owners, developers, financial institutions, professional service providers and importantly, shopping center tenants such as retailers, restaurants, gyms, health centers and service providers, we applaud the subcommittee for holding this important hearing entitled "Insuring against a Pandemic: Challenges and Solutions for Policyholders and Insurers." ICSC supports H.R. 7011, The Pandemic Risk Insurance Act, H.R. 7671, The Small Business Comeback Act, and legislation to require the Federal Insurance Office to study business interruption insurance coverage in the United States.

ICSC is proud to represent businesses that comprise an essential part of every city, town and village across the country, with small businesses representing nearly 70 percent of shopping center tenants. In a pre-COVID-19 world, the shopping center industry, as a whole, was thriving with an estimated $6.7 trillion of consumer activity produced by the retail, food & beverage, entertainment and consumer service industries occurring within America's shopping centers, and nearly 1 out of 4 American jobs retail related. Approximately $400 billion of all state and local taxes supporting local communities, public safety resources and infrastructure was generated by our industry. However, since March, millions of jobs have been lost along with hundreds of billions in lost sales and unpaid rent revenue.

Our members are navigating one of the largest economic disruptions in history and they need certainty to resume operations and attract investment. Most of our members thought that they had appropriately prepared for an event like a pandemic shutdown, only to be told by their insurance carrier that the terms of their policy did not cover business interruption caused by a COVID-19. Adding insult to injury, many of our members have been unable to access federal COVID-19 economic support and those who have been able to qualify have exhausted those funds. ICSC calls on Congress to pass additional COVID-19 economic relief to businesses that desperately need it to stay afloat and keep their staff employed.

Also of note, ICSC is a proud member of the Business Continuity Coalition (BCC), a broad group of business insurance policyholders—large and small—from across the American economy, organized with the purpose of implementing a public/private program to limit future economic damage from pandemics and other national emergencies that cause business interruptions. We support the "Recommendations for Program Features" that have been submitted by the BCC.

Our members are working closely with state and local governments on responsible business continuity measures to navigate the pandemic's impact on different communities. The government-imposed public health

1251 Avenue of the Americas | New York, NY 10020-1104
Tel: +1 646 728 3800 | Fax: +1 732 694 1755 | www.icsc.com

restrictions to limit the spread of COVID-19 have compelled new provisions in leases and other contractual agreements to limit economic exposure from future government restrictions. Meanwhile, the private insurance markets are unable to provide suitable coverage for these possible events. H.R. 7011 provides a significant development in the conversation for an accessible and affordable program to limit exposure to pandemic related business interruption as well as responsibly plan for the future. Retail real estate has proven time and again to be a resilient industry that adapts to the needs of consumers and the communities it serves and we believe that a prospective federal business interruption program is essential to that end.

The long-term strength of the shopping center industry is critical to the economic, civic and social viability of communities across the country. However, without the ability to manage risk, the impact of COVID-19 mandated closures and social distancing precautions will result in significant economic damage, empty storefronts and vacant shopping centers across the country for years to come.

Sincerely,

Tom McGee

Tom McGee
President and Chief Executive Officer
International Council of Shopping Centers (ICSC)

Congress of the United States

May 1, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi and Leader McCarthy,

The United States remains in battle with an unprecedented enemy in the form of the COVID-19 virus. While our constituents have been dealing with the personal hardships and losses resulting from this deadly disease, there has been a small glimmer of hope that we have been able to see from this tragedy. That hope is when we see people, communities, and organizations of every background coming together in these hard times to help their neighbors, friends and even strangers get through this struggle. It is this unity that we must harness in order to fully confront the medical, social, and economic peril we are in.

Over the last several weeks, members of both parties have been able to come together, hash out our differences, and enact legislation that truly helps all Americans confront this pandemic. With increased funding for medical research, and the creation of economic programs such as the Payment Protection Program (PPP) and Small Business Administration (SBA) loans, we are providing effective relief for individuals and businesses both big and small. Unfortunately, however, we have seen in recent weeks a couple of legislative and regulatory proposals which, while well-intentioned, we fear could begin to divide that sense of unity that we have been leveraging in our ongoing efforts.

Specifically, we are referring to calls for providing economic relief to a relatively small number of businesses by forcing insurance companies to pay claims for Business Interruption (BI) policies for losses that are not covered. To be clear, insurance companies must fulfill their obligations to their policyholders where pandemic losses are covered by the contract; and there must be stringent oversight to ensure that this occurs in the normal course of business.

However, after speaking with State insurance commissioners, consumer advocates, as well as several major property and casualty insurance companies, we have come to realize that only a small portion of companies purchase BI policies, and all but a very small portion of those policies exclude pandemic coverage. Further, the take-up rate for such policies decrease the smaller the business is.

Based on these facts, we believe that retroactively altering pre-existing insurance contracts to require pay outs for losses caused by COVID-19 (even if such coverage is paid for by the Federal Government) would only benefit a few and would ultimately not provide the broad relief for smaller businesses that we have continued to advocate for.

Therefore, we urge the Administration and Congress to continue to come together to advocate for solutions to ensure that all businesses, employers, and workers that have been impacted by COVID-19 are provided the support that they need, whether that is a continuation and expansion of the PPP, further direct economic support to individuals, a creation of a new economic recovery program or a combination of all of those efforts.

We can get through this while remaining together as the United States of America.

Wm. Lacy Clay	Ron Kind
Vicente Gonzalez	Emanuel Cleaver
Gwen Moore	Denny Heck
Mark Pocan	

National Association of Insurance Commissioners
& The Center for Insurance Policy and Research

November 18, 2020

The Honorable William Lacy Clay
Chairman
Subcommittee on Housing,
Community Development, and Insurance
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Steve Stivers
Ranking Member
Subcommittee on Housing,
Community Development, and Insurance
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: November 19, 2020 hearing on "Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers"

Dear Chairman Clay and Ranking Member Stivers:

On behalf of the National Association of Insurance Commissioners (NAIC), [1] we appreciate the opportunity to submit this letter for the November 19, 2020 hearing on "Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers." As the COVID-19 pandemic continues to take a devastating toll on our nation, state insurance regulators share your commitment to working to help mitigate its damaging impacts and prepare for the future. We continue to focus on protecting the health and safety of insurance consumers and ensuring the ongoing stability and operation of our nation's insurance sector. We appreciate the subcommittee's attention to exploring the issues around the impact of pandemic risk and the roles the federal government, insurers, and businesses can potentially play to help alleviate that risk.

The risk of a pandemic is difficult to insure and state insurance regulators have seen evidence that demonstrates the insurance industry is not able to take on a substantial portion of this risk on their own. State insurance regulators, through the NAIC, issued a data call to collect business interruption (BI) information from insurers to understand which insurers are writing applicable coverage, the size of the market, the extent of exclusions related to COVID-19, and claims and losses related to COVID-19. The information collected includes data from 230 insurance groups writing coverage for business interruption including the top 50 commercial carriers, who alone represent over 80% of the market. Results show that nearly 8 million commercial insurance policies include business interruption coverage. Of that amount, 90% were for small businesses, defined as having 100 or fewer employees; 8% for medium businesses, defined as having 101-500 employees, and 2% for large businesses, defined as having 501 or more employees. Significantly, 83% of all policies included an exclusion for viral contamination, virus, disease, or pandemic and 98% of all policies had a requirement for physical loss. This is not surprising as insurance

[1] As part of our state-based system of insurance regulation in the United States, the NAIC provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. The U.S. standard-setting organization is governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. For more information, visit www.naic.org.

works well and remains affordable when a relatively small number of claims are spread across a broader group. It is therefore not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period.

The data also indicates that approximately 200,000 claims have been submitted by policyholders seeking lost income benefits under business interruption coverage with less than 2% of claims having been closed with payment, and nearly 82% of claims having been closed without payment due to no coverage under the policy. We recognize that the pandemic has caused massive disruptions to businesses and it is the expectation of state insurance regulators that insurance companies honor their commitments by paying claims that are covered by insurance policies. However, as we indicated in our March statement to Congress,[2] the NAIC opposes proposals to apply BI coverage retroactively to uncovered claims based on COVID-19 and has serious concerns that requiring retroactive coverage would pose significant risks to the solvency of insurers and potentially systemic impacts to the sector and financial system as a whole.

The data clearly illustrates insurers are largely unwilling or unable to underwrite the risk of a pandemic, creating an enormous coverage gap for American businesses and subsequent liability for American taxpayers. Going forward, Congress should consider proposals that depending on structure could limit taxpayer exposure to the economic consequences of the next pandemic without jeopardizing the solvency of the insurance industry. Therefore, the NAIC supports establishing a federal mechanism to help ensure widespread availability of business interruption insurance for pandemic risks. We understand there are several proposals to establish such a program, including legislation by Congresswoman Maloney (H.R. 7011), and proposals from industry and policyholders. While the NAIC does not have a position on any of the specific proposals at this time, to the extent the insurance sector or insurance contracts are the vehicles used to address such risks, it is critical that any legislative solution be designed in a manner that does not undermine state insurance regulatory authorities to protect insurance consumers and ensure the solvency of the industry. It also must not jeopardize the financial condition of insurance companies or affect their ability to pay other types of claims. Finally, any solution should be affordable to policyholders to ensure adequate take up rates, but also reduce the overall taxpayer exposure to risks from a pandemic.

Separately, we wanted to bring to the subcommittee's attention two reports[3] that the NAIC has issued detailing state insurance regulators' response to the pandemic (attached). As detailed in those reports, state insurance regulators have been engaged in heightened monitoring of the insurance industry since the onset of the crisis and have taken several actions to protect consumers and ensure that the insurance sector remains strong. The NAIC has also created a Coronavirus Resource Center to help consumers, the business community, and insurance professionals understand and manage the risks of the COVID-19 pandemic.[4]

In conclusion, as state officials, we are perhaps closer to the consumers and businesses impacted by this pandemic than any other primary financial regulator. We are on the front lines assisting consumers with policy questions and talking to businesses about their concerns. We are committed to do all that we can to support our communities and remain committed to continuing to work with our federal, state, and local partners to help our country address the devastating health and economic impacts of COVID-19. Thank you for considering the state insurance regulatory perspective. We look forward to continued engagement with you as we work together to respond to the COVID-19 pandemic.

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[2] https://content.naic.org/article/statement_naic_statement_congressional_action_relating_covid_19.htm
[3] "*A Report of the NAIC on the State Insurance Regulatory Response to COVID-19*" (January 1, 2020 to May 31, 2020) https://content.naic.org/sites/default/files/inline-files/naic_covid_19_report_1%5B1%5D.pdf; *A Report of the NAIC on the State Insurance Regulatory Response to COVID-19*" (Update 2 / June 1—Sept. 30, 2020) https://content.naic.org/sites/default/files/naic_covid_19_report_update2.pdf
[4] https://content.naic.org/naic_coronavirus_info.htm

Sincerely,

Raymond G. Farmer
NAIC President
Director
South Carolina Department of Insurance

David Altmaier
NAIC President-Elect
Commissioner
Florida Office of Insurance Regulation

Dean L. Cameron
NAIC Vice President
Director
Idaho Department of Insurance

Chlora Lindley-Myers
NAIC Secretary-Treasurer
Director
Missouri Department of Commerce and Insurance

Michael F. Consedine
Chief Executive Officer
National Association of Insurance Commissioners

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

A REPORT OF THE NAIC ON THE STATE INSURANCE REGULATORY RESPONSE TO COVID-19

UPDATE 1 / JANUARY 1 — MAY 31, 2020

TABLE OF CONTENTS

COVID-19 has changed the way we live and work in ways we never would have imagined a few short months ago. As the scale and threat to the health and financial stability of our market has taken shape, at the NAIC, our mission and top priorities are very clear. Our primary focus is now on assisting insurance regulators in protecting the health and safety of U.S. consumers and ensuring the ongoing stability and operation of our nation's critical insurance sector in light of COVID-19. Since early March, this has been our focus as we have worked with our members to protect consumers, maintain sound insurance markets, and deliver NAIC operations and member services virtually.

We've summarized the efforts and early results on behalf of the NAIC and our members in this first in a series of reports on the regulatory insurance response to COVID-19. Working with our members, we have delivered on many critical decisions and programs, and other work is in process as the crisis and associated issues continue to evolve.

Just as our members and the industry have had to quickly shift priorities and adjust to changing work requirements, our approach has been both flexible and focused. And clearly the issues are continuing to evolve.

This report catalogues our efforts from January 1, 2020 – May 31, 2020. The NAIC will continue to work with commissioners and their staff to assess the issues related to ongoing solvency of major U.S. carriers, the need for further regulatory relief in 2020, continued policymaker interest in business interruption insurance, policy engagement on COVID-19 health coverage issues, and other issues.

COVID-19 AND THE INSURANCE SECTOR

The outbreak of COVID-19 in the U.S. and globally led to a "perfect storm" of significant considerations that required the immediate attention and engagement of state insurance regulators, including:

- Potential health and mortality threats of a new virus on millions of Americans.
- Access to testing, treatment, and education critical for consumers.
- Lack of accurate and credible information on COVID-19 as it relates to insurance coverages.
- Impact of COVID-19 on the deferment of health care treatments.
- Significant impacts as insurance consumers face unemployment, business interruption, workers' compensation claims, and potential inability to pay for critical coverages.
- Historic levels of economic disruption on a global scale. U.S. insurers—while generally well capitalized and reserved—are not immune from this disruption.
- Insurers face increased investment losses and operational disruption.
- Increased political and regulatory uncertainty. The U.S. Congress has provided two economic rescue packages and may consider more that may either relieve or potentially exacerbate financial pressure on the insurance sector.
- State insurance departments are increasingly being pressured to deal with policy, data collection, and regulatory relief actions on a more uniform and consistent manner.

REGULATORY RESPONSE TO COVID–19

2020 MILESTONES

2020

JAN 1
Begin Year with Focus on 2020 Strategic and Operational Priorities
- *State Ahead* 1.0 Strategic Plan Implementation
- Culture and Diversity
- Leadership Development and Succession Planning
- SERFF Assessment
- Member Support and Engagement

JAN 9-11
NAIC Committee Assignments in SC
- *State Ahead* 2.0 Strategic Planning
- Formation of Strategic Planning Steering Committee

JAN 11
China Reports First "Known" COVID Death

JAN 20
First Confirmed Case in the U.S.

JAN 23
Wuhan Closed Off

JAN 29
Meeting with IAIS and Stakeholders in DC
- Continued Push for Recognition of U.S. Aggregation Method

FEB 11
WHO Names New Virus "COVID-19"

FEB 12-15
NAIC Commissioners Conference in FL
- Agreement on Strategic Regulatory and Operational Priorities
- *State Ahead* 2.0 Planning
- International Policy Discussion

FEB 17-21
NAIC Revised Business Continuity Plan (BCP) to Address Pandemic Developments

FEB 23
Italy Sees Surge in COVID Cases

FEB 24-29
IAIS Meetings in Basel, Switzerland
- Discussion of Asian Response to COVID-19

FEB 29
U.S. Reports First COVID Death

MAR 2
NAIC Coronavirus Resource Center Launched

MAR 10-12
"The Pivot Point"
NAIC Decides to Cancel In-person Spring National Meeting

MAR 11
WHO Declares Pandemic;
U.S. Blocks All Travel from Europe;
NBA Suspends Season

MAR 12
Officer/Committee Leadership Call on Virtual National Meeting Alternatives

MAR 13
POTUS Declares National Emergency

MAR 13
NAIC Continuity of Ops Plan Triggered; DC/NY Offices Begin Remote Operations

MAR 17-18
Remote Operations Pilot Test for KC Office; KC Office Begins Remote Operations

MAR 18
POTUS Signs First COVID-19 Relief Package

MAR 20
NYC Issues First Shelter-in-Place Order

MAR 20
NAIC Holds Special Session on COVID-19 **(Over 2,700 Attendees)**

MAR 24
Japan Cancels 2020 Summer Olympics

MAR 24
Work Begins with NAIC Officers on COVID-19 "Priority One" Initiative

MAR 25
NAIC Issues Statement on Retroactive Business Interruption

MAR 26
U.S. Becomes Nation Hardest Hit by COVID-19

MAR 27
POTUS Signs **$2 Trillion Stimulus Package**

MAR 27
NAIC Issues Real Estate Forbearance Accounting Guidance

MAR 30
DC, MD and VA Issue Stay-at-Home Orders

APR 1
NAIC Issues Coordinated Data Call on COVID-19 Impact

APR 2
Worldwide COVID Cases Hit **1 Million,** with **51,000 Confirmed Deaths**

APR 2
Executive (EX) Committee Call Approving "Priority One"

APR 6
NAIC Issues Model Bulletin on Regulatory Relief

APR 9
Member Call Approving "Priority One" Initiative; State Action Tracking System Rolled Out to Members

APR 10
Global COVID-19 Deaths Pass **10,000**

APR 14
IMF Warns of Worst Economic Downturn since Great Depression

APR 15
Europe Begins Easing Restrictions on Italy

APR 15
NAIC Adopts Related Accounting Changes and Interpretations

APR 21
NAIC Capital Markets Bureau Issues Special Report: "Oil Futures Plunge Below Zero as Capital Markets Volatility Continues"

APR 26
Global Death Toll Passes **200,000**

APR 30
U.S. Airlines Require Face Masks

APR 30
NAIC Member Call Focused on Business Interruption and Health Issues

MAY 4
NAIC Forms Internal "Return to Office" Task Force

MAY 7
U.S. Unemployment Continues to Increase; **33 Million Jobless Claims** in Past 7 Weeks

MAY 7
IAIS Issues Guidance on Business Interruption/Solvency Concerns

MAY 11
NAIC Issues Coordinated Data Call on Business Interruption

MAY 12
EX/EX1 Call Reviewing NAIC's Regulatory Response to COVID-19

MAY 14
Member Call Reviewing NAIC's Regulatory Response to COVID-19

MAY 20
CDC Provides Guidance as States Begin to Open; Federal Reserve, FDIC and OCC Issue Principles for Offering Small Dollar Loans

MAY 20
NAIC Submits Comments to U.S. House of Representatives' Small Business Committee Virtual Hearing on Business Interruption Insurance

MAY 21
U.S. House of Representatives' Small Business Committee Holds Virtual Hearing on Business Interruption Insurance

MAY 23
NAIC Capital Markets Bureau Issues Research: "U.S. Insurer CLO Exposure at Risk of Ratings Downgrade"

MAY 29
CDC Reports **1.7 Million Cases** and **100,446** Deaths Related to COVID-19 in the U.S.

NAIC **PRIORITY ONE**

SUPPORTING OUR MEMBERS

NAIC PRIORITY ONE

The previously identified NAIC 2020 regulatory and operational priorities were founded on the assumption that we would be operating under normal market conditions. Clearly, this is no longer the case. As of March 2020, NAIC made supporting the efforts of U.S. insurance regulators in managing the impact of the COVID-19 pandemic its **"Priority One"**. Our efforts focus on the three critical areas of **(1)** protecting insurance consumers; **(2)** ensuring the ongoing stability and operation of our nation's insurance sector; and **(3)** delivering exceptional member service.

CONSUMER PROTECTION

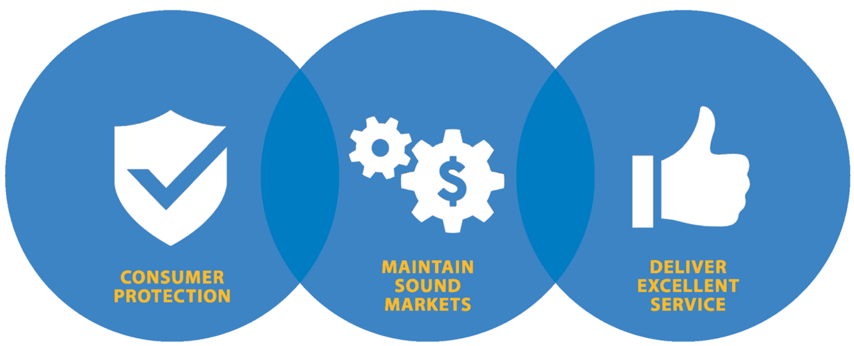
> Coordinate state data collection efforts & promote consistency
> Create a repository of state actions & best practices
> Generate bulletins to educate consumers about the impact of the pandemic on insurance lines
> Provide enhanced market analysis & surveillance on COVID-19 impact
> Coordinate with global regulators
> Collaborate with global regulators and advise policymakers

MAINTAIN SOUND MARKETS

> Coordinate state data collection efforts & promote consistency
> Create a repository of state actions & best practices
> Provide enhanced market analysis & surveillance on COVID-19 impact
> Coordinate with global regulators

DELIVER EXCELLENT SERVICE

> Facilitate ongoing & frequent member communications using virtual platforms
> Assess & meet evolving member needs
> Provide targeted training & education
> Ensure resiliency & ongoing operation of core NAIC services



CONSUMER PROTECTION

State insurance departments took quick actions in response to the crisis to protect vulnerable and anxious consumers whose lives were being touched by COVID-19 in very real ways. These steps included prohibiting carriers from terminating insurance contracts due to non-payment and waiving late fees. Some states also instructed carriers to adjust claims as expeditiously as possible and to use remote adjustment options whenever possible. An index of state regulatory actions is attached at the end of this report.

At the NAIC, we worked to provide opportunities for state insurance departments to share actions and best practices and provide information directly to consumers through online resources. An index of NAIC actions is attached at the end of this report.

HEALTH INSURANCE

With access and affordability of COVID-19 testing and treatment a critical issue, state insurance departments took swift action to allow health insurance consumers to access testing without cost-sharing and worked to extend access to coverage for consumers. Nearly all states acted initially to remove consumer cost-sharing for COVID-19 testing. Some have gone further to disallow cost-sharing for COVID-19 treatment or for an eventual vaccine. Most states acted to clarify that insurers must cover early prescription drug refills and took other steps to facilitate access to needed drugs during the outbreak.

State insurance departments have also worked to expand access to telehealth services, in some cases lifting restrictions on methods of communication and reducing cost-sharing. Many state regulators also requested or required insurers to offer enrollees extended premium due dates, suspend cancellations, and offer greater flexibility for small business coverage. Some regulators also called on insurers to verify the adequacy of their provider networks, modify utilization review, inform enrollees of benefits, or adjust provider credentialing.

The NAIC continues to engage on a daily basis with federal agencies, like The U.S. Department of Health and Human Services (HHS) and Centers for Medicare and Medicaid Services (CMS), to provide a forum for coordination between state and federal efforts targeting health insurance. Similarly, the NAIC remains directly engaged with Congress to ensure federal efforts to stabilize or support health insurance markets are coordinated and effective.

LIFE INSURANCE

As with other lines of insurance, several states have required life insurers to defer premium payments and suspend cancellations and non-renewals. In some circumstances, consumers have up to a year to pay back any deferred payments. Life insurers have also been instructed to waive late fees and penalties, and allow payment plans for premiums payments to otherwise avoid a lapse in coverage in other states.

AUTO INSURANCE

Many states have mandated or encouraged auto insurance companies to institute paybacks to drivers, who have greatly reduced miles driven during the pandemic. The announced refunds, discounts, dividends and credits are estimated to total more than $10 billion.

CONSUMER RESOURCES

To help consumers, legislators and business owners understand the impacts of COVID-19 on insurance, the NAIC created a Coronavirus Resource Center and outreach program. The website provides access to third-party information and resources, as well as information specifically created by the NAIC. NAIC resources include research, information on coverages and exclusions related to health, travel, life, business interruption, event cancellation, workers' compensation, general business liability, and directors and officers insurance, as well as annuities. It also includes a database of more than 1,000 state bulletins, actions, and alerts to help the public keep track of state insurance actions taken across the country to protect consumers and ensure market solvency.

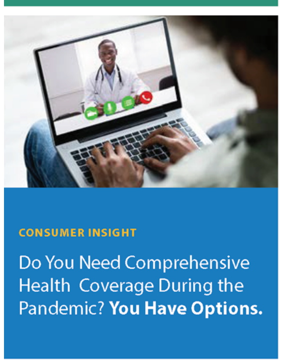
1,000+

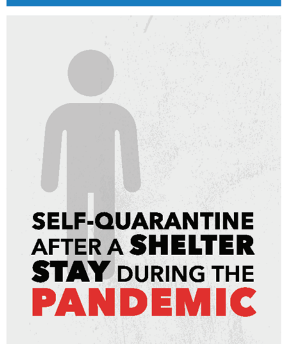
STATE BULLETINS, ACTIONS, & ALERTS

State actions are characterized as orders when they require insurers to take an action. They are characterized as requests when they encourage insurers to take an action. Notices advise insurers, consumers, or others of relevant information.

As with many crises, fraud is also a major concern. States insurance departments and the NAIC have issued warnings to consumers about potential COVID-19-related scams, such as robocalls and text messages advertising bogus miracle cures, free at-home test kits, home cleaning that scammers claim will reduce the risk of getting COVID-19, and assistance with obtaining federal government stimulus checks.

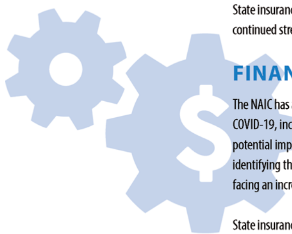
The NAIC has also fielded multiple requests for relief from 22 industry, consumer and health provider associations. Many of these have resulted in new draft bulletins and committee discussions.





MAINTAIN SOUND MARKETS

State insurance regulators and the NAIC have been closely monitoring the financial health of insurers to ensure their continued strength and resilience. This work will continue as the crisis evolves.



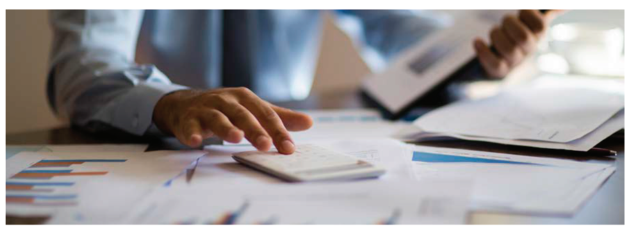
FINANCIAL SOLVENCY

The NAIC has also been working with state insurance departments to identify and evaluate company exposure to COVID-19, including monitoring the capital markets and providing reports to the states for their use in evaluating the potential impact of the economic downturn on insurance company assets. Evaluating company exposure has involved identifying those companies whose products put them at a greater risk of being impacted, as well as those companies facing an increased risk as a result of the interest rate cuts and market downturn.

State insurance departments have worked together—through the NAIC—to develop a national information request template that gathers initial data from insurers on their exposure to potential COVID-19 claims and the impact of the related economic downturn on their assets. More specific data requests from property/casualty insurers who write lines that could be impacted by COVID-19 — such as business interruption, workers' compensation and travel insurance — have also been developed. State insurance regulators have also worked with life insurers to evaluate the impact of the economic stresses on their liquidity.

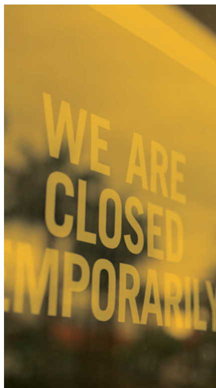
The NAIC also finalized a resource and guidance document of COVID-19 assumptions state regulators may use when reviewing health insurance carrier rate submissions for 2021.

In addition, the NAIC has provided input on the U.S. response to a survey by the International Association of Insurance Supervisors (IAIS). To date, they have nearly 60 responses from around the globe. The NAIC is contributing to a similar cross-sectoral survey being conducted by the international Financial Stability Board.



NEW ACCOUNTING AND REPORTING GUIDANCE

The NAIC worked with members to provide new accounting and reporting guidance for including the treatment of overdue mortgages and due dates of quarterly filings to provide some relief and guidance for insurers — and, by extension for business owners — by allowing more time for the insurers to collect premium receivables before reporting the receivables as nonadmitted in the statutory financial statements. The NAIC also plans to address rate and form review in light of premium discounts and rebates for non-use of personal vehicles during shelter-in-place orders.



BUSINESS INTERRUPTION INSURANCE

State insurance departments have issued guidance regarding coverage for coronavirus in a standard business interruption policy. The guidance has alerted business owners that many (83%) of policies have exclusions for virus, bacteria and pandemics and most (98%) requires a physical loss. It also encourages consumers to read their policy to determine if coverage exists.

The pandemic has caused massive disruptions to businesses. The American Property Casualty Insurance Association (APCIA) estimates that business revenue losses for small businesses (less than 100 employees) are between $255 billion and $431 billion a month, which dramatically exceeds the amount of premiums collected. The NAIC released a statement detailing concerns and opposition to any legislative proposals relating to retroactively altering the business interruption provision of polices to include new coverages that were not contemplated or funded and, in many cases, were specifically excluded by the policy.

State insurance regulators are committed to working at the state and federal level to help mitigate the devastating economic impacts of the coronavirus (COVID-19) pandemic. For example, states have already taken swift action to allow health insurance consumers to access COVID-19 testing without cost-sharing, and working to extend access to coverage for consumers where states are empowered to do so. Given the current condition of the financial markets, state regulators and the NAIC are also closely monitoring the financial health of insurers to ensure their continued strength and resilience.

We thank Congress and the Administration for acting quickly to give states greater flexibility to protect consumers and deal with ever-changing market dynamics, and we look forward to continuing that partnership as issues arise. However, as Congress considers further legislative proposals to address the devastating impacts of the COVID-19 pandemic, we would caution against and oppose proposals that would require insurers to retroactively pay unfunded COVID-19 business interruption claims that insurance policies do not currently cover.

Business interruption policies were generally not designed or priced to provide coverage against communicable diseases, such as COVID-19, and therefore include exclusions for that risk. Insurance works well and remains affordable when a relatively small number of claims are spread across a broader group, and therefore it is not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period. While the U.S. insurance sector remains strong, if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing.

Moving forward, if Congress believes the business interruption insurance sector can play a vital role in addressing the policy challenges of future pandemics, we stand ready to work with Congress on such solutions. However, swift action by Congress to directly address the needs of citizens and our economy is the most effective and expedient means to addressing the devastating impact of COVID-19.

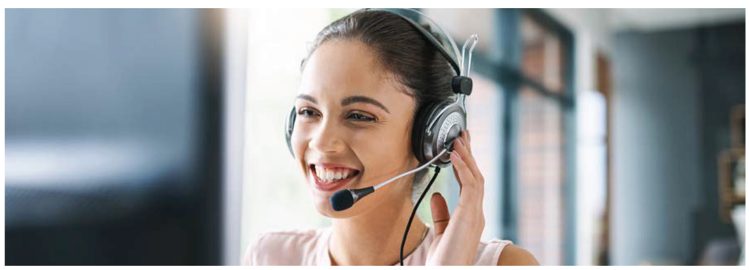
PRODUCER LICENSING

The NAIC has worked with state insurance departments on a variety of issues designed to maintain the integrity of reporting and license requirements, while at the same time streamlining processes to work effectively with shelter-in-place orders.

Insurance producers are in direct contact every day with Americans, helping them make critical decisions on financial and personal welfare. Our obligation is to ensure those producers have the knowledge and personal integrity to fulfill those responsibilities.

NIPR NATIONAL INSURANCE PRODUCER REGISTRY

The NAIC worked with the National Insurance Producer Registry (NIPR) on recommended best practices and a bulletin template for guidance on the implementation of a temporary license for insurance producers which distributed to the states. Together, we continue to do the technical work required for state insurance departments to extend renewal deadlines or offer temporary licenses electronically through NIPR.



OTHER WORK INCLUDED

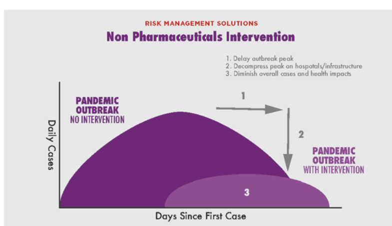
- Support for virtual inspections and the use of new technologies
- The use of telemedicine for workers' compensation claims
- Delays and suspensions of in-person audits
- Suspension and relief from notary and first-class mail requirements, while allowing the use of electronic signatures
- Expedited review of life insurance products

DELIVER EXCELLENT SERVICE

Our agility was tested in March as we triggered the NAIC's Business Continuity Plan and moved our teams to remote operations. Additionally, in March we made the decision to cancel our in-person Spring National Meeting due to concerns about the health and safety of our members, employees and attendees. We reprioritized our efforts to allow our members and staff more time to focus on the health emergency. At the same time, we sought new and innovative ways to maintain stakeholder engagement and transparency of NAIC proceedings.

VIRTUAL SPECIAL SESSIONS

On March 20, we held a virtual special session on COVID-19. The public session was attended by 2,700 interested parties. Attendees heard presentations on virus pathology, pandemic modeling, financial impact, and policy coverage issues. The session also included panel discussions about the impact of COVID-19 on the health insurance market, insurer readiness, and various consumer issues.



This first session was followed by a regulator-to-regulator session that enabled our members to have a robust discussion about the stability of the insurance sector, possible issues that may need attention in the near-term, and what is being done at the state level.

Since that time, we have hosted several other virtual conversations with our members to address best practices and address important issues. Additionally, various NAIC committees continue to meet in virtual public and regulator-to-regulator sessions. As we move forward, we anticipate that this practice will become more common.

RESEARCH

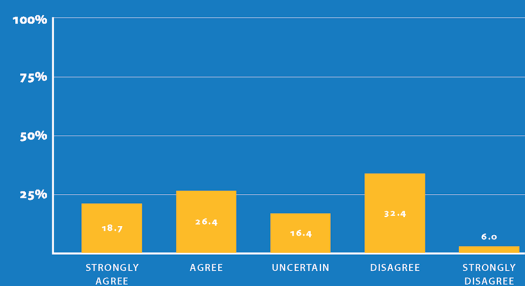
The NAIC's independent research division, the Center for Insurance Policy and Research (CIPR), maintains a current list of research reports, articles, and other resources relating to pandemics, as well as compiled key historical learnings from NAIC Proceedings and a recent CIPR symposium on pandemics. Working in partnership with the academic community, the CIPR partnered with the Wisconsin School of Business (WSB) Insurance Experts Panel to weigh in on business interruption insurance and special enrollment periods, publishing the survey results to help advance discussion around these key public policy issues. The NAIC's *Journal of Insurance Regulation* issued a special call for research articles related to COVID-19 and how it will continue to impact the insurance industry and its regulation from an operational, business, and investment perspective.

PANDEMIC BUSINESS INTERRUPTION INSURANCE

INSIGHTS FROM WSB SURVEY OF INSURANCE EXPERTS

SURVEY QUESTION 3

Only the federal government can help provide business interruption insurance for pandemic risks.

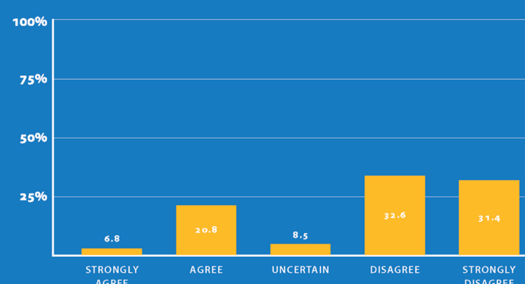


> 45 total responses
> 4 "no opinion"
> 4 did not answer

SPECIAL ENROLLMENT PERIODS FOR HEALTH INSURANCE MARKETPLACES

INSIGHTS FROM WSB SURVEY OF INSURANCE EXPERTS

Opening special enrollment periods for health insurance marketplaces during the COVID-19 pandemic is not a necessary policy because there are sufficient existing special enrollment rules and Medicaid access that provide health insurance access to those who need it.



> 37 total responses
> 10 "no opinion"
> 6 did not answer

EMERGING ISSUES

> OPERATIONAL TRANSITION ISSUES
> ONGOING SOLVENCY MONITORING
> TARGETING FRAUD AND CONSUMER ABUSE
> FURTHER REGULATORY REQUESTS
> CONTINUED PRESSURE ON BUSINESS INTERRUPTION INSURANCE
> RELATIONSHIP BETWEEN BUSINESS INTERRUPTION CLAIMS CAUSED BY COVID-19 AND CLAIMS ARISING FROM RECENT RIOTING AND LOOTING
> ENGAGEMENT ON HEALTH COVERAGE ISSUES RELATED TO COVID-19
> INCREASED DATA CALLS
> IMPACT ON INTERNATIONAL INITIATIVES

INDEX OF ACTIONS BY COMMITTEE

ATTACHMENT A

ACTIONS BY COMMITTEE

HEALTH INSURANCE & MANAGED CARE (B) COMMITTEE

> Serving as a public forum for stakeholders to submit requests for regulatory flexibility for state insurance regulators' consideration related to specific areas due to COVID-19, such as prior authorization, claims filing, form filing, and telehealth requirements
> Held a conference call discussing some of these stakeholder requests
> Anticipates developing and finalizing a resource and guidance document of COVID-19-related assumptions that state insurance regulators may use when reviewing carrier rate submissions for 2021
> Tracking state actions related to COVID-19 and health insurance; in particular, 2021 rate filings

PROPERTY & CASUALTY INSURANCE (C) COMMITTEE

> Received comments from industry and consumer groups regarding a coordinated state response to COVID-19 issues
> Issues include ongoing business operations, such as claims handling, notification requirements, and use of virtual and technology-based means for inspections and adjusting
> Concerns also include regulatory oversight considerations, such as premium discounts or rebates, rate and form approval, and exceptions to credit-based insurance scores
> Assisted State Insurance Departments in issuing a COVID-19 Data Call
- **Part 1** includes information on business interruption, including written premium, number of policies, and percentage of policies with language specific to physical damage and exclusions for virus or pandemic
  - Preliminary findings show that nearly 8 million commercial insurance policies include business interruption coverage
  - Of that amount, 90% were for small businesses, as defined as having 100 or fewer employees; 8% for medium businesses, and 2% for large businesses
  - Significantly, 83% of all policies included an exclusion for viral contamination, virus, disease, or pandemic and 98% of all policies had a requirement for physical loss
- **Part 2** includes additional information on Business Interruption including claims and loss amounts
- Additional data calls are still being contemplated by a regulator-to-regulator drafting group with input from industry
  - Future data calls could include additional lines of business such as travel insurance, event cancellation, general liability, directors and officers, workers' compensation, and medical professional liability

CASUALTY ACTUARIAL & STATISTICAL (C) TASK FORCE

> Discuss session rate and form review in light of premium discounts and rebates for non-use of personal vehicles during shelter-in-place orders

WORKERS' COMPENSATION (C) TASK FORCE

> To discuss use of telemedicine and other regulatory issues arising from COVID-19

MARKET REGULATION & CONSUMER AFFAIRS (D) COMMITTEE

- Fraud issues arising from the crisis
- Temporary licensing for producers; onboarding new producers
- Use of technology for claims settlement
- Regulatory relief for companies in claims settlement
- Tracking and coding of complaints and regulatory actions
- Adjuster licensing

STATUTORY ACCOUNTING PRINCIPLES (E) WORKING GROUP

- Provided three accounting interpretations related to COVID-19
- Statutory accounting exceptions allow insurance reporting entities to respond to policyholder needs for premium payment delays, and address mortgage loan modification or forbearance requests, while mitigating insurance reporting entity concerns on the impact to statutory financial statements

INTERNATIONAL INSURANCE RELATIONS (G) COMMITTEE

- Worked on a number of activities at the international level and COVID-19 has had an impact on planned international workstreams and events
- Responding to COVID-19 has been the focus of the International Association of Insurance Supervisors (IAIS)
    - Held regular calls to share experiences in dealing with the current situation and conducted a survey to collect information on jurisdiction responses
    - Work on comparability between the insurance capital standard and aggregation method has continued; however, the consultation on principles for assessment criteria will be delayed from July to later in 2020
    - Other IAIS papers scheduled for public consultation have been deferred by at least six months
    - IAIS and other international organizations' in-person meetings have been canceled for much of the rest of the year. This includes the IAIS committee meetings and global seminar the NAIC was planning to host in June, as well as the November committee meetings

INDEX OF ACTIONS BY STATES

ATTACHMENT **B**

LIFE & HEALTH

	CUSTOMER COST-SHARING	TELEHEALTH	PREMIUMS/CANCELATIONS	PRESCRIPTION DRUGS	SPECIAL ENROLLMENT PERIODS	RATES AND FORMS REVIEW	STATUTORY FILINGS	OTHER
ALABAMA	●	●	●	●				●
ALASKA	●	●	●	●		●	●	●
ARIZONA	●	●	●				●	●
ARKANSAS	●	●	●	●			●	●
CALIFORNIA	●	●	●		●		●	●
COLORADO	●	●	●	●	●	●		●
CONNECTICUT	●	●	●	●	●	●	●	●
DELAWARE	●	●	●	●				●
DISTRICT OF COLUMBIA	●	●	●	●	●	●	●	●
FLORIDA	●	●	●	●			●	
GEORGIA	●		●			●		●
HAWAII			●			●		
IDAHO	●	●	●	●			●	●
ILLINOIS	●	●	●	●		●		●
INDIANA	●	●						
IOWA	●	●	●					
KANSAS	●					●		
KENTUCKY	●	●		●		●	●	●
LOUISIANA	●	●	●	●				●
MAINE	●	●	●	●		●	●	●
MARYLAND	●		●	●	●	●	●	●
MASSACHUSETTS	●	●	●		●			●
MICHIGAN	●	●	●	●		●	●	
MINNESOTA	●	●		●	●	●	●	●
MISSISSIPPI	●	●	●			●	●	
MISSOURI	●	●	●	●		●		●
MONTANA	●							
NEBRASKA	●	●				●	●	●
NEVADA	●	●		●	●			●
NEW HAMPSHIRE	●	●	●	●		●		●
NEW JERSEY	●	●	●					●
NEW MEXICO	●	●	●	●				●
NEW YORK	●	●	●	●	●			●
NORTH CAROLINA	●	●				●		●
NORTH DAKOTA	●	●				●		●
OHIO	●	●	●	●		●	●	●
OKLAHOMA	●	●	●	●			●	●
OREGON	●	●	●			●		
PENNSYLVANIA	●	●	●	●		●		●
RHODE ISLAND	●	●		●	●			●
SOUTH CAROLINA	●	●	●	●			●	●
SOUTH DAKOTA	●	●	●	●				●
TENNESSEE	●	●		●		●	●	●
TEXAS	●	●	●	●				●
UTAH	●	●		●			●	●
VERMONT	●	●		●	●	●		●
VIRGIN ISLANDS	●						●	
VIRGINIA	●					●	●	●
WASHINGTON	●	●	●	●	●			●
WEST VIRGINIA	●	●	●	●				●
WISCONSIN	●	●	●	●		●		●
WYOMING	●	●						
TOTAL JURISDUCTIONS WITH ACTION	51	45	36	34	12	26	22	41

PROPERTY & CASUALTY

	AUTO INSURANCE	BUSINESS CONTINUITY	BUSINESS INTERRUPTION	CLAIMS HANDLING	GENERAL INFORMATION	LICENSING
ALABAMA	●			●	●	●
ALASKA						
ARIZONA					●	●
ARKANSAS	●		●	●	●	●
CALIFORNIA	●		●		●	●
COLORADO	●		●	●	●	●
CONNECTICUT	●		●		●	●
DELAWARE	●				●	
DISTRICT OF COLUMBIA			●		●	
FLORIDA	●	●		●	●	●
GEORGIA	●		●		●	●
GUAM						
HAWAII	●				●	●
IDAHO	●		●	●	●	●
ILLINOIS	●				●	●
INDIANA			●		●	●
IOWA					●	●
KANSAS			●		●	●
KENTUCKY	●				●	●
LOUISIANA	●		●		●	●
MAINE		●		●	●	●
MARYLAND	●		●	●	●	●
MASSACHUSETTS	●		●		●	●
MICHIGAN	●			●		●
MINNESOTA			●		●	●
MISSISSIPPI			●		●	●
MISSOURI			●			●
MONTANA						
NEBRASKA						●
NEVADA				●	●	●
NEW HAMPSHIRE	●		●		●	●
NEW JERSEY	●				●	●
NEW MEXICO	●					
NEW YORK		●			●	●
NORTH CAROLINA	●		●		●	●
NORTH DAKOTA			●		●	●
OHIO	●				●	●
OKLAHOMA		●	●		●	●
OREGON	●			●	●	
PENNSYLVANIA						●
RHODE ISLAND				●		●
SOUTH CAROLINA			●		●	●
SOUTH DAKOTA						●
TENNESSEE					●	
TEXAS				●	●	●
UTAH	●			●	●	●
VERMONT	●		●		●	●
VIRGIN ISLANDS		●			●	●
VIRGINIA	●		●	●	●	●
WASHINGTON	●		●	●	●	●
WEST VIRGINIA		●		●	●	●
WISCONSIN			●		●	●
WYOMING						●
TOTAL JURISDICTIONS WITH ACTION	26	6	24	16	42	45

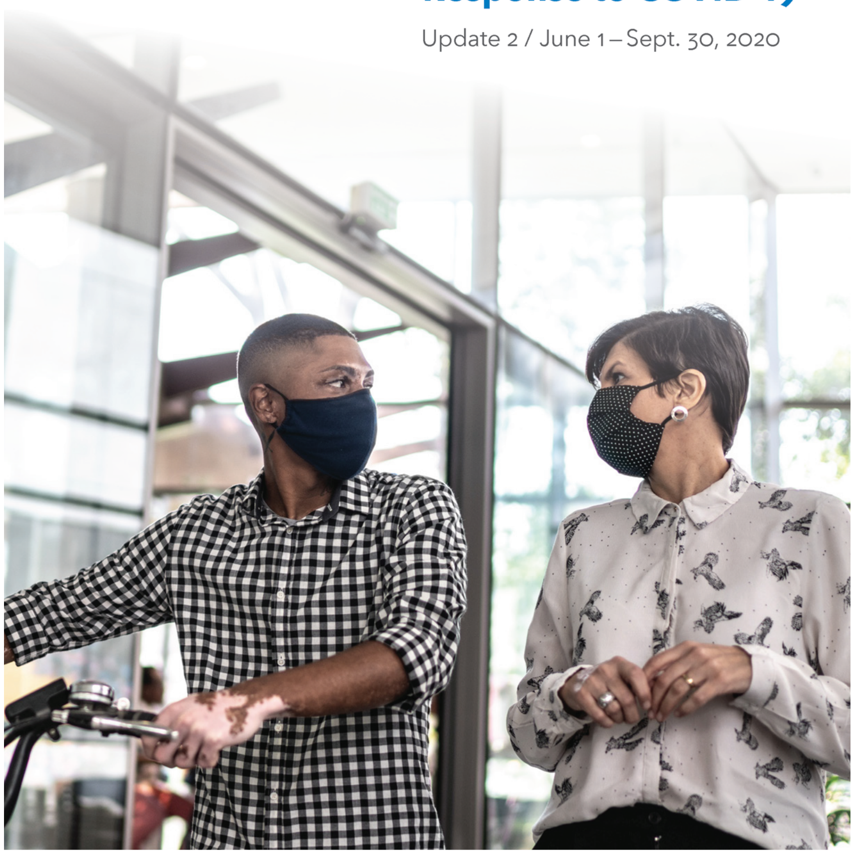
PROPERTY & CASUALTY

	MARKET CONDUCT	NOTARY	RATES AND FORMS	REQUESTS FOR INFO	STATUTORY FILINGS	TRAVEL INSURANCE	WORKERS' COMPENSATION
ALABAMA	●	●					
ALASKA	●		●		●	●	●
ARIZONA	●	●			●	●	
ARKANSAS	●	●	●		●		
CALIFORNIA	●	●	●	●	●		●
COLORADO	●		●				●
CONNECTICUT	●				●	●	●
DELAWARE	●	●					●
DISTRICT OF COLUMBIA	●		●		●	●	●
FLORIDA	●				●		●
GEORGIA	●		●				●
GUAM							
HAWAII	●		●				●
IDAHO	●				●		●
ILLINOIS	●		●			●	●
INDIANA	●						●
IOWA						●	●
KANSAS	●		●			●	
KENTUCKY	●	●	●		●		●
LOUISIANA	●	●				●	●
MAINE	●				●	●	●
MARYLAND	●	●	●		●	●	●
MASSACHUSETTS	●						●
MICHIGAN	●		●		●	●	
MINNESOTA	●	●	●	●	●	●	●
MISSISSIPPI	●	●			●	●	●
MISSOURI	●		●				
MONTANA	●		●				●
NEBRASKA	●	●	●		●	●	
NEVADA		●				●	
NEW HAMPSHIRE		●	●			●	
NEW JERSEY	●						●
NEW MEXICO	●						●
NEW YORK	●			●		●	●
NORTH CAROLINA	●		●				●
NORTH DAKOTA	●					●	●
OHIO			●		●	●	●
OKLAHOMA	●				●		●
OREGON	●		●				●
PENNSYLVANIA	●		●				●
RHODE ISLAND							
SOUTH CAROLINA				●	●		●
SOUTH DAKOTA							●
TENNESSEE	●		●		●		
TEXAS	●		●			●	●
UTAH	●	●			●		●
VERMONT	●		●				●
VIRGIN ISLANDS	●			●	●		
VIRGINIA	●		●		●		
WASHINGTON	●			●		●	●
WEST VIRGINIA	●		●		●	●	
WISCONSIN	●		●				●
WYOMING							
TOTAL JURISDICTIONS WITH ACTION	44	14	27	6	23	22	37

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

A Report of the NAIC on the State of Insurance Regulatory Response to COVID-19

Update 2 / June 1 – Sept. 30, 2020



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Introduction

COVID-19 has presented the world with the crisis of a lifetime in terms of its impact on people's lives, finances, and futures. While we have begun reopening, it's clear that we'll be facing challenges for a long time. New hotspots are emerging regularly. There is significant unemployment, the potential permanent closure of many businesses, and a still unfolding economic impact that will likely be in the trillions of dollars in the U.S. alone.

This report is the second in the series of reports on regulatory response summarizing the efforts and results on behalf of the NAIC and our members, and the nation's chief insurance regulators. Working with our members, we continue to take critical steps to protect insurance consumers and ensure stabilized insurance markets.

Our efforts, both recent and historic, have resulted in an insurance sector that continues to show strength and resiliency in this time of crisis. Even in the midst of a global pandemic, consumers continue to receive the benefits of their policies, which is particularly important given the natural catastrophes that have occurred at a historic pace across the country. We have also worked to advance the priorities set out in early March to work with our members to protect consumers, maintain sound insurance markets, and deliver NAIC operations and member services virtually.

We are not through this pandemic yet nor through the longer-term economic instability that it will likely leave in its wake. The issues continue to evolve, and we remain steadfast in our commitment to address them with flexibility and focus.

This report catalogues our efforts from June 1, 2020–Sept. 30, 2020. The NAIC will continue to work with commissioners and their staff on issues related to extending regulatory relief and reporting procedures to account for adjustments, health care policy for consumers, and the impact on business interruption insurance.

COVID-19 & the Insurance Sector

In the spring of 2020, the insurance sector enacted a series of programs to respond to the initial events brought on by COVID-19. As we moved into the summer months and positive cases initially declined, several other considerations required attention from state insurance regulators including:

> Emergence of new hotspots affecting the health and mortality of residents.
> Continued business operation impacts, as local governments rolled back re-openings.
> Resolving reporting questions arising from swiftly adapting programs to help alleviate consumer burdens from COVID-19.
> Combatting the insurance impact of the pandemic while managing a historically active hurricane and wildfire season.
> Responding to the social justice movement that gained national attention.
> Alerting consumers to fraud schemes that often emerge during chaotic times.
> Frequent engagement with Congress and federal agencies on the impact of COVID-19 on insurance policy holders and markets.

Regulatory Response to COVID-19

June 1, 2020 – Sept. 30, 2020 Milestones

June 2
NAIC issues report on **U.S. Insurer Exposure to Bank Loans**

June 10
U.S. COVID-19 cases hit **2 million**

June 18
NAIC issues report on **Collateralized Loan Obligations**

June 20
National Institutes of Health halted trial of hydroxychloroquine

June 25
NAIC lowers Life Insurance Cash Value Forfeiture Rates to Below **1%**

June 30
NAIC issues report on **U.S. Insurers' Exposure to Mortgage Loans**

July 1
NAIC issues report on **U.S. Insurers' Cash and Invested Assets Reach at Year-End 2019**

July 7
U.S. officially notified the UN of its withdrawal from the World Health Organization (withdrawal is expected to take effect July 6, 2021)

July 17
U.S. sets world record highest single-day rise in cases at **77,638**

July 22
NAIC issues report on **U.S. Insurer Industry Outsourcing to Unaffiliated Investment Managers**

July 22
NAIC Adopts INT for COVID-19 Related Refunds

July 28
NAIC's Virtual Summer National Meeting Begins (3 week program)

August 10
NAIC holds Special Session on COVID-19 Lessons Learned **(2,737 attended)**

August 11
NAIC provides Rules for Auto Insurers to Follow When Reporting Policy Refunds

August 14
NAIC issues a report on **Private Equity (PE) Owned U.S. Insurers**

August 17
NAIC Extends INT Several Reporting Rules through Third Quarter:
> 90-day rule
> Mortgage Loan Impairment Assessment
> Investment Income Due and Accrue

August 24
First case of reinfection was reported in Hong Kong

August 28
NAIC issues a Report on **U.S. Insurance Industry's High-Yield Bond Exposure**

August 31
U.S. surpasses **6 million** COVID-19 cases

August 31
SBS Submits License Expiration Date Extensions

September 2
NAIC issues a Report on **U.S. Insurer Total Exposure to Schedule 8A**

September 8
NAIC's Virtual Insurance Summit begins (2 week program)

September 22
U.S. death toll hits **200,000**

September 22-24
Virtual Meeting of the IAIS Executive Committee

September 29
Global death toll hits over **1 million**

Key Actions

When COVID-19 took hold of the country the NAIC jumped into action revising our regulatory priorities for the year to help curtail the impact of the pandemic on the insurance industry. Specific details about our actions can be found in our first Report of the NAIC on the State of Insurance Regulatory Response to COVID-19. Then, like now we remain focused on three critical areas:

> Protecting insurance consumers
> Ensuring stability in the insurance market
> Delivering exceptional service

Summary of key actions from June 1, 2020 – Sept. 30, 2020:

CONSUMER PROTECTION

> Continued to update the NAIC Coronavirus Resource Center with information from state regulators, the NAIC, and reputable third parties.
> Continued to distribute educational resources about the impact of the pandemic on insurance lines.
> Continued to warn about potential fraud risks.
> Worked with regulators and consumers to mitigate the impact of COVID-19 as states dealt with a myriad of natural catastrophes.

MAINTAIN SOUND MARKETS

> Coordinated data collection on business interruption insurance.
> Adjusted regulations to reflect challenges caused by COVID-19.
> Coordinated with federal counterparts and other regulators across the world on the global response to pandemic impacts on multi-national insurance groups.
> Continued to adjust NAIC software capabilities to streamline the process and enable remote business operations.

DELIVER EXCELLENT SERVICE

> Shifted communications to virtual platforms and maintained regular outreach to members and the stakeholder community.
> Targeted training and education to regulators.
> Provided assistance to states grappling with their response to natural catastrophes.
> Ensured resiliency and ongoing operation of core NAIC services.

Consumer Protection

State regulators continued the programs they enacted at the start of the pandemic to help protect consumers whose health and livelihoods have been affected. These initiatives include prohibiting carriers from terminating insurance contracts due to non-payment; waiving late fees; and in some states, requiring insurers to provide refunds or reduce premiums on certain policies.

At the NAIC, we continued to provide resources to consumers to educate them on COVID-19 changes to insurance and raise awareness and understanding of emerging scams. A complete list of actions can be found at the end of this report.

Health Insurance

State insurance departments continued their efforts to ensure access and affordability for COVID-19 testing and treatment. When the pandemic began, nearly all states acted initially to remove consumer cost-sharing for COVID-19 testing.

As federal cost-sharing requirements emerged, states worked to communicate and implement the federal standards and offer feedback on their effectiveness. Some states have gone further, disallowing cost-sharing for COVID-19 treatments, including costs of a vaccine in the future.

Most states also acted to clarify that insurers must cover early prescription drug refills and they took other steps to facilitate access to medications during the outbreak. Almost all state-based marketplaces opened for new enrollment by individuals in need of coverage.

State insurance departments have also continued to work to expand access to telehealth services, in many cases lifting restrictions on methods of communication and reducing cost-sharing. Many state regulators also requested or required insurers to offer enrollees extended premium due dates, suspend cancellations, and offer greater flexibility for small business coverage. Some regulators also worked with insurers to provide premium holidays for certain types of coverage. Others called on insurers to verify the adequacy of their provider networks, modify utilization reviews, inform enrollees of benefits, and adjust provider credentialing.

The NAIC continues to engage with federal agencies, including the U.S. Department of Health and Human Services (HHS) and Centers for Medicare and Medicaid Services (CMS) to provide a forum for coordination between state and federal efforts targeting health insurance. Similarly, the NAIC remains directly engaged with the U.S. Congress to ensure that federal efforts to stabilize or support health insurance markets are coordinated and effective.

Auto Insurance

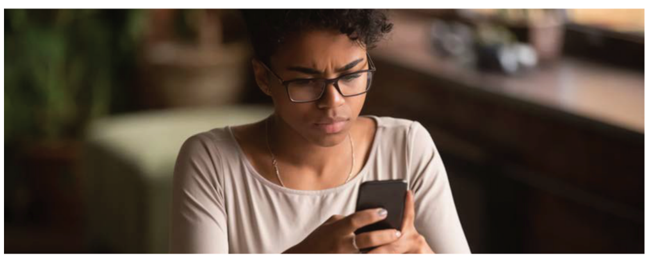
Early in the COVID-19 pandemic, insurance regulators understood that the pandemic was having a significant impact on consumer behavior, including the fact that many drivers were driving fewer miles. In April, 26 state departments of insurance issued bulletins urging insurers to issue immediate reductions in auto insurance premiums to reflect reduced driving. Some states granted consumer relief and mandated premium grace periods. Nearly all states urged consumers to contact their agent or carrier about possible premium reductions.

Insurance premium relief measures generally shaved 15–25% off customers' premium payments for one or more months during the spring and returned a reported $14 billion to policyholders. State insurance property and casualty regulatory actuaries have been actively reviewing filings, working with insurers, and sharing information within the regulatory community about how to handle refund and rate change filings.

Auto insurers have been finding significant decreases in the frequency of accidents, but also an increase in the severity. Insurance companies have reported significant increases in speeding activity, which could be one of the reasons for the increasing cost of accidents. Currently, regulatory rate filing reviewers and actuaries are evaluating rate filings with close attention to major changes in data experience.

NAIC members expect companies to respond to changes in data, but not to overreact when the scope and duration of current impacts are not yet fully known. As policies are written for a future period, typically six months or one year, insurers need to evaluate the losses and reassess risk following that policy term rather than trying to price in "real time" within the policy period. As data has become more readily available over time and technology continues to advance, regulators have worked to ensure that insurers utilize data to better assess risk to more accurately price auto insurance policies. We anticipate that as usage-based pricing becomes more prevalent, the industry and regulatory community will have more data to evaluate the need for pricing modifications.

Insurance regulators continue to evaluate data to determine if long-term adjustments are needed to rating models and encourage consumers to shop for a better rate as auto insurance markets are typically very competitive with numerous carriers competing for consumers' business.



Protecting Against Fraud and Improper Marketing

As with many crises, fraud is a major concern. State insurance departments and the NAIC have issued warnings to consumers about potential COVID-19-related scams, such as robocalls and text messages advertising bogus miracle cures, free at-home test kits, home cleaning that scammers claim will reduce the risk of getting COVID-19, and assistance with obtaining federal government stimulus checks.

The NAIC and state regulators continue to alert consumers and warn against improper marketing of health insurance. These tactics often involve robocalls using the consumer's local area code offering health insurance plans from major insurers. Scammers will often direct the consumer to an out-of-state call center, offer coverage that is not with a major provider and sell policies with a more limited scope than presented.

Natural Disasters

COVID-19 added a new dimension to disaster preparation in 2020. Working with guidance from FEMA and the CDC, the NAIC provided consumers with tips and advice to help consumers protect themselves, safely prepare, evacuate, and shelter in the event of a natural disaster, while protecting themselves and others from COVID-19.

Consumer Resources

The NAIC continued to add new information to its Coronavirus Resource Center and outreach program helping consumers, legislators and business owners understand the impacts of COVID-19 on insurance and providing a one-stop-shop for reliable and up-to-date information. Additionally, we continued to proactively distribute information to consumers through social media, press releases, and in partnership with state departments of insurance.

Maintain Sound Markets

State insurance regulators and the NAIC monitored the financial health of insurers to ensure their continued strength and resilience. We collected data to understand the true impact the pandemic was having on carriers and implemented guidance to help reduce the burden on insurers and consumers. We continued to analyze the market impact as the crisis evolved extending guidance and enacting new procedures to respond to emerging issues. Thus far the U.S. market and the state-based insurance system behind it have proven their resiliency.

Data collected from regulators across the globe demonstrates that the COVID-19 global pandemic has had a major impact affecting all sectors of the economy, including insurance. In times of stress such as these, the regulatory systems in place to ensure insurers' solvency and policyholder protection are put to the test. A recent global report by Standard & Poor's, a rating agency that provides ratings to the global markets, analyzed how the insurance industry has dealt with COVID-19 and its impact on the industry's capital buffers. The report notes the overall resiliency of such buffers, and stress testing conducted found North American insurers to be the most resilient region globally. Such testing considers the overall capital strength, risk management and asset allocations of the insurers.

U.S. state insurance regulators attribute the resiliency of the region in part to improvements and advancements made to the regulatory system over the last decade, including those related to solvency, corporate governance and group supervision.

Extension of Accounting and Reporting Guidance

At the start of the pandemic, the NAIC worked with members to provide new accounting and reporting guidance for the treatment of overdue mortgages. It also extended the due dates of quarterly filings to provide some relief and guidance for insurers—and, by extension business owners—by allowing more time for the insurers to collect premiums before reporting the payments as late in the statutory financial statements. Originally these guidelines were only allowed for first and second quarter reporting, but this guidance was extended to Sept. 30, 2020 to be applicable for third quarter financial statements as well.

New Accounting Rules for Auto Insurers

The NAIC addressed the accounting issues related to auto insurers' refunds, rate reductions and policy dividends to consumers based on less driving due to shutdowns. It was decided that the default methodology would be to record it as a reduction in premium, but the guidance also offers flexibility for insurers that prefer to report through expenses in a one-time as a limited exception.

Business Interruption

To date, nearly 200,000 claims have been reported by policyholders seeking reimbursement for lost income under business interruption coverage. Less than 1% of claims reported have been closed with payment and 74% of claims reported have been closed without payment.

This analysis is based on our work with state regulators to understand which insurers are writing business interruption coverage, the size of the market, the extent of exclusions related to COVID-19, and claims and losses related to COVID-19.

The analysis also showed that 83% of policies have exclusions for virus, bacteria and pandemics and nearly all (98%) require a physical loss for a claim. This is not surprising as insurance works well and remains affordable when a relatively small number of claims are spread across a broader group. It is therefore not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period.

Several lawsuits were filed against insurers by the business community. To date, these lawsuits have focused on whether the virus causes direct property damage to an insured's place of business such that business interruption or civil authority coverage is triggered. At the federal level, there are a number of legislative proposals to address business interruption coverage gaps, so the NAIC adopted a policy position in October to guide our efforts in engaging with Congress as this issue moves forward.

We will continue to collect data on business interruption claims each month through November 2020.

Life Insurance Interest Rates

An NAIC committee began working on the *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805) to drop the standard minimum nonforfeiture interest rate for individual deferred annuities from 1% to 0, due to the effects on interest rates because of COVID-19. This is expected to enable insurers to better weather the low interest rate environment.

Producer Licensing

The NAIC has worked with state insurance departments on a variety of issues designed to maintain the integrity of reporting and license requirements, while at the same time streamlining processes to work effectively with shelter-in-place orders.

The NAIC and the National Insurance Producer Registry (NIPR) provided the technical and communications support to 49 states to implement over 140 orders and bulletins related to producer licensing. Thirty-three states issued bulletins related to license renewals and 30 states issued bulletins related to temporary licensing, which provided licensees more time to complete state mandated pre-licensing or continuing education requirements. The NAIC's State Based Systems (SBS) continued to support its states throughout their response to COVID-19, by extending the expiration dates of more than 105,000 licensees in 11 states.

Insurance producers are in direct contact every day with Americans, helping them make critical decisions on financial and personal welfare. This need has been heightened during this time of economic uncertainty. Our obligation is to ensure that insurance companies can meet consumer demands for insurance products with producers who have the knowledge and personal integrity to fulfill those responsibilities.

The NAIC worked with NIPR on recommended best practices for the implementation of a temporary license for insurance producers, which was distributed to the states. NIPR held weekly industry update calls and created a COVID-19 resource center, found at *nipr.com*, to provide an updated, central source of information about state bulletins, examination center information and a state's DOI updates. Together, we continue to do the technical work required for state departments of insurance to extend renewal deadlines or offer temporary licenses electronically through NIPR. Recognizing the need for a long-term solution to provide safe and secure access to producer examinations for new applicants while maintaining the security and integrity of examinations, state insurance regulators have turned their focus toward implementing remote, proctored examinations. NAIC worked with state regulators to increase the number of states offering remote proctored exams from one in March 2020 to 21 as of Sept. 30, 2020, with additional states exploring the possibility of remote exams in the fourth quarter.

Financial Solvency

In addition to providing relief for the treatment of overdue mortgages and the collection of premiums, other accounting guidance was developed to address specific issues arising related to certain invested assets for insurers. This includes guidance related to the Term Asset-Backed Securities Loan Facility (TALF) and the assessment of other than temporary impairments.

International Coordination

Over the past months, coordination and communication with international counterparts has continued with bilateral dialogues with other jurisdictions and discussion on a variety of issues and sharing of experiences at the International Association of Insurance Supervisors (IAIS). The NAIC has provided updates to the IAIS survey on the supervisory response to COVID-19, which contains information from almost 70 jurisdictions around the globe.

In August, the International Monetary Fund (IMF) finalized the 2020 U.S. Financial Sector Assessment Program (FSAP) by publishing a number of reports with its findings and opinions on the U.S. financial regulatory system. There is an appendix addressing the impact of COVID-19 in both the IMF's Stress Testing Technical Note and the Financial System Stability Assessment; however, the FSAP was largely completed prior to the start of the pandemic.

Deliver Excellent Service

As we quickly revamped our priorities to respond to the emerging issues stemming from COVID-19, like everyone, the NAIC moved all staff to remote work and priorities shifted. Our move to work from home was largely uneventful. But as the initial chaos of the pandemic subsided, we were able to resume some of our regular programs—in altered formats —while still providing up-to-date information on the pandemic's impact on insurance.

Additionally, the NAIC and demonstrated the ability to organizationally "flex" and take on emerging issues where NAIC member engagement was critical. The two biggest examples centered around racial equality/ social justice and climate risk/resiliency. In both cases, NAIC members determined that our involvement in these issues was critical from both a market and consumer protection perspective. Over the course of just a few months, NAIC members approved two executive level task forces associated with these initiatives along with corresponding workstreams and deliverables. The pandemic is certainly a historic challenge for our financial services sector but global regulators must still remain vigilant and engaged on other critical issues that emerge during this time.

Summer National Meeting

We broke attendance records with more than 2,900 people attending NAIC's Virtual Summer National Meeting. The impact of COVID-19 and what happens next was a main discussion topic as we examined lessons learned and the outlook for the road ahead. But it also enabled us to address some of the larger industry issues stemming out of the social justice movement happening this summer. We held a special session on race and insurance examining the role of the NAIC and state insurance regulators in addressing racially discriminatory practices in insurance.

Insurance Summit

The Insurance Summit also went virtual and featured several guest speakers who shared their insights around how COVID-19 was affecting our way of life and suggested that we keep an eye on trends. Below are session topics related to COVID-19.

Remote Online Proctoring

With COVID-19 and stay-at-home orders, states needed to quickly adapt their approach to proctored examinations. This session focused on the current state of testing centers and state implementation of remote, proctored exams. Panelists included Elizabeth Kelleher Dwyer (Superintendent, Rhode Island Division of Insurance) and Larry D. Deiter (Director, South Dakota Division of Insurance).

National Fraud Trends

This session explored the new trends in insurance fraud, which included effects from the COVID-19 pandemic. It looked at these trends on both a national and global level with leaders from the Texas Department of Insurance, the NICB, the Coalition Against Insurance Fraud and BAE Systems.

Financial Analysis Update

Led by Andy Daleo and Jane Koenigsman of the NAIC, this was a discussion of recent and ongoing enhancements to analysis handbook guidance, analysis tools and related sound practices. While providing updates on industry trends through the second quarter of 2020, it also included key considerations from the latest edition of the risk alert, including COVID-19 risks and procedures.

How COVID-19 is Changing Society–America Adapts!

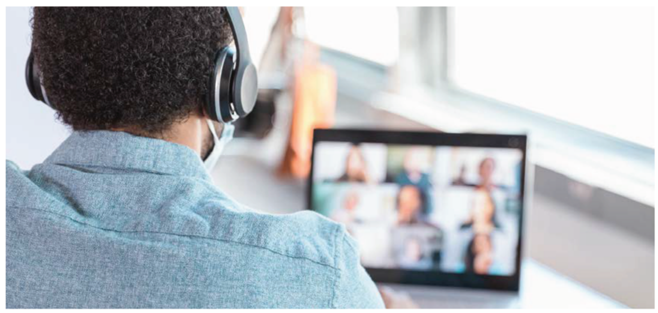
In a scenario-based approach, Grant McCracken- PhD walked participants through an examination of the cycles of decline and the decentralization of cities in general, then the changes this could provoke in society. He then dove into possible future scenarios to help inform planning and communication in 2020 and beyond.

Innovation and Technology State Contacts Roundtable

Innovation and Technology State Contacts from across the U.S. discussed recent developments in InsurTech. Special emphasis was placed on technology implemented or expedited as a result of COVID-19.

Developed New Regulator-Only Platforms

Developed a regulator-only collaboration website for sharing COVID-19 related information and creatied a new SharePoint document portal as an iPad alternative for NAIC members and senior insurance department staff to access meeting related documents.



Conversations with State Regulators

We connected state regulators with industry and consumers through virtual meetings to get first-hand accounts of how state regulators have been handling the COVID-19 pandemic. We published special episodes of The Regulators podcast featuring candid conversations about the COVID-19 response with state insurance regulators including workplace transition and protecting consumers virtually.

Appendix I:

Actions by Committee

Actions by Committee

LIFE ACTUARIAL (A) TASK FORCE

> Removed 4% floor from Life Standard Nonforfeiture Rate.
> Proposed a change to Model #805 to allow an interest rate floor between .50% and 0%.

HEALTH INSURANCE & MANAGED CARE (B) COMMITTEE

> Serving as a public forum for stakeholders to submit requests for regulatory flexibility for state insurance regulators' consideration related to specific areas due to COVID-19, such as prior authorization, claims filing, form filing and telehealth requirements.
> Held conference calls and national meeting sessions discussing some of these stakeholder requests.
> Facilitated the development of a resource and guidance document of COVID-19-related assumptions that state insurance regulators may use when reviewing carrier rate submissions for 2021.
> Tracking state actions related to COVID-19 and health insurance; in particular, this includes 2021 rate filings.

PROPERTY & CASUALTY INSURANCE (C) COMMITTEE

> Assisted state insurance departments in issuing a COVID-19 Data Call on business interruption and exploring data calls for additional lines of business affected by COVID-19.
> Collecting monthly data on business interruption claims through November 2020.
> Collaborated among states on how to handle current and future auto insurance premium refunds and rate reductions.
> Discussed assisting state insurance departments in collecting workers' compensation exposure data related to COVID-19. The NAIC is evaluating the collection of workers' compensation claims data related to COVID-19 as it becomes available.

MARKET REGULATION & CONSUMER AFFAIRS (D) COMMITTEE

> Fraud issues arising from the crisis .
> Temporary licensing for producers; onboarding new producers; remote, proctored examinations.
> Use of technology for claims settlement.
> Regulatory relief for companies in claims settlement.

- Regulator relief for companies filing Market Conduct Annual Statement data.
- Enhancing coding to track complaints and regulatory actions arising from "pandemics" and claims for "business interruption" coverage.

STATUATORY ACCOUNTING PRINCIPLES (E) WORKING GROUP

- Extended guidance for three accounting interpretations related to COVID-19 through third quarter reporting.
- Provided guidance for auto insurers who participated in premium refunds, rate reductions and policy dividends as a result of COVID-19.

FINANCIAL REGULATIONS STANDARDS AND ACCREDIATION (F) COMMITTEE

- Shifted accreditation reviews to a virtual review model to ensure that the high standards in state regulation continue to be met.
- Provided guidance to state insurance departments in meeting accreditation standards that are affected by COVID-19, such as filing deadlines and examination deadlines.

INTERNATIONAL INSURANCE RELATIONS (G) COMMITTEE

- Facilitated the International Association of Insurance Supervisors (IAIS) collection of COVID-19 related data for quarter 1 and quarter 2.
- Provided input to the IAIS survey on COVID-19 related policy and supervisory measures.
- Contributed to the Organisation for Economic Cooperation and Development (OECD) workstream on the role of public-private partnerships to address the insurability of perils that are or are increasingly becoming uninsurable such as pandemic/epidemics, but also perils such as floods, wildfires, and cyclones whose severity and frequency are being affected by a changing climate.
- Conducted several virtual supervisory cooperation calls with regulators from Asia, the Caribbean, Europe, and Latin America.

Appendix II:

Actions by State

Life & Health

	CUSTOMER COST-SHARING	TELEHEALTH	PREMIUM/CANCELATION	PRESCRIPTION DRUGS	SEPs	RATE & FORM REVIEW	STATUTORY FILINGS	OTHER
ALABAMA	●	●	●	●				●
ALASKA	●	●	●	●		●	●	●
ARIZONA	●	●	●				●	●
ARKANSAS	●	●	●	●			●	●
CALIFORNIA	●	●	●		●		●	●
COLORADO	●	●	●	●	●	●		●
CONNECTICUT	●	●	●	●	●	●	●	●
DELAWARE	●	●	●	●				●
DISTRICT OF COLUMBIA	●	●	●	●	●	●	●	●
FLORIDA	●	●	●	●			●	
GEORGIA	●		●			●		●
HAWAII			●			●		
IDAHO	●	●	●	●			●	●
ILLINOIS	●	●	●	●		●		●
INDIANA	●	●						
IOWA	●	●	●					
KANSAS	●					●		
KENTUCKY	●	●		●		●	●	●
LOUISIANA	●	●	●	●				●
MAINE	●	●	●	●		●	●	●
MARYLAND	●		●	●	●	●	●	●
MASSACHUSETTS	●	●	●		●			●
MICHIGAN	●	●	●	●		●	●	
MINNESOTA	●	●		●	●	●	●	●
MISSISSIPPI	●	●	●			●	●	
MISSOURI	●	●	●	●		●		●
MONTANA	●							
NEBRASKA	●	●				●	●	●
NEVADA	●	●		●	●			●
NEW HAMPSHIRE	●	●	●	●		●		●
NEW JERSEY	●	●	●					●
NEW MEXICO	●	●	●	●				●
NEW YORK	●	●	●	●	●			●
NORTH CAROLINA	●	●				●		●
NORTH DAKOTA	●	●				●		●
OHIO	●	●	●	●		●	●	●
OKLAHOMA	●	●	●	●			●	●
OREGON	●	●	●			●		
PENNSYLVANIA	●	●	●	●		●		●
RHODE ISLAND	●	●		●	●			●
SOUTH CAROLINA	●	●	●	●			●	●
SOUTH DAKOTA	●	●	●	●				●
TENNESSEE	●	●		●		●	●	●
TEXAS	●	●	●	●				●
UTAH	●	●		●			●	●
VERMONT	●	●		●	●	●		●
VIRGIN ISLANDS	●						●	
VIRGINIA	●					●	●	●
WASHINGTON	●	●	●	●	●			●
WEST VIRGINIA	●	●	●	●				●
WISCONSIN	●	●	●	●		●		●
WYOMING	●	●						
TOTAL	**51**	**45**	**36**	**34**	**12**	**26**	**22**	**41**

Property & Casualty

	AUTO INSURANCE	BUSINESS CONTINUITY	BUSINESS INTERRUPTION	CLAIMS HANDLING	GENERAL INFORMATION	LICENSING	MARKET CONDUCT	NOTARY	RATE AND FORM	INFORMATION REQUESTS	STATUTORY FILINGS	TRAVEL INSURANCE	WORKERS' COMPENSATION
ALABAMA	●			●	●	●	●	●					
ALASKA			●			●	●		●		●	●	●
ARIZONA					●	●	●	●			●	●	●
ARKANSAS	●		●	●	●	●	●	●	●		●		
CALIFORNIA	●		●		●	●	●	●	●	●	●		●
COLORADO	●		●	●	●	●	●		●				●
CONNECTICUT	●		●		●	●	●				●	●	●
DELAWARE	●				●	●	●	●					●
DISTRICT OF COLUMBIA			●		●		●		●		●	●	●
FLORIDA	●	●		●	●	●	●				●		●
GEORGIA	●		●		●	●	●		●				●
HAWAII	●				●	●	●		●				●
IDAHO	●		●	●	●	●	●				●		●
ILLINOIS	●		●		●	●	●		●			●	●
INDIANA			●		●	●	●						●
IOWA					●	●						●	●
KANSAS			●		●	●	●		●			●	
KENTUCKY	●				●	●	●	●	●		●		●
LOUISIANA	●		●		●	●	●	●				●	●
MAINE		●		●	●	●	●				●	●	●
MARYLAND	●		●	●	●	●	●	●	●		●	●	●
MASSACHUSETTS	●		●		●	●	●	●	●		●		●
MICHIGAN	●			●	●	●	●		●		●	●	
MINNESOTA			●		●	●	●	●	●	●	●	●	●
MISSISSIPPI			●		●	●	●	●			●	●	●
MISSOURI			●		●	●	●		●				
MONTANA				●	●		●		●				●
NEBRASKA					●	●	●	●	●		●	●	
NEVADA	●			●	●	●		●	●			●	●
NEW HAMPSHIRE	●		●		●	●		●	●		●	●	
NEW JERSEY	●				●	●	●			●			●
NEW MEXICO	●						●						●
NEW YORK		●			●	●	●			●		●	●
NORTH CAROLINA	●		●		●	●	●		●				●
NORTH DAKOTA			●		●	●	●					●	●
OHIO	●				●	●			●		●	●	●
OKLAHOMA		●	●		●	●	●				●		●
OREGON	●			●	●		●		●				●
PENNSYLVANIA						●	●		●				●
RHODE ISLAND				●		●							
SOUTH CAROLINA			●		●	●				●	●		●
SOUTH DAKOTA						●							●
TENNESSEE					●		●		●		●		
TEXAS				●	●	●	●		●			●	●
UTAH	●			●	●	●	●	●			●		●
VERMONT	●		●		●	●	●		●				●
VIRGIN ISLANDS		●			●	●	●			●	●		
VIRGINIA	●		●	●	●	●	●		●		●		
WASHINGTON	●		●	●	●	●	●			●		●	●
WEST VIRGINIA		●		●	●	●	●		●		●	●	
WISCONSIN			●		●	●	●		●				●
WYOMING						●							
TOTAL	**27**	**6**	**26**	**17**	**46**	**47**	**44**	**15**	**29**	**7**	**25**	**22**	**39**

NATIONAL ASSOCIATION OF REALTORS®

Vince Malta
2020 President

Bob Goldberg
Chief Executive Officer

ADVOCACY GROUP

Shannon McGahn
Chief Advocacy Officer

November 18, 2020

The Honorable William Lacy Clay
Chairman
House Subcommittee on Housing, Community Development and Insurance
2428 Rayburn House Office Building
Washington, DC 20515

The Honorable Steve Stivers
Ranking Member
House Subcommittee on Housing, Community Development and Insurance
2234 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Clay and Ranking Member Stivers:

On behalf of our 1.4 million members, the National Association of REALTORS® thanks you for holding this important hearing, "Insuring against a Pandemic: Challenges and Solutions for Policyholders and Insurers." As Congress considers relief options to help businesses harmed by the COVID-19 pandemic, it is crucial that the country think ahead about potential solutions to safeguard against future pandemics or similar crises. REALTORS® support a Federal Insurance Office (FIO) study to help consumers evaluate the cumulative, distributional and pass-through impacts of pandemic insurance proposals on commercial policyholders as well as on insurers and taxpayers.

To date, Congressional debate has centered on whether and to what extent the insurance industry can and should co-insure pandemic-related business interruptions. Yet it is the commercial policyholder who would ultimately bear these costs, as the government seeks to recoup some of its losses while insurers pass along their losses to insureds, subject to state commissioner approval. Without a comprehensive impact analysis, including recoupment and passthrough to policyholders, it is difficult for consumers to fully understand and evaluate the proposals under consideration. At minimum, REALTORS® recommend an FIO study that includes the following datapoints in order to support a full, informed and transparent debate over the various approaches to pandemics:

- Estimates of pandemic-related business interruptions (BI) and cost per month;
- Total number and average cost of current commercial property insurance policies;
- Share of the commercial policies that include BI coverage;
- Share of the BI policies that cover non-physical or pandemic-specific losses;
- Total monthly revenue and surplus available for all commercial property policies;
- Share of revenue from the BI policies – broken out by physical vs. non-physical loss;

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- Take-up rate and average cost of non-physical or pandemic-specific coverages today;
- Price elasticity of demand and pass-through for commercial property insurance;
- Cumulative impact on policyholders, including recoupment and pass-through under a range of scenarios (e.g., 100% pass-through and 140-percent recoupment to various aggregate retention limits)
- Distribution of the impacts and cross subsidization among commercial policyholders (e.g., between those with and without BI coverage, lines of insurance, etc.); and
- Other datapoints that FIO deems helpful to commercial policyholders.

Thank you again for holding this important hearing. NAR looks forward to working with you as Congress considers providing additional federal assistance to small businesses struggling under pandemic-related local civil authority orders.

Sincerely,

Vince Malta
2020 President, National Association of REALTORS®

cc: U.S. House of Representatives Subcommittee on Housing,
Community Development and Insurance

STATEMENT BEFORE THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES, SUBCOMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT AND INSURANCE, FOR A HEARING ON INSURING AGAINST A PANDEMIC: CHALLENGES AND SOLUTIONS FOR POLICYHOLDERS AND INSURERS

November 19, 2020

Founded in 1931, the National Association of Professional Insurance Agents (PIA National) is a national trade association that represents independent insurance agencies and their employees. PIA members sell and service all kinds of insurance but specialize in coverage of automobiles, homes, and businesses. PIA National represents independent insurance agents in all 50 states, Puerto Rico, and the District of Columbia.

Independent insurance agencies play a particularly important role in delivering insurance products to commercial businesses, large and small, throughout the U.S. Since March, the spread of the COVID-19 virus has wreaked havoc on ordinary life and devastated businesses. During this difficult time, independent agents have stepped up, as they always do during a crisis, to offer as much help as they can to their clients.

PIA National supports policy proposals that will help its members and the whole small business community maintain liquidity and, ultimately, solvency during these tumultuous economic times. Throughout this time, we have urged Congress to pass more relief for small businesses, and we will continue to do so, including by funding, reforming, and resuming the Paycheck Protection Program (PPP). At the same time, we recognize the need to be proactive in preparing for the possible economic consequences of a future pandemic.

PIA National's Guiding Principles for Future Pandemic Proposals

- **Public-Private Partnership:** PIA National envisions a federal government backstop in the form of a public-private partnership as the optimal method of providing business interruption (BI) coverage for pandemics. We support the Pandemic Risk Insurance Act (PRIA), and we are open to improvements that will maximize its benefits for both industry and policyholders.

- **Affordability for Small Businesses:** A legislative solution must be affordable for small businesses.

- **Utilization of Existing Insurance Framework:** PIA members prefer to work within the framework of the insurance industry. We are concerned about proposals that would require insurance agents to deliver a non-insurance product to consumers.

- **Focused on the Future:** Proposals should be future-focused, allowing businesses to properly budget for it and make considered, informed decisions about their participation. We strongly oppose any proposal that would retroactively rewrite existing BI provisions.

Public-Private Partnership

PIA National believes that a public-private partnership is essential to ensuring that a future pandemic does not again result in economic disaster, particularly for small businesses. The insurance industry did not cause this economic upheaval, but the insurance community can be part of the solution. In the past, similar steps have been taken to create markets for flood and terrorism risk insurance and, while it would be challenging, the insurance community can do it again for pandemics using a public-private partnership.

Without a federal government backstop, it is not clear that insurers would—or could—provide BI coverage for losses resulting from pandemics. But with this backstop, losses that arise out of future pandemics could be insurable. A program like PRIA could be temporary, just until a private market develops for BI products that include viruses. The creation of a private market for a new group of products strengthens the entire industry. PIA National's long-term objective is for the private industry to build and deliver BI products that cover pandemics, and we encourage our industry partners to embrace that long-term goal as their own.

A pandemic is unpredictable in both frequency and severity. Carriers may be understandably reluctant to offer coverage in circumstances where they are unable to gauge the potential financial impact on industry surplus. However, carriers are in the best position to assist in the claims process after a loss occurs, and the presence of a government backstop should provide sufficient financial scaffolding to allow risk-averse carriers to offer BI coverage that includes pandemics. A public-private partnership like the one contemplated by the PRIA proposal will provide the insurance industry with the certainty it needs to safely underwrite this unique risk.

PIA National supports a public-private partnership that utilizes the existing insurance framework and provides businesses with a realistic option for protecting themselves from the economic consequences of a potential future pandemic.

<u>Pandemic Risk Insurance Act</u>

PIA National supports H.R. 7011, the Pandemic Risk Insurance Act (PRIA), which was introduced earlier this year by Rep. Carolyn Maloney (D-NY). This legislation includes many of the elements PIA National views as essential for any public-private partnership.

The PRIA bill, which, as we understand it, would not apply retroactively to COVID-19-related losses, would begin on January 1, when most insurance plans renew, and would cultivate a market for pandemic insurance. The PRIA bill would permit insurers to voluntarily opt into a program whereby any BI provision offered by the participating carrier would include pandemic coverage. In exchange, the federal government would cover 95% of losses incurred by a covered event (where "covered event" is defined as an outbreak of infectious disease or pandemic, identified as a public health emergency, according to the Secretary of Health and Human Services).

The Treasury Department would pay 95% of aggregate covered losses once those losses reach $250 million. The government coverage would be capped at $750 billion in losses per year. The program would be voluntary, but insurers that offer BI coverage would be required to include the risk of pandemics if they chose to participate. Insurers that chose not to participate would retain the option of keeping a pandemic exclusion in any BI coverage they offered.

Affordability for Small Businesses

Any proposed solution must be affordable for small businesses. Policymakers should offer businesses of all sizes a way to avoid the economic crisis a future pandemic could cause. According to the Insurance Information Institute (III), as of earlier this year, only about one-third of all small businesses had BI coverage at all.

Many of the policy proposals that include pandemic BI coverage could inadvertently increase the cost for all kinds of BI coverage for small businesses. A PRIA-like program that increases the cost of BI coverage without offering any offsetting savings will inevitably price out small businesses and thus further lower the percentage of businesses that have it overall.

Other proposals that have been released by industry stakeholders may hold the key to the affordability issue. Whether it is amending the current PRIA text to include a mandatory-offer provision applicable to small businesses (who would need to affirmatively opt out) or the use of risk pools, we can come together to ensure that small businesses will be able to afford a program created to address future pandemics.

Utilization of Existing Insurance Framework

PIA's members prefer to work within the framework of the insurance industry. Any proposal should utilize the existing insurance framework, as have the solutions to other so-called "uninsurable" risks, which once included terrorism and even flood insurance. Proposals that would require insurance agents to deliver a non-insurance product to consumers undermine the power of the agent salesforce. Independent agents represent the needs of their policyholders to insurers, explaining the intricacies of policy features and limitations and acting as an intermediary between consumers and carriers. When agents are forced to sell non-insurance products, it compromises their credibility and can diminish their relationships with their clients.

One such proposal appears to be modeled off the National Flood Insurance Program (NFIP) and its NFIP Direct program; it would rely entirely on the federal government for its administration. Apparently, independent insurance agents would be the main delivery force for this program. The federal government would pay for most of the losses in the categories the proposal covers.

This approach assumes the federal government will have a permanent role in insuring pandemics. On the other hand, a public-private partnership that utilizes the existing insurance framework could, over time, cultivate the development of a private market that operates independently of the federal government.

Focused on the Future

Any proposal should be focused on the future so that businesses can plan it within their budgets and make an informed decision about participating. We strongly oppose any proposal that would retroactively rewrite existing BI provisions.

The business community requires assistance to survive the COVID-19 pandemic and thrive in its aftermath. One typical source of such assistance is BI coverage, which allows businesses to file insurance claims for (typically physical) losses resulting from interruptions to their ordinary course of business. BI coverage is routinely available after a business is forced to close because of physical damage sustained in a hurricane or tornado, for example. However, most BI provisions include exclusions for losses caused by intangible conditions like viruses or gas leaks.

One troubling suggestion has been proposed in several state legislatures and the U.S. Congress: requiring insurers to retroactively recognize financial losses triggered by the coronavirus outbreak as part of their policyholders' BI coverage, even where such coverage would otherwise be contractually excluded. Broadly speaking, these proposals would seek to expand BI insurance provisions to cover losses associated with the closures and shelter-in-place orders arising from COVID-19, even though the policies including such provisions were not written, sold, or purchased with that understanding by anyone involved. Such a proposal would essentially override the common exclusion for losses due to viruses like COVID-19, and it would eliminate (often statutory) requirements that losses be a direct result of damage to or loss of physical property.

Insurance policies are priced and sold based on the likelihood of the policyholder experiencing a covered loss, the risk of which is calculated by actuaries and underwriters. Moreover, commercial insurance policies are contracts entered into by businesspeople with extensive background knowledge and experience on both sides. State or federal legislatures do not have the power to rewrite private contracts. The unanticipated long-term consequences of such proposals would harm everyone involved. Even in the immediate future, it would create additional financial instability and uncertainty, exacerbating the existing economic struggles plaguing businesses and the American people.

Most importantly, retroactive BI would leave many small businesses behind, because, as noted above, only about one-third of American small businesses have business interruption coverage. As such, using retroactive BI to solve this problem would not help even half the small businesses currently struggling because of COVID-19. Pursuing retroactive BI will artificially create winners and losers within the small business community.

Any policy prescription intended to protect businesses from the economic consequences of a future pandemic should be focused on the future. Importantly, this approach will also allow businessowners to choose to participate in a future pandemic proposal.

Conclusion

PIA National believes a public-private partnership is the best way to protect businesses from the negative impact of a future pandemic. The PRIA legislation introduced by Rep. Maloney should serve as a template for action on this issue. We support building upon the PRIA bill by incorporating thoughtful provisions from other proposals, particularly those that would facilitate the affordability and thus the participation of small businesses.

We are hesitant to embrace a non-insurance product that relies on independent insurance agents, who prefer to work within the framework of insurance. PIA National and its members look forward to continuing to work with policymakers on this important issue.

RETAIL INDUSTRY LEADERS ASSOCIATION

99 M Street, SE
Suite 700
Washington, DC 20003

www.rila.org

November 17, 2020

Honorable William Lacy Clay
Chairman
Subcommittee on Housing,
Community Development & Insurance
2129 Rayburn House Office Building
Washington, DC 20515

Honorable Steve Stivers
Ranking Member
Subcommittee on Housing,
Community Development & Insurance
4340 O'Neill House Office Building
Washington, DC 20024

Dear Chairman Clay and Ranking Member Stivers,

The Retail Industry Leaders Association (RILA) appreciates the opportunity to provide comments on *H.R. 7011, the Pandemic Risk Insurance Act*, to the Subcommittee on Housing, Community Development and Insurance. This legislation would establish a federal insurance program to address pandemic risks and provide the business community with the necessary tools to address these challenging events. This is a pivotal moment to move ahead on this discussion, and RILA supports your leadership on this important issue.

RILA is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

RILA commends the legislative actions by Congress over the spring and summer. Our nation's leaders have taken bold action to address the COVID-19 pandemic, providing necessary economic relief for American families, employees and businesses of all sizes and we stand ready to assist as Congress contemplates other economic stimulus measures as the pandemic has accelerated across the country.

We believe it is important for Congress to begin bipartisan discussions focusing on a solution to protect all businesses against future pandemic risks. The creation of a new federal pandemic risk insurance program that would provide businesses of all sizes with the certainty they need to renew leases, invest in real estate, order inventory, plan for capital improvements, and hire and re-hire workers is critical at this moment. This legislative solution will require leadership from both chambers and the broader business community to achieve success.

RILA supports the core structure of H.R. 7011. It sets out to resolve the current problems surrounding business interruption insurance during a pandemic and provides the entire business community with a necessary federal backstop. It is paramount for policy makers to ensure our nation and its businesses are prepared for future challenges.

As the Subcommittee solicits feedback, RILA supports the continued inclusion of legislative language to provide insurance protection for conferences, events, and meetings. As the leading retail trade association for the largest and most innovative brands across America, RILA regularly brings our members together to collaborate and discuss key issues addressing the merchant community. The current pandemic has disrupted our business relationships with strategic partners and venues. RILA welcomes the opportunity to discuss potential resolutions to these issues as the debate moves forward in Congress.

In conclusion, a federally insured pandemic risk insurance program will provide businesses of all sizes with the certainty they need to weather damaging disruptions in business activity. It would also be a mechanism for an immediate and predictable economic recovery should the nation face another pandemic.

RILA supports your leadership on this critical issue and is prepared to be an active partner in addressing this specific policy for the business community and American economy.

Sincerely,

Austen Jensen
Senior Vice President, Government Affairs

SAG·AFTRA.

November 12, 2020

Honorable Maxine Waters
Chairwoman
House Committee on Financial Services
2221 Rayburn House Office Building
Washington, DC 20515

Honorable Patrick McHenry
Ranking Member
House Committee on Financial Services
2004 Rayburn House Office Building
Washington, DC 20515

Honorable Wm. Lacy Clay
Chairman
House Financial Services Subcommittee on
Housing, Community Development & Insurance
2428 Rayburn House Office Building
Washington, DC 20515

Honorable Steve Stivers
Ranking Member
House Financial Services Subcommittee on
Housing, Community Dev & Insurance
2234 Rayburn House Office Building
Washington, DC 20515

RE: H.R. 7011 – Pandemic Risk Insurance Act of 2020

Dear Chairwoman Waters, Ranking Member McHenry, Chairman Clay & Ranking Member Stivers:

On behalf of the over 160,000 actor, recording artist and broadcaster members of the Screen Actors Guild-American Federation of Television & Radio Artists ("SAG-AFTRA") we write to express our gratitude to you for your continued leadership through the unprecedented challenges facing our nation, and for your willingness to address the unique insurance issues faced by the film and television industry. We are grateful to Congresswoman Maloney for her work on the Pandemic Risk Insurance Act, and we are grateful to you for scheduling the upcoming hearing on November 19, 2020. We support the urgent need for a federally backed, public-private partnership establishing business interruption insurance covering pandemics. We want to ensure that any insurance solution includes film and television production at all levels, and covers both the immediate crisis and future events.

The film and television industry and our members work to provide audiences with engaging, diverse, and vibrant film, television, and streaming content. That content is enjoyed by billions around the world, and it drives the creative economy in this country. The film & television industry employs millions of people around the country, with middle class jobs and strong union health and retirement benefits. In 2018 and 2019, before the current crises hit, SAG-AFTRA saw record numbers of jobs and earnings for our members across the country.

Unfortunately, like many other industries, the pandemic has had a devastating economic impact on our industry and our members. As production begins to return, we are working tirelessly with our employers, and with state and local government officials, to ensure it returns with the highest of safety standards. These safety standards will result in increased production costs in an industry where cost, budgeting and managing risk are particularly challenging. The ability to return to active and robust production is compromised by the inability to purchase insurance covering losses stemming from communicable diseases amongst cast, crew, and others involved in the production. This insurance is essential for those who risk investment in a film or television program, especially when the program may be shut down while a single member of the cast or crew recovers from illness. Without this insurance, production – especially independent production – cannot resume on a significant level.

We greatly appreciate your consideration and your help getting this vital industry moving. Our members are ready to get back to work and we stand ready to help however we can.

Sincerely,

Jeffrey Bennett
Chief Deputy General Counsel
Screen Actors Guild-American Federation of Television & Radio Artists

Cc: The Honorable Carolyn Maloney

Congress of the United States
Washington, DC 20515

April 30, 2020

The Honorable Donald J. Trump
President
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20050

Dear Mr. President:

The United States remains in battle with an unprecedented enemy in the form of the COVID-19 virus. While our constituents have been dealing with the personal hardships and losses resulting from this deadly disease, there has been a small glimmer of hope that we have been able to see from this tragedy. That hope is when we see people, communities, and organizations of every background coming together in these hard times to help their neighbors, friends and even strangers get through this struggle. It is this unity that we must harness in order to fully confront the medical, social, and economic peril we are in.

Over the last several weeks, members of both parties have been able to come together, hash out our differences, and enact legislation that truly helps all Americans confront this battle. With increased funding for medical research and the creation of economic relief programs such as the Small Business Administration's (SBA) Paycheck Protection Program (PPP), we are working to address needs relating toto the public health crisis and to provide relief to America's businesses and their workers. Unfortunately, however, we have seen in recent weeks legislative and regulatory proposals which, while well- intentioned, we fear could begin to undo the sense of unity and slow the momentum of our ongoing efforts.

One flawed proposal would force insurance companies to pay claims for Business Interruption (BI) policies that insurers never underwrote or collected premiums for in the first place. To be clear, insurance companies must fulfill their obligations to policyholders with coverage for pandemic-related losses; and we support efforts by state insurance regulators to ensure these policies are honored.

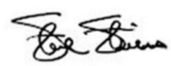
However, it is worth noting that the State insurance commissioners have also expressed themselves on this issue, sharing concerns that requiring retroactive payments might jeopardize the solvency of insurers and adversely affect other property and casualty policyholders. Specifically, the National Association of Insurance Commissioners (NAIC) states that:

"Insurance works well and remains affordable when a relatively small number of claims are spread across a broader group, and therefore it is not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period. While the U.S. insurance sector remains strong, if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing.[1]"

Furthermore, we worry that even if insurers are forced by lawmakers to pay for excluded policies, litigation would ultimately prevent or greatly slow any payments to America's small businesses that need help *today*, defeating the goal of providing speedy relief to companies struggling to make it through these difficult times.

Therefore, we urge the Administration and Congress to continue to work together on efforts to ensure that all businesses and workers are provided with the more immediate support they need to make it through this crisis.

Sincere regards,



Wm. Lacy Clay

Steve Stivers

[1] https://content.naic.org/article/statement_naic_statement_congressional_action_relating_covid_19.htm

AMERICA'S RECOVERY FUND COALITION

July 28, 2020

The Honorable Filemon Vela
United States House of Representatives
307 Cannon House Office Building
Washington, D.C. 20515

The Honorable Lance Gooden
United States House of Representatives
425 Cannon House Office Building
Washington, D.C. 20515

Dear Representatives Vela and Gooden:

We represent more than 150 organizations – from locally-owned businesses and chambers to trade associations – coming together to promote a sustainable recovery for America. Together, we represent 45 percent of the American workforce and roughly 58 million workers nationwide. Comprised of over 30 different business sectors, we are hairstylists, auto mechanics, hospitality workers, and dentists – and we are grateful for the leadership you have shown in introducing H.R. 7671, the Small Business Comeback Act of 2020.

America's Recovery Fund Coalition was conceived on the vital truth that the COVID-19 pandemic is indiscriminate in the businesses it affects. This virus does not choose which industries to ravage and which to spare. In the name of public health, all business sectors and all individual owners and employees have been asked to make sacrifices, and each will play a vital role in America's economic recovery story. That is why we strongly support the introduction of the Small Business Comeback Act: it does not pick winners and losers, but instead builds on previous COVID-19 relief efforts to provide greater stability and certainty across American industries.

Because the pandemic is so broad and continually evolving, so must be the response from Congress – and this bipartisan legislation, reflective of bold and necessary leadership, meets that need. By offering direct federal grants, as the Small Business Comeback Act does, you are empowering businesses to continue paying fixed operating expenses, such as rent and utilities, and continue paying employees, and providing benefits like health care with minimal administrative burden or financial liability. Further, with the assistance guaranteed by your bill, the businesses represented by our coalition will have the certainty they need to be able to stay open, provide jobs, and pay state and local taxes, which benefit their broader communities and will help shore up budgets at a moment of great financial uncertainty for state and local governments alike.

We look forward to working with you to continue building support for and ultimately passing the Small Business Comeback Act. This legislation provides relief and stability when our economy needs it most, ensures the survival of countless American businesses that make up our economy, and helps us avoid the long-term economic damage and permanent job losses that would come with their demise.

Sincerely,

America's Recovery Fund Coalition

July 1, 2020

The Honorable Nancy Pelosi, Speaker
United States House of Representatives
1236 Longworth House Office Building
Washington, D.C. 20515

The Honorable Mitch McConnell, Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Kevin McCarthy, Leader
United States House of Representatives
2468 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Charles Schumer, Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

RE: Nonprofit Associations Urgently Need Support in the Next COVID-19 Relief Measure

Dear Speaker Pelosi, Leader McCarthy, Leader McConnell and Leader Schumer:

The undersigned organizations, which represent tens of thousands of member organizations and businesses, hundreds of thousands of American workers and dozens of industries across the country, **respectfully urge you to <u>include nonprofit 501(c)(6) organizations, such as trade, business, professional and membership associations, in the Paycheck Protection Program</u> (PPP) and reauthorize the flagship program until at least the end of the year. Further, we urge you to pass the <u>Pandemic Risk Insurance Act of 2020</u> (H.R. 7011) and, per proposed amendment, the <u>Skills Renewal Act of 2020</u> (H.R. 7032 / S. 3779).**

In a span of roughly four months, 2020 has presented our nation with health, safety, civil and economic calamities unseen for 100 years. And, while recovery remains daunting, your swift leadership and action to provide American workers, nonprofits and businesses trillions of dollars of relief have proven critical to shield our economy and collective livelihoods from permanent damage or failure. Our community is extremely grateful for your passage of the Coronavirus Aid, Relief and Economic Security (CARES) Act (P.L. 116-136) and other relief legislation, which no doubt helped preserve the safety and welfare of millions of Americans. We were disappointed, however, that nonprofit associations were excluded from eligibility under the PPP, even as an initial draft of the CARES Act made such entities eligible.

Nonprofit associations of all sizes, varied functions and disparate industries comprise Section 501(c)(6) of the Internal Revenue Code. More than 62,000 501(c)(6)[1] organizations across the country play a critical role to provide education and professional development for America's workforce, create product and safety standards for everything from food packaging to new building construction, define and advance standards for professional certification and codes of ethics in a wide range of professional fields, and organize community assistance programs in times of greatest need, such as after natural disasters or catastrophic events – including the current COVID-19 pandemic.

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[1] IRS Data Book 2018. North American Industry Classification System (NAICS). U.S. Census Bureau

Following are quotes directly from nonprofit associations to highlight some of the incredible work our community is doing to help Americans throughout this crisis:

United Fresh Produce Association – Washington, D.C.
"In response to the COVID-19 pandemic, the United Fresh Start Foundation has infused the fresh produce industry with 25 $1,000 Rapid Response FRESH Grants to increase access to fresh fruits and vegetables for children and families in need, while also creating opportunities for foodservice distributors experiencing lost markets due to the restaurant, hospitality and school shutdowns. Companies used these grants to support fresh produce donations to food banks, schools and hunger relief organizations in their local communities."

Texas Rural Water Association – Austin, TX
"94 percent of water utilities nationwide are rural or small municipal systems serving populations of less than 10,000. In Texas, thousands of rural water suppliers are scattered across the state serving small communities far off the beaten path. The Texas Rural Water Association (TRWA) is a 501(c)(6) nonprofit association that serves these rural and small water suppliers by providing them a variety of support services that enable them to ensure the safe water supply of millions of Texans. There is no question that clean water plays an important role in preventing the spread of COVID-19, and that the essential employees of these water suppliers are needed to keep our society functioning. By extension, the work TRWA does to support these systems – which includes providing required training to water and wastewater operators, on-site and remote technical assistance, legal services, employing trained emergency responders, and communicating rapidly changing information in a heavily regulated industry – is also essential."

Despite nonprofit associations' collective efforts to help sustain America amid adversity, most are ineligible for significant relief offered through the PPP. According to a June 5 survey of 501(c)(6) executives by the American Society of Association Executives (ASAE) Research Foundation, **72 percent of respondents anticipate using up to half of reserve funds to offset estimated revenue loss, while four percent anticipate using more than half of reserves and four percent anticipate insufficient reserves to cover estimated losses**.[2]

As these data demonstrate, many nonprofit associations have little or no financial cushion to carry them through this devastating time and thus desperately need access to the PPP. For example, the **Kansas Home Care and Hospice Association (KHCHA)** in Topeka, Kansas, which is the "leading statewide organization that represents those businesses that provide medical and/or support services in their clients' homes," has one of the two smallest budgets of all 56 member organizations of the National Association of Home Care & Hospice. 2020 year-to-date has seen just 35 percent on average of the revenue during the same period in 2019. To make things worse, KHCHA will have to transition their in-person annual meeting to a virtual format, which jeopardizes as much as 40 percent of its annual revenue.

In California, the **Carlsbad Village Association** (CVA) is a nonprofit 501(c)(6) that supports nearly 400 small businesses in its downtown area. An affiliate of Main Street America, CVA employs three people – two of whom have been furloughed since April 1. That month, only days after President Trump signed the CARES Act into law, CVA reported the following:

[2] ASAE Research Foundation Association Impact Snapshot for June 5, 2020.

> "Our main source of income, a weekly farmers' market, is currently shut down at a net financial loss of $10,000 per month to our association. One of our biggest events, the 22nd annual Art in the Village, will most likely be canceled, causing us a net loss of an additional $15,000. We are keeping our doors open and are committed to run through every penny of our reserves to keep our association going in order to support our downtown businesses during this crisis. It would be a tremendous help if we too could qualify for the Paycheck Protection Program, like the businesses we support, so that our staff could stay employed to work on their behalf. There might only be three of us at our association, but we represent and support nearly 400 stakeholders. Help us keep our association strong for them."

In Illinois, the **American Academy of Pediatric Dentistry**, which advances optimal oral health for all children, has experienced grave financial harm:

> "Our association had to cancel our 2020 Annual Session that was scheduled for Memorial Day weekend, resulting in an estimated $3.6 - 4.1 million in lost revenue. We also had to cancel an in-person Continuing Education course scheduled for late March and another one scheduled for September. The financial impact forced our association to lay off five staff (approximately 20 percent of our workforce), institute a hiring and salary freeze, and cancel two summer internship programs."

As you can see, nonprofit associations – alongside all employers and employees in America – are reeling amid COVID-19, which is why <u>the undersigned ask that Congress immediately pass legislation to grant nonprofit 501(c)(6) organizations access to the PPP and reauthorize the program until at least December 31, 2020</u>.

Pandemic Risk Insurance Act of 2020 (H.R. 7011)

<u>The undersigned ask you to support and pass the Pandemic Risk Insurance Act of 2020</u> (PRIA), <u>introduced by Congresswoman Carolyn B. Maloney (D-NY), or include such legislation in the next COVID-19 relief bill</u>. If enacted, PRIA would establish a system of shared public and private compensation for business interruption losses and event cancellations resulting from future pandemics or public health emergencies.

This bill is essential for the nonprofit association community whose lifeblood courses from in-person meetings and events. According to the Professional Convention Management Association, conferences and other in-person events account for an average of 35 percent of total annual revenue for nonprofit associations.[3] And, according to the ASAE Research Foundation survey mentioned above:

- 86 percent of respondents face up to **$1,000,000** in estimated revenue losses – while six percent will face **$1,000,000-$2,000,000** in estimated losses – <u>just to event cancellations;</u>
- 80 percent of respondents face up to **49 percent** of estimated revenue loss – while eight percent estimate a revenue loss of **50 percent or more** – <u>just to event cancellations;</u>

[3] Professional Convention Management Association. 28th Annual Meetings Markey Survey

- 39 percent of respondents do not expect to resume in-person meetings and events until **at least January 2021**;
- 47 percent of respondents report **zero insurance coverage** for event cancellation, while only **five percent** report full coverage; and
- 63 percent of respondents stated they are **likely or very likely** to purchase PRIA coverage if made available.

Modeled after the Terrorism Risk Insurance Act, PRIA would establish a public-private cost-sharing partnership between government and insurers for prospective claims. Beginning January 2021, once total claims for an individual pandemic or public health emergency reach $250 million, the government would cover 95 percent of all prospective, related claims. And while insurers are not required to offer this coverage, early adopters will prosper, for PRIA would empower nonprofit associations to further benefit the economy and help our nation recover from COVID-19. As an example, in August 2018, ASAE convened more than 5,000 nonprofit association professionals at its annual meeting in Chicago. As of May 2019, this single event directly produced at least $147 million in downstream economic impact.[4]

PRIA offers the security nonprofit associations need to fully reignite our community's far-reaching economic impact through industry-focused conferences, workforce development, educational programming and other critical services. For these reasons, we strongly support H.R. 7011.

Skills Renewal Act of 2020 (H.R. 7032 / S. 3779)

The undersigned ask you to support and pass the Skills Renewal Act of 2020 (H.R. 7032 / S. 3779), per proposed amendment, or include such legislation in the next COVID-19 relief bill. Introduced in the House by Representatives Derek Kilmer (D-WA), Susan Brooks (R-IN), Terri Sewell (D-AL) and G.T. Thompson (R-PA), and in the Senate by Senators Amy Klobuchar (D-MN), Ben Sasse (R-NE), Cory Booker (D-NJ) and Tim Scott (R-SC), the Skills Renewal Act would serve as a boon for American workers hit hard by the financial reality of COVID-19. This important bill would provide Americans who have been laid-off or furloughed as a result of COVID-19 a $4,000 tax credit to pursue post-secondary skills training and credentials and thereby help reestablish their welfare and wellbeing.

If amended, as proposed by the Professional Certification Coalition,[5] Americans could use the credit to pursue and obtain industry certifications and other professional credentials that would help them more fully access the economy and contribute to a dynamic marketplace through increased competition and consumer choice. This will undoubtedly support nonprofit

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[4] Choose Chicago (Chicago, Illinois Convention & Visitors Bureau) Economic Reporting.

[5] The Professional Certification Coalition (PCC) is a nonprofit association representing professional certification programs, those who hold private certification credentials, and the many constituencies that rely on professional certification as a signal of professional competence. The PCC's founding organizations – the American Society of Association Executives (the leading organization for association management) and the Institute for Credentialing Excellence (the leading developer of accreditation standards for professional certification programs) – serve as its Steering Committee. The PCC currently has more than 100 organizational members, including non-governmental professional certification organizations, professional societies, and service providers. Its members reflect a wide spectrum of professions, including health care, engineering, financial advisors, and information technology, among many others.

associations and others who offer workforce development programs and will increase access to job opportunities for Americans who have faced employment setbacks due to the pandemic. For these reasons, we strongly support H.R. 7032 / S. 3779.

The Pandemic Risk Insurance Act of 2020 and the Skills Renewal Act of 2020, per proposed amendment, serve not only to support employers and Americans in need, but as bellwether legislation that will help secure our workforce and economy throughout COVID-19 and beyond. These measures – and 501(c)(6) access to the PPP – are essential to uphold nonprofits associations' vital contribution to American economy and society.

Thank you for your consideration and continued support of our country during this challenging time. If you have questions regarding this urgent support request for the nonprofit association community, please contact Mary Kate Cunningham, CAE, vice president of public policy for ASAE, at mcunningham@asaecenter.org or 202-626-2787.

Signatories listed below carbon copy line.

CC:

The Honorable Carolyn B. Maloney
United States House of Representatives

The Honorable Derek Kilmer
United States House of Representatives

The Honorable Susan Brooks
United States House of Representatives

The Honorable Terri Sewell
United States House of Representatives

The Honorable G.T. Thompson
United States House of Representatives

The Honorable Nydia Velázquez
United States House of Representatives

The Honorable Steven Chabot
United States House of Representatives

The Honorable Maxine Waters
United States House of Representatives

The Honorable Patrick McHenry
United States House of Representatives

The Honorable Amy Klobuchar
United States Senate

The Honorable Ben Sasse
United States Senate

The Honorable Tim Scott
United States Senate

The Honorable Cory Booker
United States Senate

The Honorable Marco Rubio
United States Senate

The Honorable Benjamin Cardin
United States Senate

The Honorable Susan Collins
United States Senate

The Honorable Jeanne Shaheen
United States Senate

The Honorable Charles Grassley
United States Senate

The Honorable Richard Neal
United States House of Representatives

The Honorable Ron Wyden
United States Senate

The Honorable Kevin Brady
United States House of Representatives

Signatories by State

ALABAMA
Alabama Association of Health Information Management
Alabama Chapter of the Community Associations Institute
Alabama Council of Association Executives
Alabama Council of The American Institute of Architects
Alabama Dental Association
Alabama Independent Automobile Dealers Association
Alabama Restaurant & Hospitality Association
Alabama Society of CPAs
Albertville Chamber of Commerce
American Association of Teachers of Spanish and Portuguese
Association of Home Builders of Greater Birmingham
Auburn Chamber of Commerce
Automotive Aftermarket Association Southeast, Inc.
Birmingham Automobile Dealers Association
Chamber of Commerce Association of Alabama
Coastal Alabama Business Chamber
Cullman Area Chamber of Commerce & Visitor Center
Mobile Area Chamber of Commerce
Montgomery Area Chamber of Commerce
North Baldwin Chamber of Commerce
Prattville Area Chamber of Commerce
Selma and Dallas County Chamber of Commerce and Tourism Information

ALASKA
Alaska Society of CPAs
Anchorage Home Builders Association

ARIZONA
AIA Arizona
Alliance of Arizona Nonprofits
American Association of Cosmetology Schools
American Council of Engineering Companies of Arizona
American Planning Association - Arizona Chapter
Anthem Area Chamber of Commerce
Arizona Business Leadership Association, Inc.
Arizona Chapter of NAIOP
Arizona Craft Brewers Guild

Arizona Dental Association
Arizona Dermatology and Dermatologic Surgery Society
Arizona Pharmacy Association
Arizona Sign Association
Arizona Society of Professional Engineers
Arizona Technology Council
Arizona Transit Association
Association for Animal Welfare Advancement
Association for Learning Environments
Automotive Service Association of Arizona
Black Chamber of Arizona
Buckeye Valley Chamber of Commerce
Central Arizona Regional Economic Development Foundation
Chandler Chamber of Commerce
College Sports Information Directors of America
Colorado Sign Association
Cottonwood Chamber of Commerce
Glendale Chamber of Commerce
Graham County Chamber of Commerce
Grand Canyon Chamber of Commerce & Visitors Bureau
Greater Flagstaff Chamber of Commerce
Greater Florence Chamber of Commerce
Greater Vail Area Chamber of Commerce
Green Valley Sahuarita Chamber of Commerce & Visitor Center
High Country Conference Center NAU
Home Builders Association of Central Arizona
KCA
Lake Havasu Area Chamber of Commerce
Marana Chamber of Commerce
Nevada Sign Association
Nogales-Santa Cruz County Chamber of Commerce
Northwest Sign Council
Peoria Chamber of Commerce
Pinal Alliance for Economic Growth
Poco Diablo Resort
Prescott Chamber of Commerce
Prescott Valley Chamber of Commerce
Professional Beauty Association
Queen Creek Chamber of Commerce
Sierra Vista Area Chamber of Commerce
Southern Arizona Chamber of Commerce Association
Southern Arizona Home Builders Association
Southwest Cable Communications Association
Southwest Credit Management Association
Southwest Valley Chamber of Commerce
Surprise Regional Chamber of Commerce

Tempe Tourism Office
Tucson Metro Chamber
United States Swim School Association
Utah Sign Association
Visit Mesa
West and Southeast REALTORS of the Valley, Inc.
West Valley Chamber of Commerce Alliance
Western States Sign Council

ARKANSAS
Arkansans for the Arts
Arkansas Health Information Management Association
Arkansas Hospitality Association
Arkansas Oil Marketers Association, Inc.
Arkansas Ready Mixed Concrete Association, Inc.
Arkansas Society of CPAs
Arkansas Timber Producers Association
Cabot Chamber of Commerce
Greater Bentonville Area Chamber of Commerce

CALIFORNIA
ABC NorCal
ACSA
AIA Orange County
AIA San Francisco
Amador Vintners Association
American Board of Foot and Ankle Surgery
American Board of Venous & Lymphatic Medicine
American Institute of Architects - California
American Institute of Architects - Los Angeles
American Institute of Architects - San Fernando Valley Chapter
American Society for Aesthetic Plastic Surgery (The Aesthetic Society)
Anaheim Chamber of Commerce
Anderson Valley Winegrowers Association
Arcadia Association of Realtors
Associated General Contractors of California, Inc.
Association for Play Therapy, Inc.
Association Management Solutions, LLC
Association of California School Administrators
Association of California Symphony Orchestras
Association of Talent Agents
Association Results, Inc.
Beverly Hills Chamber of Commerce
Big Bear Chamber of Commerce
BOMA Oakland East Bay
Brea Chamber of Commerce

CAI - Coachella Valley Chapter
CAI - Greater Inland Empire
Calaveras County Chamber of Commerce
Calaveras Winegrape Alliance
California Academy of Eye Physicians and Surgeons
California Assisted Living Association
California Association for Bilingual Education
California Association for Coordinated Transportation
California Association for Health Services at Home
California Association of Health Facilities
California Association of Marriage and Family Therapists
California Association of School Psychologists
California Beer and Beverage Distributors
California Chiropractic Association
California Construction and Industrial Materials Association
California Council of Community Behavioral Health Agencies
California Employment Lawyers Association
California Fuels & Convenience Alliance
California Health Information Association
California Landscape Contractors Association
California Lawyers Association
California Narcotic Officers' Association
California Natural Gas Vehicle Coalition
California Park & Recreation Society
California Peace Officers' Association
California Physical Therapy Association
California Police Chiefs Association
California Professional Association of Specialty Contractors
California Self Storage Association
California Society of Association Executives
California Society of Certified Public Accountants
California Society of Dermatology & Dermatologic Surgery
California Society of Enrolled Agents
California Special Districts Association
Californians Together
Campbell Chamber
Capitola-Soquel Chamber of Commerce
Carlsbad Chamber of Commerce
Carlsbad Village Association
CAWA - Representing the Automotive Parts Industry
CFA Society San Francisco
Channel Islands Chapter of Community Associations Institute
CITE (California IT in Education)
Community Associations Institute - Bay Area & Central CA Chapter
Community Associations Institute - Greater Inland Empire Chapter
Community Associations Institute - Greater Los Angeles Chapter

Community Associations Institute - San Diego
ConferenceDirect
Consumer Attorneys of California
Consumer Attorneys of San Diego
Contra Costa County Bar Association
Dana Point Chamber
DECO Ventures, LLC
Destination Marketing Association of the West
Distribution Management Association
Diving Equipment and Marketing Association
El Dorado Winery Association
Encinitas 101 Mainstreet Association
FACCC
Filipina Women's Network
Fremont Chamber of Commerce
Fresno Chamber of Commerce
Fullerton Chamber of Commerce dba North Orange County Chamber
Gamut Event Services
Global Equity Organization
Golden Sails Hotel
Graham Construction, Inc.
Grass Valley Downtown Association
Greater Conejo Valley Chamber of Commerce
Greater Grass Valley Chamber of Commerce
Greater Irvine Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Hollywood Professional Association
Horror Writers Association
HPN Global
IMA of Greater Los Angeles
Independent Book Publishers Association
Independent Film & Television Alliance
International Association of Plumbing and Mechanical Officials
International Right of Way Association
La Habra Area Chamber of Commerce
La Mesam Chamber of Commerce
Lancaster Chamber of Commerce
LAX Coastal Chamber of Commerce
LeadingAge California
Long Beach Area Chamber of Commerce
Los Gatos Chamber of Commerce
Marine Recreation Association
Mason Contractors Association of California, Inc.
Medical Oncology Association of Southern California
Meeting & Association Management Services, Inc.

Meeting Possibilities, LLC
Member Extra, Inc.
Monterey County Vintners & Growers Association
Morgan Hill Chamber of Commerce
Moulding & Millwork Producers Association
Mountain View Chamber of Commerce
Multimedia over Coax Alliance, MoCA®
MUN CPAs
Murdoch, Walrath & Holmes
National Association of Nutrition Professionals
Newport Beach Chamber of Commerce
North Park Main Street
North State Building Industry Association
North Valley Regional Chamber of Commerce
Ocean Beach MainStreet Association
Oceanside Chamber of Commerce
Orange County Regional Chapter of the Community Associations Institute
Organization for Associate Degree Nursing
Plant Based Foods Association
Pleasanton Chamber of Commerce
Pleasanton Downtown Association
Plumbing Heating Cooling Contractors of California
Professionals in Human Resources Association
Promax
Rancho Cordova Travel & Tourism
Receivables Management Association International
Sacramento Regional Builders Exchange
San Bernardino County Medical Society
San Clemente Chamber of Commerce
San Diego North Economic Development Council
San Diego Regional East County Chamber of Commerce
San Francisco Dental Society
San Marcos Chamber of Commerce
San Ramon Chamber of Commerce
Santa Barbara Vintners Association
Santa Cruz County Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
SCMWA
Scott Oser Associates
Sherman Oaks Chamber of Commerce
Simi Valley Chamber of Commerce
Social Media Club, Inc.
Society for the Advancement of Material and Process Engineering
Southern California Rental Housing Association
Specialty Coffee Association

Sport & Social Industry Association
Studio City Chamber of Commerce
Tahoe City Downtown Association
Temecula Valley Winegrowers Association
Tulare Chamber of Commerce
Tulare Downtown Association
UNITE-LA
Valley Industry and Commerce Association
Van Weide Group, Inc.
Visit Temecula Valley
Vista Chamber of Commerce
WACUBO
West Valley Warner Center Chamber of Commerce
Western Association of Chamber Executives
Western Electrical Contractors Association
Western Manufactured Housing Communities Association
Western Section American Urological Association

COLORADO
ACCED-I
AIA Colorado
Alamosa County Chamber of Commerce
American Animal Hospital Association
American Association of Post-Acute Care Nursing
American Cheese Society
American Galvanizers Association
Association of Collegiate Conference and Events Directors - International
Billiard Congress of America
BOMA Colorado
Bucks County Association of Realtors
Carbon Valley Chamber of Commerce
CASTA
Castle Rock Chamber of Commerce
Children's Hospital Colorado
Colorado Brewers Guild
Colorado Broadcasters Association
Colorado Dental Association
Colorado Hotel & Lodging Association
Colorado Nursery and Greenhouse Association
Colorado Society of Association Executives
Colorado Society of Certified Public Accountants
Colorado Solar and Storage Association
Colorado Technology Association
Community Associations Institute - Southern Colorado
Denver Chapter of the International Facility Management Association
Denver Metro BOMA

Facilities Operations Managers Association
Financial Planning Association
Glenwood Springs Chamber Resort Association
Greater Woodland Park Chamber of Commerce
Independent Electrical Contractors Rocky Mountain
International Association for Human Resource Information Management
International Live Events Association, Denver Chapter
Loveland Chamber of Commerce
Mountain States Lumber Dealers Association
National Association of RV Parks and Campgrounds
National Board of Surgical Technology and Surgical Assisting
National Ski Areas Association
National Women in Roofing
Outdoor Industry Association
REALTORS of Central Colorado
RMEL
Steamboat Springs Chamber
Summit County Builders Association
Tri-Lakes Chamber of Commerce
United States Ice Rink Association
Vail Valley Partnership

CONNECTICUT
American Pet Products Association
CAI - Connecticut
Chamber of Commerce, Inc., Windham Region
CONN NAHRO
Connecticut Marine Trades Association, Inc.
Connecticut Apartment Association
Connecticut Association of Health Care Facilities
Connecticut Chiropractic Council
Connecticut Environmental Council, Inc.
Connecticut Irrigation Contractors Association
Connecticut River Valley Chamber of Commerce
Connecticut Society of Certified Public Accountants
Connecticut State Dental Association
Greater Hartford Association of REALTORS
Greater Manchester Chamber of Commerce
Greater New Haven Chamber of Commerce
Greater Norwich Area Chamber of Commerce
National Marine Distributors Association
National Society of Compliance Professionals
Northeast Campground Association, Inc.
Outdoor Power Equipment and Engine Service Association
Waterbury Regional Chamber of Commerce
Windsor Chamber of Commerce

DELAWARE
Delaware Association for Home & Community Care
Medical Society of Delaware
Sussex County Association of REALTORS

DISTRICT OF COLUMBIA
ACC
Airports Council International North America
American Academy of Dermatology Association
American Academy of Ophthalmology
American Association for Access, Equity and Diversity
American Association of Naturopathic Physicians
American Bus Association
American Coatings Association
American Dental Association
American Evaluation Association
American Geophysical Union
American Highway Users Alliance
American Horse Council
American Institute of Architects
American Payroll Association
American Pharmacists Association
American Public Transportation Association
American Shipbuilding Suppliers Association
American Short Line and Regional Railroad Association
American Society for Bone and Mineral Research
American Society for Reproductive Medicine
American Society of Association Executives
American Society of Interior Designers
American Society of Landscape Architects
Americans for the Arts
Association for Clinical and Translational Science
Association of American Veterinary Medical Colleges
Association of Corporate Counsel
Association of Home Appliance Manufacturers
Association of National Advertisers
Association of Test Publishers
Building Owners and Managers Association International
Certification Commission for Healthcare Interpreters
CompTIA
Consortium for School Networking
Consumer Healthcare Products Association
Council for Advancement and Support of Education
Council for Responsible Nutrition
Destinations International

Direct Selling Association
Distilled Logic, LLC
District of Columbia Dental Society
Door and Hardware Institute
Drug Information Association
Employee Benefit Research Institute
Energy Bar Association
EPDM Roofing Association
Equipment Leasing and Finance Association
Factum Global, LLC
Futures Industry Association
Healthcare Business Management Association
Household & Commercial Products Association
Industrial Minerals Association - North America
Industrial Truck Association
Institute for Portfolio Alternatives
Institute of Makers of Explosives
Institute of Scrap Recycling Industries
Insured Retirement Institute
International Downtown Association
International Franchise Association
KG1 Consulting
King Consults
Linguistic Society of America
National Association for Gifted Children
National Association of Bond Lawyers
National Association of Business Political Action Committees
National Association of Housing and Redevelopment Officials
National Association of Local Housing Finance Agencies
National Association of Social Workers
National Business Officers Association
National Club Association
National Demolition Association, Inc.
National Forum for Black Public Administrators
National Institute of Building Sciences
National League for Nursing
National Leased Housing Association
National Lumber & Building Material Dealers Association
National Marine Manufacturers Association
National Parking Association
National Propane Gas Association
National Shooting Sports Foundation
NGVAmerica
Organic Trade Association
PeopleForBikes
Population Health Alliance

Portland Cement Association
Rail Passengers Association
Railway Supply Institute
RTDNA
Senior Executives Association
Society for Neuroscience
Society for Public Health Education
Society of Industrial and Office Realtors
Solar Energy Industries Association
Specialty Equipment Market Association
United Fresh Produce Association
University Club of Washington, D.C.
Vacation Rental Management Association
Valve Manufacturers Association
Water Systems Council
Workgroup for Electronic Data Interchange

FLORIDA
AACE
Academy of Laser Dentistry
American Association of Clinical Endocrinologists
American Institute of Architects - Orlando chapter
Apalachicola Bay Chamber of Commerce & Visitor Center
Apartment Association of Greater Orlando, Inc.
Apopka Area Chamber of Commerce
Association for Experiential Education
BBB Serving Southeast Florida and the Caribbean
BICSI
BK Association Management
Bradenton Area Economic Development Corporation
Broward County Bar Association
Building Industry Consulting Service International, Inc.
Calhoun County Chamber of Commerce
Cape Coral Construction Industry Association
Central Florida Auto Dealers Association, Inc.
Central Florida Hotel & Lodging Association
Chamber of Commerce of Okeechobee County, Inc.
Chamber of Commerce of the Palm Beaches
Community Associations Institute - SE Florida Chapter
Contemporary Ceramic Studios Association
Coral Springs Coconut Creek Regional Chamber of Commerce
Crawford Marketing and Consulting, dba, CMC & Associates
Deerfield Beach Chamber of Commerce
Examination Board of Professional Home Inspectors
FACC Florida
Florida Apartment Association

Florida Association of Chamber Professionals
Florida Association of Special Districts
Florida Chiropractic Association, Inc.
Florida Festivals and Events Association
Florida Graphics Alliance
Florida Health Information Management Association
Florida Institute of Certified Public Accountants
Florida Nursery Growers & Landscape Association
Florida Pest Management Association
Florida Psychiatric Society
Florida Recreation and Park Association
Florida Society of Association Executives
Florida Trucking Association
FloridaWest EDA
Frostproof Area Chamber of Commerce
GAWDA
Greater Boca Raton Chamber of Commerce
Greater Dade City Chamber
Greater Fort Walton Beach Chamber of Commerce
Greater Gainesville Chamber
Greater Gainesville Chamber of Commerce
Greater Marathon Chamber of Commerce
Greater Palm Bay Chamber of Commerce
Greater Palm Harbor Area Chamber of Commerce
Greater Sarasota Chamber of Commerce
Greater Seminole Area Chamber of Commerce
Greater Tallahassee Chamber of Commerce
Greater Winter Haven Chamber of Commerce
Greater Zephyrhills Chamber of Commerce
Gulf Breeze Area Chamber of Commerce
Hispanic Chamber of Commerce of Metro Orlando
Hispanic Chamber of Commerce of Tampa Bay
Holly Hill Chamber of Commerce
Independent Electrical Contractors Florida East Coast Chapter
Institute for Credentialing Excellence
Institute of Internal Auditors
International Association of Amusement Parks and Attractions
International Municipal Signal Association
Lake City-Columbia County Chamber of Commerce
Lake Wales Area Chamber of Commerce & Economic Development Council
Lakeland Chamber of Commerce
Lincoln Road Business Improvement District
Maitland Area Chamber of Commerce
Melbourne Regional Chamber
MIACF
Miami Association of REALTORS

Miramar Pembroke Pines Regional Chamber of Commerce
Nassau County Florida Chamber of Commerce
National Association of Dental Laboratories
National Creditors Bar Association
National Mobility Equipment Dealers Association
National Tax Lien Association
National Utility Contractors Association of Florida
Navarre Beach Area Chamber of Commerce
NEFAR
North Gulf Coast Chapter of Community Associations Institute
Northeast Florida Association of Realtors, Inc.
Northeast Polk Chamber of Commerce
NUCA Central Florida
NUCA of North Florida
NUCA of South Florida
Orange County Bar Association
Ormond Beach Chamber
Osceola County Association of Realtors
Palm City Chamber of Commerce
Panama City Beach Chamber of Commerce
Partners in Association Management, Inc.
Pasco EDC
Perdido Key Area Chamber of Commerce
Rapid Security Solutions, LLC
Safety Harbor Chamber of Commerce
Sanibel and Captiva Chamber of Commerce
South Dade Chamber
South Florida District Dental Association
South Gulf Coast Chapter of CAI
South Tampa Chamber of Commerce
Southwest Florida Apartment Association
St. Johns County Chamber of Commerce
St. Petersburg Area Chamber of Commerce
Stuart/Martin County Chamber of Commerce
Sun City Center Area Chamber of Commerce
Suncoast Utility Contractors Association
Tampa Bay Chamber
Tampa Bay Economic Development Council
Tampa Downtown Partnership
Tavares Chamber of Commerce
Textile Care Allied Trades Association
The Deputies, LLC
Treasure Coast Builders Association
U.S. Superyacht Association
Uptown Chamber of Commerce
Venice Area Chamber of Commerce

West Florida Chapter of Community Associations Institute
West Orange Chamber of Commerce
Wireless Internet Service Providers Association
World Millwork Alliance

GEORGIA
AAHOA
ACPE the Standard for Spiritual Care and Education
Albany Area Chamber of Commerce
American Academy of Religion
American Association of Clinical Anatomists
American College of Rheumatology
American Council of Engineering Companies of Georgia
Association Management Executives, Inc.
Association of Energy Engineers
Association Services Group
ATL Airport Chamber
Augusta Convention & Visitors Bureau, Inc.
Bach, James, Mansour and Company, Inc.
Barrow County Chamber of Commerce
Business Relationship Management Institute, Inc.
City of Villa Rica
Columbia County Chamber of Commerce
Cordele-Crisp Chamber of Commerce
Covington/Newton Chamber
Darien-McIntosh County Chamber of Commerce
Dawson County Chamber of Commerce
Discover DeKalb
Dooly County Chamber
EnglishUSA
Explore Brookhaven
Fayette Chamber of Commerce
Florida Society of Dermatology and Dermatologic Surgery
Georgia Association of Convention & Visitors Bureaus
Georgia Poultry Federation
Georgia Restaurant Association
Georgia Society of Association Executives
Georgia/Carolinas PCI
Griffin Spalding Chamber of Commerce
Gwinnett Chamber of Commerce
Henry County Chamber of Commerce
Home Builders Association of Georgia
Human Anatomy & Physiology Society
Industry Council for Tangible Assets, Inc.
Johns Creek Chamber of Commerce
Literacy Research Association

Map Dynamics
Medical Association of Georgia
Murray County Chamber
National Association of the Remodeling Industry - Atlanta Chapter
Newnan-Coweta Chamber
OUT Georgia Business Alliance
Paulding Chamber of Commerce
Pensionmark Financial Group
Play Sports Community
Port Wentworth Chamber of Commerce
Printing & Imaging Association of Georgia
SECO International
SHRM-Atlanta
Southeast Life Sciences
Southeast Tourism Society
Southern Economic Development Council
Sumter County Chamber of Commerce
Towns County Chamber of Commerce
Valdosta-Lowndes County Chamber of Commerce
Valdosta-Lowndes County Conference Center & Tourism Authority
Villa Rica Convention & Visitors Bureau
Walton County Chamber of Commerce
World Floor Covering Association

HAWAII
AIA Honolulu
Building Industry Association of Hawaii
Hawaii Arts Alliance
Hawaii Dental Association
Hawaii Dermatological Society
Hawaii REALTORS
Hawaii Society of CPAs
Hawaii Transportation Association

IDAHO
Associated Logging Contractors of Idaho
Boise Metro Chamber
Boise Regional REALTORS
Building Contractors Association of Southwestern Idaho
Idaho Brewers United
Idaho Dermatologic Society
Meridian Chamber of Commerce

ILLINOIS
ABRET Neurodiagnostic Credentialing & Accreditation
Academy of General Dentistry

ACG
AHIMA
Algonquin Lake in the Hills Chamber of Commerce
All Chicagoland Moving & Storage Co.
American Academy of Dental Group Practice
American Academy of Esthetic Dentistry
American Academy of Oral and Maxillofacial Pathology
American Academy of Oral and Maxillofacial Radiology
American Academy of Pediatric Dentistry
American Academy of Physical Medicine and Rehabilitation
American Association for Accreditation of Ambulatory Surgery Facilities
American Association of Endodontists
American Association of Hip and Knee Surgeons
American Association of Neuroscience Nurses
American Association of Nurse Anesthetists
American Association of Oral & Maxillofacial Surgeons
American Association of Oral and Maxillofacial Surgeons
American Board of Medical Quality
American Board of Oral Implantology/Implant Dentistry
American College of Medical Quality
American College of Osteopathic Emergency Physicians
American College of Osteopathic Family Physicians
American Foundry Society
American Health Information Management Association
American Massage Therapy Association
American Planning Association
American Society for Dermatologic Surgery Association
American Society for Gastrointestinal Endoscopy
American Society of Anesthesiologists
American Society of Home Inspectors
American Society of Plumbing Engineers
American Society of Safety Professionals
American Society of Sanitary Engineering
American Specialty Toy Retailing Association
AnkleNFootCenters, LLC
Arlington Heights Chamber of Commerce
Associated Equipment Distributors
Association for Supply Chain Management
Association Forum
Association Management Center
Association of Diabetes Care & Education Specialists
Association of Nutrition and Foodservice Professionals
Association Strategies, Inc.
Aurelius Public Affairs
Batavia Chamber of Commerce
Battery Council International

Bolingbrook Area Chamber of Commerce
Carol Stream Chamber of Commerce
Cary-Grove Area Chamber of Commerce
CCIM Institute
Center for International Credentials
Certification Board for Diabetes Care and Education
Champaign County Chamber of Commerce
Chicago Association of Realtors
Chicago Chapter of the Appraisal Institute
Chicago Sport and Social Club
Chicagoland Chamber of Commerce
Community Associations Institute - Illinois
Community of Experts of Dassault Systems Solutions
Content Company, Inc.
Control System Integrators Association
Cook-Witter, Inc.
Council of Medical Specialty Societies
Council of Supply Chain Management Professionals
Crystal Lake Chamber of Commerce
DeKalb Chamber of Commerce
Des Plaines Chamber of Commerce & Industry
Dixon Chamber of Commerce and Main Street
Downtown Springfield, Inc.
Edwardsville/Glen Carbon Chamber of Commerce
Effingham County Chamber of Commerce
Elgin Area Chamber of Commerce
Elmhurst Chamber of Commerce & Industry
Federation of Independent Illinois Colleges and Universities
Federation of Women Contractors
Financial Planning Association of Illinois
Frankfort Chamber of Commerce
French-American Chamber of Commerce of Chicago
Fuel User Group
Genoa Area Chamber of Commerce
GLC - A Marketing Communications Agency
GLMV Chamber of Commerce
GOA Regional Business Association
Greater Fayette County Chamber of Commerce
Greater Springfield Chamber of Commerce
Grundy County Chamber of Commerce & Industry
Healthcare Information and Management Systems Society
Healthcare Laundry Accreditation Council
HIGH IMPACT Mission-Based Consulting & Training
Highland Park Chamber of Commerce
Hinsdale Chamber of Commerce
Hospitality Technology Next Generation

I-CAR
Illinois Academy of Family Physicians
Illinois Association of Chamber of Commerce Executives
Illinois Chamber of Commerce
Illinois Chiropractic Society
Illinois Council of Health-System Pharmacists
Illinois CPA Society
Illinois Hotel & Lodging Association
Illinois Pharmacists Association
Illinois Podiatric Medical Association
Illinois Security Professionals Association
Illinois Society of Association Executives
Illinois Society of Eye Physicians & Surgeons
Illinois State Bowling Proprietors Association
ILTA
Institute of Food Technologists
International Association of Diecutting and Diemaking
International Association of Healthcare Central Service Materiel Management
International Association of Lighting Designers
International Association of Oral and Maxillofacial Surgeons
International Interior Design Association
International Transplant Nurses Society
IREM
ISSA - The Worldwide Cleaning Industry Association
Jacksonville Area Chamber of Commerce
Ken Bartels Consulting
Lakeview Chamber of Commerce
LeadingAge Illinois
Lidia Varesco Design
Lincolnwood Chamber of Commerce
Manteno Chamber of Commerce
Material Handling Equipment Distributors Association
Media Financial Management Association
Mendota Area Chamber of Commerce
Metals Service Center Institute
Monmouth Area Chamber of Commerce
Mt. Zion Chamber of Commerce
National Association of Concessionaires
National Association of Fire Equipment Distributors
National Association of Personal Financial Advisors
National Association of the Remodeling Industry
National Council of Structural Engineers Associations
National Council of Teachers of English
National Roofing Contractors Association
National Sporting Goods Association
NBCRNA

Neurocritical Care Society
North American Neuromodulation Society
Northcenter Chamber of Commerce
Palatine Area Chamber of Commerce
Pekin Area Chamber of Commerce
Peoria Area Chamber of Commerce
Pinot's Palette
Pontiac Area Chamber of Commerce
Power Transmission Distributors Association
Real Estate Business Institute
REALTORS Land Institute
RiverBend Growth Association
Rockford Area Convention & Visitors Bureau
Rockford Area Economic Development Council
Rockford Chamber of Commerce
Rolling Meadows Chamber of Commerce
Roscoe Village Chamber of Commerce
Sauk Valley Area Chamber of Commerce
Selected Independent Funeral Homes
Shorewood Area Chamber of Commerce
Society of Actuaries
Society of Gastroenterology Nurses and Associates, Inc.
Society of Gynecologic Oncology
Society of Pediatric Nurses
Society of Permanent Cosmetic Professionals
Strategic Account Management Association
Sycamore Chamber of Commerce
Urgent Care Association
USMCA
Valley Industrial Association
Winnetka-Northfield Chamber of Commerce

INDIANA
Aspire Johnson County
Carroll County Chamber of Commerce
Central Indiana Chapter - CAI
Coalition Construction Safety
Columbus (Indiana) Area Chamber of Commerce
Columbus Area Chamber of Commerce
Construction Family Assistance Foundation
Corporate Housing Providers Association
Crossroads Regional Chamber of Commerce
Custom Electronic Design and Installation Association
Decatur Chamber of Commerce
DeKalb Chamber Partnership
Fulton County Chamber of Commerce

Greater Brownsburg Chamber of Commerce
Home Builders Association of Northwest Indiana
Indiana Academy of Dermatology
Indiana Association of Realtors
Indiana Chamber of Commerce
Indiana Commerce Executives Association
Indiana Convention Center & Lucas Oil Stadium
Indiana State Bar Association
International Ticketing Association
Jasper Chamber of Commerce
Linton-Stockton Chamber of Commerce
Muncie-Delaware County Chamber of Commerce and Economic Development Alliance
National Electrical Manufacturers Representatives Association
National Precast Concrete Association
Noblesville Chamber of Commerce
Northwest Radiology Network
Organization of American Historians
Pike County Chamber of Commerce
Regional Chamber of Northeast Indiana
Spencer County Regional Chamber of Commerce
Syracuse-Wawasee Chamber of Commerce
University Risk Management Insurance Association
Zotecpartners

IOWA
American Institute of Architects - Iowa Chapter
Ames Chamber of Commerce
Ames Economic Development Commission
Brain Injury Alliance of Iowa
Cedar Rapids Metro Economic Alliance
Clear Lake Area Chamber of Commerce
Dyersville Area Chamber of Commerce
Dyersville Area Community Foundation
Greater Iowa City Area Home Builders Association
Grinnell Area Chamber of Commerce
Indianola Chamber of Commerce
Iowa Automobile Dealers Association
Iowa City Area Business Partnership
Iowa Dental Association
Iowa Drainage District Association
Iowa Health Information Management Association
Maquoketa Chamber of Commerce
Mason City Area Chamber of Commerce
Monticello Area Chamber of Commerce, Inc.
National Systems Contractors Association
Sauter, Baty & Bloomquist Inc.

KANSAS
American Academy of Family Physicians
Angel Capital Association
ARMA
Emporia Area Chamber of Commerce
Gardner Edgerton Chamber of Commerce
Greater Topeka Chamber of Commerce
International Association of Plastics Distribution
Junction City Area Chamber of Commerce
Kansas Health Information Management Association
Kansas Home Care & Hospice Association
National Agri-Marketing Association
National Association of Trailer Manufacturers
National Auctioneers Association
NEJC Chamber of Commerce
Pacific Coast Society of Orthodontists
Salina Area Chamber of Commerce
Society of Teachers of Family Medicine
Wisconsin Health Information Management Association

KENTUCKY
American Association of Equine Practitioners
American Craft Spirits Association
Association of Biomolecular Resource Facilities
Building Industry Association of Northern Kentucky
Chamber of St. Matthews
Commerce Lexington, Inc.
Hopkins County Regional Chamber of Commerce
KAMC
Kentucky Association of Manufacturers
Kentucky Association of School Administrators
Kentucky Automobile Dealers Association
Kentucky Guild of Brewers
Kentucky Health Information Management Association
Kentucky Nurses Association
Kentucky Pharmacists Association
Kentucky Rural Water Association
Kentucky Society of Association Executives
Kentucky Society of Certified Public Accountants
KY/TN Section of American Water Works Association
National Cooperative of Health Networks Association
National Tour Association
NUCA of Kentucky
Southeast Kentucky Chamber of Commerce
VisitLEX

LOUISIANA
American Institute of Architects - Louisiana
Baton Rouge Bar Association
Bossier Chamber of Commerce
Childcare Association of Louisiana
Committee of 100 for Economic Development
Compass Health
French American Chamber of Commerce, Gulf Coast Chapter
Greater New Orleans Hotel & Lodging Association
Home Builders Association of Greater New Orleans
Home Care Association of Louisiana
Iberville Chamber of Commerce
Jefferson Chamber
Louisiana Academy of Eye Physicians and Surgeons
Louisiana Academy of Family Physicians
Louisiana Ambulatory Surgery Center Association
Louisiana Association of Self Insured Employers
Louisiana Charter Boat Association
Louisiana Forestry Association
Louisiana Orthopaedic Association
Louisiana Retailers Association
Louisiana Travel Association
Monroe Chamber of Commerce
New Orleans Bar Association
New Orleans Bar Foundation
New Orleans Chamber of Commerce
One Acadiana
Provosty & Gankendorff, LLC
St. Landry Chamber of Commerce

MAINE
Bar Harbor Chamber of Commerce
Greater Bridgton Lakes Region Chamber of Commerce
HospitalityMaine
Lewiston Auburn Metropolitan Chamber of Commerce
Maine Better Transportation Association
Maine Grocers & Food Producers Association
Maine Society of Certified Public Accountants
Ogunquit Chamber of Commerce
Retail Association of Maine
Ski Maine
Visit Portland

MARYLAND
AIA Potomac Valley
Alpha Omega Dental Society

AMDA - The Society for Post-Acute and Long-Term Care Medicine, Inc.
American College of Nurse-Midwives
American Occupational Therapy Association
American Podiatric Medical Association
American Society of Media Photographers, Inc.
Anne Arundel Bar Association
Anne Arundel County Bar Foundation
Association for Financial Professionals
Association of Chiropractic Colleges
Auto Care Association
Biomedical Engineering Society
Board of Certification/Accreditation
Cecil County Chamber of Commerce
Central Maryland Chamber of Commerce
Chesapeake Region Chapter of CAI
Community Forklift
Council on Undergraduate Research
Education Market Association
Greater Bethesda Chamber of Commerce
Harford County Chamber of Commerce
Hospice & Palliative Care Network of Maryland
Howard County Chamber of Commerce
INFORMS
Institute of Hazardous Materials Management
Inteleos
Intersocietal Accreditation Commission
MACPA & Business Leaning Institute
Mariner Management and Marketing, LLC
Maryland Chamber of Commerce
Maryland Health Information Management Association
Maryland Horse Breeders Association
Maryland Hotel Lodging Association
Maryland National Capital Home Care Association
Maryland State Bar Association
Maryland State Dental Association
Maryland Tourism Coalition
National Association for Bilingual Education
National Association for Bilingual Education
National Association for Catering and Events
National Association of Surety Bond Producers
National Boating Federation
National Society for Histotechnology
ONJO Medical Solutions
Parenteral Drug Association
Renal Physicians Association
Security Industry Association

Smiley Renovations, LLC
Sports & Fitness Industry Association
Staffing Advisors
Synthetic Turf Council
Talbot County Chamber of Commerce
The Haney Company
Washington County (MD) Chamber of Commerce

MASSACHUSETTS
Alliance of Automotive Service Providers of Massachusetts
AmCon Shows
Back Bay Association
Burlington Area Chamber of Commerce
Cohasset Collision Center
Eastham Chamber of Commerce
ERC5 East of the River Five Town Chamber of Commerce
Hogan & Van
Hudson Downtown Business Improvement District, Inc.
Hyannis Main Street Business Improvement District
Massachusetts Board of Real Estate Appraisers
Massachusetts College of Emergency Physicians
Massachusetts Funeral Directors Association
Massachusetts Marine Trades Association
New England Healthcare Engineers Society
New England Newspaper and Press Association
Northeast HR Association
Northeast Public Power Association
Tri-Town Chamber of Commerce
AASP-MA
Amherst Area Chamber of Commerce
Amherst Business Improvement District
Assabet Valley Chamber of Commerce
Association for Commuter Transportation
Blackstone Valley Chamber of Commerce
Boston Society for Architecture
Builders and Remodelers Association of Greater Boston
Cambridge Chamber of Commerce
Cape Cod Canal Region Chamber of Commerce
Cape Cod Chamber of Commerce & CVB
CFA Society Boston
Community Associations Institute - New England Chapter
Corridor 9/495 Regional Chamber of Commerce
Cranberry Country Chamber of Commerce
Downtown Boston Business Improvement District
Easton Chamber of Commerce
FACCNE

Falmouth Chamber of Commerce
Fox Ballroom Dance Studio
Franklin County Chamber of Commerce
German-American Business Council of Boston, Inc.
Greater Holyoke Chamber of Commerce
Greater Lowell Chamber of Commerce
Greater Newburyport Chamber of Commerce
Greater Newburyport Chamber of Commerce & Industry
Infusion Nurses Society
International Society of Hotel Associations
Manufacturing Jewelers & Suppliers of America, Inc.
Marlborough Regional Chamber of Commerce
McKenna Management, Inc.
Metro South Chamber of Commerce
Nantucket Island Chamber of Commerce
Nashoba Valley Chamber of Commerce
Neponset River Regional Chamber
New England Golf Course Owners Association
NEWEA
Newton-Needham Regional Chamber
Orleans Chamber
South Shore Realtors, Inc.
Taunton Area Chamber of Commerce
Trust Energy Solutions, LLC
United Regional Chamber of Commerce
Wakefield Lynnfield Chamber of Commerce

MICHIGAN
AIA Michigan
Artrain
Arts Alliance
Associated Wire Rope Fabricators
Automotive Industry Action Group
Battle Creek Area Chamber of Commerce
Bay Area Chamber of Commerce
BCAM Bowling Centers Association of Michigan
Birch Run Bridgeport Chamber of Commerce
Board for Global EHS Credentialing
Butler's Collision
Cadillac Area Chamber of Commerce
Charlevoix Area Chamber of Commerce
Cheboygan Area Chamber of Commerce
Cheboygan Area Visitors Bureau
FACC Michigan Chapter
Greater Romeo Washington Chamber of Commerce
Grosse Pointe Chamber of Commerce

HBA of Southeastern Michigan
Holland Area Convention & Visitors Bureau
Home Builders Association of Central Michigan
Home Builders Association of Greater Lansing
Home Builders Association of Livingston County
Home Builders Association of Saginaw
Home Builders Association of Western Michigan
International Association for Public Participation USA
Lakeshore Home Builders Association
Lansing Regional Chamber of Commerce
Lenawee County Association of Home Builders
MIADA
Michigan Association of Certified Public Accountants
Michigan Association of Chamber Professionals
Michigan Association of Chiropractors
Michigan Association of Insurance Agents
Michigan Chapter of CAI
Michigan Dental Association
Michigan Health Information Management Association
Michigan HomeCare and Hospice Association
Michigan Pharmacists Association
Michigan Society of Association Executives
Michigan State Medical Society
National Truck Equipment Association
Non-Ferrous Founders' Society
Society for College and University Planning

MINNESOTA
ACA International
Alliance of Automotive Service Providers of Minnesota
American Association of Medical Society Executives
American Council of Engineering Companies of Minnesota
American Institute of Architects - Minnesota
Archery Trade Association
Associations North
Base Real Estate Services, Inc.
Cottage Grove Area Chamber of Commerce
Dawson Area Chamber of Commerce
Electrical Association
Fergus Falls Area Chamber of Commerce
French-American Chamber of Commerce, Inc. - Minnesota
Global Management Partners, LLC
Greater Downtown Council
Greater Stillwater Chamber of Commerce
Hospitality Minnesota
Housing First Minnesota

Independent Community Bankers of Minnesota
Industrial Fabrics Association International
Lonsdale Area Chamber of Commerce
mackmiller design+build
Marine Retailers Association of the Americas
Marshall Area Chamber of Commerce
Micronet
Mid-Minnesota Builders Association
Midwest Poultry Federation
Minnesota Asphalt Pavement Association
Minnesota Dental Association
Minnesota Employers Workers Compensation Alliance
Minnesota Hmong Chamber of Commerce
Minnesota Nursery & Landscape Association
Minnesota Salon & Spa Professional Association
Mountain Lake Chamber of Commerce
Northfield Area Chamber of Commerce and Tourism
Northwestern Lumber Association
Pipestone Area Chamber of Commerce & CVB
Printing Industry Midwest
PRMIA
Professional Skaters Association
Redwood Area Chamber & Tourism
Rochester Downtown Alliance
Salon & Spa Professional Association
Surface Mount Technology Association
TwinWest Chamber of Commerce
White Bear Area Chamber of Commerce
Winona Area Chamber of Commerce
Wood Component Manufacturers Association

MISSISSIPPI
American Council of Engineering Companies of Mississippi
Byhalia Area Chamber of Commerce
Central Mississippi Realtors, Inc.
Cleveland-Bolivar County Chamber of Commerce
Community Development Foundation
Hancock Chamber
HB&RA of Northeast Mississippi
Hernando Main Street Chamber of Commerce
Hinds County EDA
Lala Enterprises
Mississippi Press Association, Inc.
National Association of Emergency Medical Technicians

MISSOURI
AIA Kansas City
American Association of Orthodontists
American Institute of Architects - St. Louis Chapter
American Meat Science Association
American Osteopathic College of Radiology
BBB St. Louis
Downtown Springfield Association
Electrical Apparatus Service Association
Electrical Board of Missouri and Illinois
Farm Equipment Manufacturers Association
Fish Window Cleaning Services, Inc.
Greater Kansas City Chamber of Commerce
Greater St. Charles County Chamber of Commerce
Home Builders Association of St. Louis and Eastern Missouri
Independence Chamber of Commerce
In-Plant Printing and Mailing Association
International Association of Administrative Professionals
International Association of Fairs & Expositions
International Window Cleaning Association
Joplin Area Chamber of Commerce
Labor-Management Council of Greater Kansas City
Lake Area Chamber of Commerce
Liberty Area Chamber of Commerce
Missouri Craft Brewers Guild
Missouri Dermatological Society
Missouri Health Information Management Association
Missouri Hospice & Palliative Care Association
Missouri State Teachers Association
Mt. Vernon Area Chamber of Commerce
National Wood Flooring Association
Ozark Chamber of Commerce
St. Louis REALTORS
St. Louis Regional Chamber
VisionServe Alliance

MONTANA
American Academy of Craniofacial Pain
American College for Advancement in Medicine
American Marketing Association
Helena Area Chamber of Commerce
Radiation Research Society
Southwest Montana Building Industry Association

NEBRASKA
Creative Association Management Co.

Grand Island Area Chamber of Commerce
Independent Insurance Agents of Nebraska
Lincoln Of Commerce
National Association of Insurance and Financial Advisors - Nebraska
Nebraska Petroleum Marketers & Convenience Store Association
Nebraska Society of Certified Public Accountants
NEIADA
Ogallala/Keith County Chamber of Commerce
Professional Towers Association of Nebraska
Visit Omaha

NEVADA
American Gem Society
Boulder City Chamber of Commerce
Clark County Medical Society
Laughlin Chamber of Commerce and Tourism Commission
Laughlin Tourism Commission
Nevada Chapter, Associated General Contractors
Nevada Independent Insurance Agents
Nevada Justice Association
Nevada Society of Certified Public Accountants
NUCA of Las Vegas
Reno + Sparks Chamber of Commerce
Southern Nevada Home Builders Association

NEW HAMPSHIRE
Greater Manchester Chamber of Commerce
Lakes Region Chamber of Commerce
New Hampshire Brewers Association
New Hampshire Lodging & Restaurant Association
New Hampshire Medical Society
New Hampshire Society of CPAs
Tree Care Industry Association

NEW JERSEY
AH Association Headquarters
American Needlepoint Guild
Association Headquarters
Association of New Jersey Chiropractors
Builders Association of Northern New Jersey
Burlington County Regional Chamber of Commerce
Camden County Bar Association
Chamber of Commerce Southern New Jersey
CORE Association of Realtors
DCAT
Financial Executives International

Halloween & Costume Association
Healthcare Businesswomen's Association
Indoor Air Quality Association
Institute of Nuclear Materials Management
Investment Casting Institute
ISPOR - The Professional Society for Health Economics & Outcomes Research
Juvenile Products Manufacturers Association
Literacy & Life, Inc.
Marine Trades Association of New Jersey
Meadowlands Regional Chamber & CVB
Metal Powder Industries Federation
NADCA
NAFA Fleet Management Association
National Board for Certification of School Nurses
National Kitchen & Bath Association
National Limousine Association
New Jersey Association of Mental Health and Addiction Agencies, Inc.
New Jersey Broadcasters Association
New Jersey Gasoline, Convenience, Automotive Association
New Jersey Landscape Contractors Association
New Jersey Licensed Beverage Association
New Jersey Nursery & Landscape Association
New Jersey Pharmacists Association
New Jersey Society of CPAs
New Jersey State Bar Association
Nexus Association of Realtors
Phillipsburg Area Chamber of Commerce

NEW MEXICO
AIA New Mexico
American Society of Radiologic Technologists
Clovis Economic Development
Clovis/Curry County Chamber of Commerce
Greater Las Cruces Chamber of Commerce
Las Cruces Home Builders Association
New Mexico Dental Association
New Mexico Society of Association Executives
New Mexico Technology Council
Roswell Chamber of Commerce
Santa Fe Area Home Builders Association
SVC
AIA Albuquerque
Greater Albuquerque Chamber of Commerce
International Boarding & Pet Services Association
New Mexico Biotechnology & Biomedical Association
New Mexico Brewers Guild

Northern New Mexico Independent Electrical Contractors

NEW YORK
Adult Day Health Care Council
AIA Queens, Inc.
AIM USA, Inc.
American Association of Advertising Agencies
American Group Psychotherapy Association
American Guild of Organists
American Institute of Architects - New York State, Inc.
Audio Engineering Society
Bethlehem Chamber of Commerce
Better Business Bureau of Metropolitan New York
Better Business Bureau of Upstate New York
Bronx Chamber of Commerce
Buffalo Niagara Partnership
Business Council of Westchester
CAI - Long Island Chapter
Capital Region Builders & Remodelers Association
Commerce Chenango, Inc.
Construction Exchange of Buffalo and WNY
Construction Industry Employers Association, Inc.
Cortland County Chamber of Commerce
Cosmetic Executive Women, Inc.
Dutchess County Bar Association
Eastern New York Coalition of Automotive Retailers, Inc.
Empire State Society of Association Executives, Inc.
Engineering Conferences International
ESTA
Flexographic Technical Association
Great Lakes Events & Amcon Shows
Greater Greenwich Chamber of Commerce
Greater Olean Area Chamber of Commerce
Guilderland Chamber of Commerce
Home Builders & Remodelers of Central New York
Hotel Association of New York City
International Board for Certification of Group Psychotherapists
International Trademark Association
Lake George Regional Chamber of Commerce & CVB
LeadingAge New York
Licensing International
Long Island Builders Institute
Merchant Acquirers Committee
Mobile Marketing Association
National Association of Pediatric Nurse Practitioners
National Coalition Against Censorship

National Employment Lawyers Association, New York
National Guild for Community Arts Education
National Organization of Social Security Claimants' Representatives
New Rochelle Chamber of Commerce
New York County Medical Society
New York Health Information Management Association
New York Society of Association Executives
New York State Brewers Association
New York State Council of School Superintendents
New York State Electronic Security Association
New York State Society of Certified Public Accountants
New York State Tourism Industry Association
North Country Chamber of Commerce
NYS Academy of Trial Lawyers
Pharmacists Society of the State of New York
Printing Industries Alliance
Queens Chamber of Commerce
Queens County Bar Association
Radio Advertising Bureau, Inc.
RIMS, The Risk Management Society
Rochester Home Builders Association
Secured Finance Network, Inc.
Security Traders Association of New York, Inc.
Society for Corporate Governance
Society of Motion Picture and Television Engineers
St. Lawrence County Chamber of Commerce
Staten Island Board of REALTORS
Tompkins County Chamber of Commerce, Inc.
Toy Association
United States Council for International Business
Wyoming County Chamber of Commerce & Tourism

NORTH CAROLINA
Alleghany County Chamber of Commerce
Arts North Carolina
Asheville Area Chamber of Commerce
Association of International Education Administrators
Benson Area Chamber of Commerce, Inc.
Blowing Rock Chamber of Commerce
Boone Area Chamber of Commerce
Cabarrus Regional Chamber of Commerce
Caldwell Chamber of Commerce
Carolinas AGC
Carolina's Collision Association
Cary Chamber of Commerce
Chamber for a Greater Chapel Hill-Carrboro

Charlotte Payroll
Clay County Chamber of Commerce
Community Associations Institute - North Carolina chapter
Davidson County EDC
Dermatology Nurses' Association
Durham Regional Association of Realtors
Four Oaks Chamber of Commerce
Franklin Area Chamber of Commerce, Inc.
French American Chamber of Commerce of Carolinas
Gaston Regional Chamber of Commerce
Greater Fayetteville Chamber of Commerce
Greater Mount Airy Chamber of Commerce
Greater Statesville Chamber of Commerce
Greater Winston Salem, Inc.
Havelock Chamber of Commerce
Haywood Chamber of Commerce
HBA of Greater Charlotte
HBA of Winston-Salem
Highlands Chamber of Commerce
Home Builders Association of Northeastern North Carolina
Home Builders Association of Raleigh-Wake County
Home Builders Association of Winston-Salem, Inc.
Huneycutt & Associates CPAs
Huntersville Regional Chamber
International Institute of Building Enclosure Consultants
International Textile and Apparel Association
ISTH
Jacksonville Onslow Chamber of Commerce
Lewisville-Clemmons Chamber of Commerce
Moore County Chamber of Commerce
Motor & Equipment Manufacturers Association
New Bern Area Chamber of Commerce
North Carolina Advocates for Justice
North Carolina Association of CPAs
North Carolina Association of Defense Attorneys
North Carolina Craft Brewers Guild
North Carolina Health Information Management Association
North Carolina Nursery & Landscape Association
Raleigh Chamber of Commerce
Randleman Chamber of Commerce
Reidsville Chamber of Commerce
Richmond County Chamber of Commerce, Inc.
Rocky Mount Area Chamber of Commerce
Senter & Co. Real Estate
Sigma Xi, The Scientific Research Honor Society
Swingbridge Partners

United States Composting Council
Wake Forest Area Chamber
Wilson Chamber of Commerce
Zebulon Chamber of Commerce

NORTH DAKOTA
Downtown Business Association of Bismarck
Downtown Community Partnership
Grand Forks Downtown Development Association
North Dakota Concrete Council
North Dakota Pharmacists Association
Williston Area Chamber of Commerce

OHIO
AIA Columbus
Akron Cleveland Association of REALTORS
Allied Construction Industries
American Association of Service Coordinators
American Ceramic Society
American Real Estate Society
American Society for Nondestructive Testing
American Watchmakers-Clockmakers Institute
AmericanHort
Association of College and University Housing Officers-International
Association of Fundraising Professionals Greater Cleveland
Bellbrook-Sugarcreek Area Chamber of Commerce
BIA of Stark County
Building Industry Association of Central Ohio
Chamber of Commerce of Sandusky County
Chardon Area Chamber of Commerce
CHHSM
Chillicothe Ross Chamber of Commerce
Cincinnati USA Convention & Visitors Bureau
Cleveland Metropolitan Bar Association
Clintonville Area Chamber of Commerce
Defiance Area Chamber of Commerce
Destination Geauga
Educational Theatre Association
Electrocoat Association
Electronic Security Association of Ohio
Glass Manufacturing Industry Council
Graphic Media Alliance
Greater Ashtabula Chamber of Commerce
Greater Cleveland Automobile Dealers Association
Greater Medina Chamber of Commerce
Grove City Area Chamber of Commerce

HBA of Portage & Summit Counties
HBA of the Mahoning Valley
Home Builders Association of Dayton
Home Builders Association of Greater Cleveland
Home Builders Association of Greater Toledo
Huntington Convention Center of Cleveland
International Society of Explosives Engineers
Licking County Chamber of Commerce
Management Excellence, Inc.
Marion Area Chamber of Commerce
Mason Deerfield Chamber
Midwest Sign Association
National Association of College Stores
National Drilling Association
National Ground Water Association
National Tooling and Machining Association
Natural Stone Institute
North Coast Building Industry Association
Northern Ohio Area Chambers of Commerce
NTMA
Ohio Association of Health Underwriters
Ohio Automobile Dealers Association
Ohio Craft Brewers Association
Ohio Dental Association
Ohio Funeral Directors Association
Ohio Home Builders Association
Ohio Hotel & Lodging Association
Ohio Osteopathic Association
Ohio Petroleum Marketers & Convenience Store Association
Ohio Society of Association Executives
Ohio Society of CPAs
Ohio Travel Association
Ohio Trucking Association
Over-the-Rhine Chamber of Commerce
Piqua Area Chamber of Commerce
Plexus LGBT Chamber of Commerce
Precision Metalforming Association
Rocky River Chamber of Commerce
Sidney-Shelby County Chamber of Commerce
Southern Ohio Chamber Alliance
Springboro Chamber of Commerce
Strauss Construction, Inc.
Uniform Retailers Association
Wapakoneta Area Chamber of Commerce
West Chester - Liberty Chamber Alliance
Westerville Area Chamber

Worthington Area Chamber of Commerce
Xenia Area Chamber of Commerce
Zanesville Chamber of Commerce
Zanesville-Muskingum County Chamber of Commerce

OKLAHOMA
American Council of Engineering Companies of Oklahoma
Greater OKC Chamber
Jenks Chamber of Commerce
LeadingAge Oklahoma
National Association of Legal Assistants
National Weather Association
Oklahoma Asphalt Pavement Association
Oklahoma Burglar and Fire Alarm Association
Oklahoma Pharmacists Association
Oklahoma Psychological Association
Oklahoma Ready Mixed Concrete Association
Oklahoma Rural Water Association
Oklahoma Society of Association Executives
Oklahoma State Medical Association
Society of Exploration Geophysicists
Solutions 501 Association Management
South Oklahoma City Chamber of Commerce
Tulsa Regional Chamber of Commerce

OREGON
Association Business Management
Bend Chamber of Commerce
Central Oregon Regional Chapter of Community Associations Institute
Congress of Chiropractic State Associations
Eugene Area Chamber of Commerce
Home Builders Association of Marion & Polk Counties
Home Builders Association of Metro Portland
McMinnville Chamber
NATA
National Association of Consumer Shows
NIRSA: Leaders in Collegiate Recreation
Northwest Automotive Trades Association
Oregon Association of Nurseries
Oregon Auto Dealers Association
Oregon Brewers Guild
Oregon Dental Association
Oregon Golf Association
Springfield Area Chamber of Commerce
Travel Lane County
Update Management, Inc.

PENNSYLVANIA
AASP-PA
AIA Philadelphia
AIA Pittsburgh
Allegheny County Bar Association
Allegheny National Forest Visitors Bureau
Allentown Chamber of Commerce
American Institute of Architects - Pennsylvania
Associated Builders and Contractors of Western Pennsylvania
Association for Corporate Growth Pittsburgh Chapter
Beaver County Chamber of Commerce
Bucks County Bar Association
Cambria Regional Chamber of Commerce
Carbon Builders Association
Carbon Chamber & Economic Development Corporation
Chester & Delaware County Medical Societies
Community Associations Institute - Pennsylvania & Delaware Valley Chapter
East Penn Chamber of Commerce
Eastern Montgomery County Chamber of Commerce
Easton Area Chamber of Commerce
Electrical Association of Philadelphia
Emmaus Main Street Partners
Evergreen Association Management, LLC
French-American Chamber of Commerce
Greater Bath Area Chamber of Commerce
Greater Lehigh Valley Chamber of Commerce
Greater Northern Lehigh Chamber of Commerce
Greater Scranton Board of REALTORS
Greater Scranton Chamber of Commerce
Greene County Chamber of Commerce
Hanover Area Chamber of Commerce
HBA of Bucks and Montgomery Counties
Hellertown-Lower Saucon Chamber of Commerce
Hospice & Palliative Credentialing Center
Huntingdon County Chamber of Commerce
MACS
MidAtlantic Employers' Association
Mon Valley Regional Chamber of Commerce
Montgomery Bar Association
NARI DelChester
National Association of Corporate Board Directors Three Rivers Chapter
National Association of Subrogation Professionals
Nazareth Business Council
Northampton Area Chamber of Commerce
Norwin Chamber of Commerce

NUCA of Pennsylvania
Pennsylvania Association of Fire Equipment Distributors
Pennsylvania Association of Realtors
Pennsylvania Bar Association
Pennsylvania Burglar & Fire Alarm Association
Pennsylvania Chiropractic Association
Pennsylvania College of Emergency Physicians
Pennsylvania Dental Association
Pennsylvania Institute of Certified Public Accountants
Pennsylvania Music Educators Association
Pennsylvania Osteopathic Medical As
Pennsylvania Pharmacists Association
Pennsylvania Recreation and Park Society
Pennsylvania State Association of Township Supervisors
Perry County Chamber of Commerce
Philadelphia County Medical Society
PHIMA
Pittsburgh Airport Area Chamber of Commerce
Pittsburgh Venture Capital Association
Pocono Chamber of Commerce
Pocono Mountains Association of REALTORS®
Project Management Institute
Punxsutawney Area Chamber of Commerce, Inc.
RMC Management Solutions, LLC
Schuylkill Chamber of Commerce
Society of Cable Telecommunications Engineers, Inc.
Somerset County PA Chamber of Commerce
Southern Lehigh Chamber of Commerce
Suburban West Realtors Association
Turnaround Management Association Pittsburgh Chapter
Upper Bucks Chamber of Commerce
Western Lehigh Chamber of Commerce
Westmoreland County Chamber of Commerce
Whitehall Area Chamber of Commerce
Williamsport/Lycoming Chamber of Commerce

PUERTO RICO
PRHIMA
Puerto Rico Hotel & Tourism Association
Saipan Chamber of Commerce

RHODE ISLAND
Association of Marina Industries
Hospitality Training Academy
Northeast States Sign Association
Rhode Island Hospitality Association

Rhode Island Hospitality Education Foundation
Rhode Island Marine Trades Association
Rhode Island Partnership for Home Care

SOUTH CAROLINA
AIA South Carolina
Building Industry Association of Central South Carolina
Charleston Metro Chamber of Commerce
Cherokee County Chamber of Commerce
Greater Hartsville Chamber of Commerce
Greater Mauldin Chamber of Commerce
Greater Summerville/Dorchester County Chamber of Commerce
Greenwood Partnership Alliance
Greenwood SC Chamber of Commerce
Hilton Head Area Home Builders Association
Home Builders Association of Greenville
Myrtle Beach Chamber
National Association for Campus Activities
National Golf Course Owners Association
North Myrtle Beach Chamber/CVB
South Carolina Golf Course Owners Association
South Carolina Pharmacy Association
South Carolina Restaurant & Lodging Association
South Carolina Society of Association Executives

SOUTH DAKOTA
Elevate Rapid City
Greater Sioux Falls Area Chamber
South Dakota Pharmacists Association

TENNESSEE
AIA East Tennessee Chapter
AIA Middle Tennessee
America Outdoors Association
American Association for Laboratory Animal Science
American Council of Engineering Companies of Tennessee
Bellevue Harpeth Chamber of Commerce
CAI - West Tennessee Regional Council
Covington-Tipton County Chamber of Commerce
Gallatin Area Chamber of Commerce
Ghertner & Company
HOA Management
International Automotive Remarkers Alliance
Knoxville Bar Association
Laurelwood Condominium
Lawrence County Chamber of Commerce

LeadingAge Tennessee
McMinn County Economic Development Authority
Memphis Medical Society
Mid-South Sign Association
Nashville Area Chamber of Commerce
Nashville Dental Society
Nashville LGBT Chamber
Northeast Tennessee Association of REALTORS
NUCA of East Tennessee
NUCA of Middle Tennessee
ReFrame Association
Rogersville/Hawkins County Chamber of Commerce
Tennessee Community Organizations
Tennessee Dental Association
Tennessee Farm Winegrowers
Tennessee Health Information Management Association
Tennessee Housing Association
Tennessee Recreation & Parks Association
Tennessee Society of Association Executives
Tenn-Share
Williamson County Chamber of Commerce

TEXAS
Abilene Chamber of Commerce
Allen Fairview Chamber of Commerce
American Association for Respiratory Care
American Association of Nurse Practitioners
American Association of Professional Landmen
American College of Emergency Physicians
American Institute of Architects - Dallas Chapter
American Lighting Association
American Mensa and the Mensa Foundation
Arlington Convention and Visitors Bureau
Arlington CVB
Armed Forces Communications & Electronics Association - Alamo Chapter
Associated Luxury Hotels International
Association of Education Service Agencies
Association of Progressive Rental Organizations
Aubrey 380 Area Chamber of Commerce
Austin Apartment Association
Austin NARI
Automotive Service Association
Balch Springs Chamber of Commerce
BBB Serving Central East Texas
Bulverde Spring Branch Area Chamber of Commerce
Career and Technical Association of Texas

Cedar Park Chamber of Commerce
Central Fort Bend Chamber
Centro San Antonio
Colleyville Chamber
Columbus Chamber of Commerce
Commerce Chamber of Commerce
Community Associations Institute - Austin Chapter
Community Associations Institute - Greater Houston Chapter
Community Associations Institute - San Antonio Chapter
Conference Direct
Connect Worldwide, Inc.
Council for South Texas Economic Progress, Inc.
Council of Residency Directors in Emergency Medicine
CREW: Commercial Real Estate Women, Inc.
Dallas Human Resource Management Association, Inc.
Delta Kappa Gamma Society International
Denison Area Chamber of Commerce
Distribution Contractors Association
Dumas/Moore County Chamber of Commerce & Visitor Center
El Paso Hispanic Chamber of Commerce
Electronic Security Association
Elizabeth M. Risch, CPA, LLC
Embassy Suites Denton Convention Center
enSYNC Corporation
EPHCC
Fort Worth Metro Black Chamber
French-American Chamber of Commerce Dallas/Fort Worth
Frisco Chamber of Commerce
GAACC
Giddings Area Chamber of Commerce
Granbury Chamber of Commerce
Grapevine Chamber of Commerce
Greater Arlington Chamber of Commerce
Greater Austin Asian Chamber of Commerce
Greater Austin Contractors & Engineers Association
Greater Beaumont Chamber of Commerce
Greater Elgin Chamber of Commerce
Greater Fort Worth Builders Association
Greater Houston Chapter of Community Associations Institute
Greater Houston Dental Society
Greater Houston LGBT Chamber of Commerce
Greater Marshall Chamber of Commerce
Greater New Braunfels Chamber of Commerce
Greater Tomball Area Chamber of Commerce
Harker Heights Chamber of Commerce
HBA of San Angelo

Helotes Area Chamber of Commerce
HFTP
Home Builders Association of Greater Austin
Houston West Chamber of Commerce
Huntsville Walker County Chamber
IEC Fort Worth/Tarrant County
Independent Colleges and Universities of Texas
International Association of Exhibitions and Events
International Association of Workforce Professionals
International News Media Association
Irving Hispanic Chamber of Commerce
Jacksboro Chamber of Commerce
Katy Area Economic Development Council
Kyle Area Chamber of Commerce
Laredo Chamber of Commerce
LeadingAge Texas
Longview Chamber of Commerce
Lower Rio Grande Chapter of the American Institute of Architects
Lubbock Association of REALTORS
Lubbock Chamber of Commerce
Madeleine Crouch & Co., Inc.
Meeting Professionals International
MetroTex Association of REALTORS
Midlothian Chamber of Commerce
Mineral Wells Area Chamber of Commerce & Visitors Bureau
Mount Pleasant Chamber of Commerce
NACE International
Nacogdoches County Chamber of Commerce
National Association of Dental Plans
National Association of Insurance and Financial Advisors - Texas
Nocona Chamber of Commerce
North Texas Automobile Dealers Association
North Texas Commission
Odessa Chamber of Commerce
Pasadena Chamber of Commerce
Plano Chamber of Commerce
PPAI
Promotional Products Association International
Promotional Products Association Southwest
Restaurant Facility Management Association
Rockport-Fulton Chamber of Commerce
Romance Writers of America
San Antonio Bar Association
San Antonio Board of REALTORS
San Antonio Chamber of Commerce
Science Teachers Association of Texas

Security Industry Alarm Coalition
Seguin Area Chamber of Commerce
Sherman Chamber of Commerce
Society of Diagnostic Medical Sonography
Society of Emergency Medicine Physician Assistants
Society of Petroleum Engineers
South Padre Island EDC
Southwest Conference on Language Teaching
Strategic Association Management
Terrell Chamber of Commerce
Texas Academy of General Dentistry
Texas Advertising Co., Inc.
Texas Air Conditioning Contractors Association
Texas Air Conditioning Contractors Association - Greater San Antonio
Texas ASCD
Texas Association for Supervision and Curriculum Development
Texas Association of Governmental Information Technology Managers
Texas Association of Healthcare Facilities Management
Texas Association of Life and Health Insurers
Texas Association of Nurse Anesthetists
Texas Association of Physical Plant Administrators
Texas City - La Marque Chamber of Commerce
Texas Council of Administrators of Special Education
Texas Criminal Defense Lawyers Association
Texas Downtown Association
Texas Elementary Principals and Supervisors Association
Texas Food & Fuel Association
Texas Food and Fuel Association
Texas Health Information Management Association
Texas Land Title Association
Texas Osteopathic Medical Association
Texas Physical Therapy Association
Texas Podiatric Medical Association
Texas Psychological Association
Texas Rural Water Association
Texas School Public Relations Association
Texas Society of Association Executives
Texas Society of CPAs
Texas Society of Professional Engineers
United Corpus Christi Chamber of Commerce
USFN America's Mortgage Banking Attorneys
Visit Austin
Visit Fort Worth
Visit Irving
Visit San Antonio
Waxahachie Chamber of Commerce

Weslaco Area Chamber of Commerce
West Chambers County Chamber of Commerce
West Texas Home Builders Association

UTAH
Snowsports Industries America
South Jordan Chamber of Commerce
Southern Utah Home Builders Association
URMCA
Utah Association of Certified Public Accountants

VERMONT
Addison County Chamber of Commerce
Associated General Contractors of Vermont
Lake Champlain Regional Chamber of Commerce
Northeast Kingdom Chamber of Commerce
Okemo Valley Regional Chamber of Commerce
Southern Vermont Deerfield Valley Chamber of Commerce
Swanton Chamber of Commerce
Vermont Builders and Remodelers Association

VIRGINIA
1960
AAHAM
Academy for Eating Disorders
Academy of Managed Care Pharmacy
ACEC Virginia
ACTFL
AIHA
Air Conditioning Contractors of America
Air Traffic Control Association
Alliance for Patient Medication Safety
Ambulatory Surgery Center Association
American Academy of PAs
American Ambulance Association
American Art Therapy Association
American Association of Airport Executives
American Association of Social Media Professionals
American College of Osteopathic Surgeons
American Composites Manufacturers Association
American Council of Academic Physical Therapy
American Counseling Association
American Institute of Architects - Virginia
American Institute of Biological Sciences
American Intellectual Property Law Association
American International Automobile Dealers Association

American Network of Community Options and Resources
American Physical Therapy Association
American Pipeline Contractors Association
American Society for Radiation Oncology
American Society of Appraisers
American Society of Travel Advisors
American Sportfishing Association
American Staffing Association
American Traffic Safety Services Association
AMS Meetings Solutions
Argentum
Arlington Chamber of Commerce
ASIS International
Association Chat
Association for Manufacturing Technology
Association for PRINT Technologies
Association for Unmanned Vehicle Systems International
Association of Air Medical Services
Association of Chamber of Commerce Executives
Association of Old Crows
Association of School Business Officials International
Association of the Wall and Ceiling Industry
Association of Union Constructors
ATCA
Audio Visual and Integrated Experience Association
Authentic Business Services, LLC
Automotive Trade Association Executives
Bedford Area Chamber of Commerce
Benjamin Rush Institute
Botetourt Chamber of Commerce
Capital Chapter of the Professional Convention Management Association
Central Fairfax Chamber of Commerce
Chesterfield Chamber of Commerce
CIMATRI, LLC
Club Management Association of America
CMAA
Community Associations Institute
Compressed Gas Association
Construction Management Association of America
Construction Specifications Institute
Convenience Distribution Association
Council for Affordable and Rural Housing
Council for Interior Design Qualification
Credit Union National Association
CSI
Danville Pittsylvania County Chamber of Commerce

Downtown Norfolk Council
Enterprise Wireless Alliance
Federal Bar Association
Federal Managers Association
Federation of State Boards of Physical Therapy
Fragrance Creators Association
Fredericksburg Regional Alliance
Front Royal-Warren County Chamber of Commerce
Global Business Travel Association
Global Cold Chain Alliance
Greater Reston Chamber of Commerce
Halifax County Chamber of Commerce
Hampton Convention and Visitor Bureau
Harrisonburg-Rockingham Chamber of Commerce
Hearth, Patio & Barbecue Association
Helicopter Association International
Highland County Chamber of Commerce
HighRoad Solution
Home Builders Association of Virginia
IEC National
Independent Electrical Contractors
Independent Lubricant Manufacturers Association
Infectious Diseases Society of America
Insulation Contractors Association of America
Intelligence and National Security Alliance
Interlocking Concrete Pavement Institute
International Board of Lactation Consultant Examiners
International Sign Association
International Wood Products Association
Irrigation Association
Lancaster by the Bay Chamber
LeadingAge Virginia
Loudoun County Chamber of Commerce
Manufactured Housing Institute
Medical Society of Virginia
Metacred
Monitoring Association
Montgomery County Chamber of Commerce
NAADAC, the Association for Addiction Professionals
NAILBA
NARI Central Virginia
National Affordable Housing Management Association
National Alliance of State Pharmacy Associations
National Apartment Association
National Association of Elementary School Principals
National Association of Chain Drug Stores

National Association of Elementary School Principals
National Association of Federally-Insured Credit Unions
National Association of Independent Life Brokerage Agencies
National Association of Insurance and Financial Advisors
National Association of Landscape Professionals
National Association of Secondary School Principals
National Certification Commission for Acupuncture and Oriental Medicine
National Community Pharmacists Association
National Court Reporters Association
National Glass Association
National Grants Management Association
National Home Infusion Association
National Institute for Automotive Service Excellence
National Investor Relations Institute
National Pest Management Association
National Ready Mixed Concrete Association
National Society of Professional Engineers
National Tank Truck Carriers, Inc.
National Utility Contractors Association
National Waste & Recycling Association
New River Valley Home Builders Association
Northern Virginia Apartment Association
Northern Virginia Building Industry Association
Northern Virginia Chamber of Commerce
NOVA Hispanic American Chamber of Commerce
NTCA-The Rural Broadband Association
NUCA
Online Lenders Alliance
Pet Industry Joint Advisory Council
PHTA
Plumbing Manufacturers International
Plumbing-Heating-Cooling Contractors-National Association
PMMI: The Association for Packaging and Processing Technologies
Power and Communication Contractors Association
PRINTING United Alliance
Professional Development Consortium
Radiology Business Management Association
Realtor Association of Prince William
Recreation Vehicle Dealers Association
Richmond Academy of Medicine
RV Industry Association
Salem-Roanoke County Chamber of Commerce
School Nutrition Association
Society for Marketing Professional Services
Society of Collision Repair Specialists
Society of Dermatology Physician Assistants

Society of General Internal Medicine
Transportation Intermediaries Association
TRSA
TVRC
U.S. Geospatial Intelligence Foundation
United Motorcoach Association
Utilities Technology Council
Virginia Association of Community Banks
Virginia Automobile Dealers Association
Virginia Council of CEOs
Virginia Dental Association
Virginia Dermatology Society
Virginia Health Information Management Association
Virginia Nurses Association
Virginia Pharmacists Association
Virginia Recreation and Park Society
Virginia Sheriffs' Association, Inc.
Virginia Society of Association Executives
Virginia Society of CPAs
Virginia Trial Lawyers Association
Virginia Trucking Association
Virginia Veterinary Medical Association
Vision Council of America dba The Vision Council
WateReuse Association
Worldwide ERC®
Yoga Alliance

WASHINGTON
AIA Seattle
Association of Washington School Principals
Bellevue Downtown Association
Bremerton Chamber of Commerce
Building Industry Association of Clark County
Community Associations Institute - Washington State Chapter
Dennison & Associates
Diehl & Co., LLC, Association Management
Empowered Health Institute, PLLC
Estherbrook, Inc.
Financial Planning Association of Puget Sound
Girl Scouts of Eastern Washington and Northern Idaho
Globalization and Localization Association
Great Western Council of Optometry
Greater Lake Stevens Chamber of Commerce
Hemp Industries Association
Inspire Washington
Institute of Real Estate Management Western Washington Chapter

International Association of Structural Integrators
IREM Western Washington Chapter
King County Bar Association
Lake Washington Human Resource Association
Lakewood Chamber of Commerce
Modern Living Services
Northwest Wall and Ceiling Contractors Association
Oak Harbor Chamber of Commerce
SBI Association Management
Solar Installers of Washington
Southwest Washington Contractors Association
Spokane Home Builders Association
Tacoma-Pierce County Bar Association
wafla
Washington Defense Trial Lawyers
Washington Health Care Association
Washington Society of Association Executives
Washington Society of CPAs
Washington State Chiropractic Association
Washington State Dental Association
Washington State Veterinary Medical Association
Women of Wisdom Tricities

WEST VIRGINIA
Chamber of Commerce of the Mid-Ohio Valley
Chamber of Commerce of the Two Virginias
Eastern Panhandle Home Builders Association
Harrison County Chamber of Commerce
Huntington Area CVB
Jefferson County CVB
Lewis County Convention and Visitors Bureau
Visit Southern West Virginia
West Virginia Automobile and Truck Dealers Association
West Virginia Automobile Dealers Association
West Virginia Chapter of the American Institute of Architects

WISCONSIN
Adams County Chamber of Commerce and Tourism
AESA
American Academy of Anesthesiologist Assistants
American Malting Barley Association
American Society for Quality Excellence
AMPED Association Management
Association of Equipment Manufacturers
Association Resource Center, Inc.
Beaver Dam Chamber of Commerce

Better Business Bureau Serving Wisconsin
Bowling Centers Association of Wisconsin
Cottage Grove Chamber of Commerce
Eau Claire Area Chamber of Commerce
Envision Greater Fond du Lac
Greater Milwaukee Association of REALTORS
Greater Wausau Chamber of Commerce
Home Builders Association of the Fox Cities
Impact Association Management
La Crosse Area Builders Association
Madison Area Builders Association
Manitowoc County Home Builders Association
Metropolitan Builders Association
National Association of Tax Professionals
National Funeral Directors Association
Pharmacy Society of Wisconsin
Professional Insurance Agents of Wisconsin, Inc.
SIMA
Snow & Ice Management Association
St. Croix Valley Home Builders Association
Walworth County Visitors Bureau
Winnegamie Home Builders Association
Wisconsin Assisted Living Association
Wisconsin Association of Mutual Insurance Companies
Wisconsin Bakers Association
Wisconsin Institute of CPAs
Wisconsin Library Association
Wisconsin Restaurant Association

WYOMING
Cody Chamber of Commerce
Energy Capital Economic Development

November 18, 2020

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
Washington, DC 20510

The Honorable William Lacy Clay
Chairman
Subcommittee on Housing, Community
Development and Insurance
Washington, DC 20515

The Honorable Steve Stivers
Ranking Member
Subcommittee on Housing, Community
Development and Insurance
Washington, DC 20510

Dear Chairwoman Waters, Chairman Clay, Ranking Member McHenry and Ranking Member Stivers:

Thank you for your leadership in addressing the challenges facing our nation stemming from the coronavirus pandemic. In light of the severe economic and employment headwinds we face, it is critical for the House Financial Services Committee to examine the nation-wide business insurance crisis that has impacted all aspects of our economy including film, television and sports productions. We are pleased the Committee will hold a hearing on "Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers" on November 19 and we will lend our support in any way.

We represent a coalition of interested stakeholders across the film, television, and sports landscape which comprise hundreds of thousands of small businesses with annual wages of more than $200 billion. The film, television and streaming industry provides 2.5 million jobs in all 50 states. In March, film and tv production and sporting events were halted due to the pandemic and the insurance vital to resuming production ceased to be available. The restart of our industries in the U.S. cannot begin on a widespread basis without protection against the ongoing pandemic risks.

The ability of American businesses to secure pandemic risk insurance will be a key factor to America's economic recovery and getting our workers back on the job. The legislation introduced by Representative Carolyn Maloney is a positive step and we support this hearing as an essential next step to addressing this issue. We urge Congress to move expeditiously to pass bi-partisan legislation that creates a public private insurance solution in which the government shares the financial risk of losses related to pandemics so that we in the film, tv, and sports industries can return to production. Such a program would help protect jobs and reduce economic damage from pandemics.

We thank you again for holding this important hearing and are ready to participate in any way appropriate. Working with you in a bipartisan fashion to enact pandemic risk insurance legislation is a top priority.

Sincerely,

Motion Picture Association
Independent Film & Television Alliance
NCTA – The Internet & Television Association
International Alliance of Theatrical Stage Employees
NASCAR
National Football League
Directors Guild of America
National Association of Broadcasters
Producers Guild of America
NPACT
Screen Actors Guild – American Federation of Television and Radio Artists

List of Organizations that have Publicly Endorsed Congresswoman Maloney's H.R. 7011, the Pandemic Risk Insurance Act [55 total]

1. Marsh & McLennan
2. National Retail Federation
3. Council of Insurance Agents & Brokers
4. U.S. Travel Association
5. National Association of Professional Insurance Agents
6. American Society of Association Executives
7. RIMS, the Risk and Insurance Management Society
8. Independent Film & Television Alliance
9. Swiss Re
10. Nonprofit New York
11. University Risk Management and Insurance Association (URMIA)
12. American Hotel & Lodging Association
13. International Council of Shopping Centers
14. Go LIVE Together
15. Retail Industry Leaders Association
16. International Franchise Association
17. National Multifamily Housing Council
18. Small Business Advocacy Council
19. Society of Independent Show Organizers (SISO)
20. International Association of Exhibitions and Events (IAEE)
21. Events Industry Council (EIC)
22. National Apartment Association
23. American Apparel & Footwear Association
24. Partnership for New York City
25. Healthcare Information and Management Systems Society, Inc. (HIMSS)
26. International Health, Racquet & Sportsclub Association
27. Population Association of America
28. Commission on Independent Colleges and Universities
29. National Business Aviation Association
30. Coalition of Endurance Sports Event Organizers
31. Weill Cornell Medicine
32. CCIM Institute
33. National Waste & Recycling Association
34. Institute of Scrap Recycling Industries
35. Institute of Real Estate Management
36. The Travel Technology Association
37. Travel Goods Association (TGA)
38. International Warehouse Logistics Association
39. Transportation Intermediaries Association (TIA)
40. Quantum XYZ
41. Accessories Council
42. American Bridal and Prom Industry Association (ABPIA)
43. Council of Fashion Designers of America (CFDA)

44. American Jail Association
45. Association of Woodworking and Furnishing Supplies
46. Association of Marina Industries
47. School Social Work Association of America
48. National Commission on Correctional Healthcare
49. National Career Development Association
50. Tile Council of North America
51. Modular Building Institute
52. World Floor Covering Association
53. Young Audiences Arts for Learning
54. American Case Management Association
55. The Minerals, Metals & Materials Society

STATEMENT FOR THE RECORD

JASON SCHUPP
Founder and Managing Member
Centers for Better Insurance, LLC

"Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers"

House Financial Services Committee

Subcommittee on Housing, Community Development and Insurance

November 19, 2020

Thank you, Chairman Clay, Ranking Member Stivers and the members of the Sub-Committee for accepting this statement into to record at this formative stage in the consideration of pandemic risk insurance solutions.

My name is Jason Schupp and I am the founder and managing member of the Centers for Betters Insurance (CBI). Following a 25-year career in international insurance law and regulation, I formed CBI as an independent and self-funded organization committed to making certain the insurance industry works for all stakeholders (i.e., policyholders, employees, shareholders and society at large). In furtherance of this mission, CBI makes available unbiased analysis and insights about key public policy and regulatory issues.

Just as we are still learning about the science of COVID-19, we continue to learn about the web of intertwined societal, human, and business risks it has produced. We have learned that businesses, nonprofits, and local governments will need new and innovative tools to manage a range of complex pandemic risks including:[1]

- The suspension, slowdown, or reconfiguration of their operations;
- The quarantine, illness and even death of affected employees; and
- Uncertain liabilities to third parties.

Over the last six months, several pandemic risk insurance proposals have taken shape to prepare for business interruptions that may result from future pandemics. The most prominent among those proposals is the Pandemic Risk Insurance Act (HR 7011) or PRIA.

PRIA serves as an excellent jumping off point to explore the most important element of any insurance program: **The protections provided to the policyholder.**

[1] *The Pandemic Risk Landscape — A Tool to Optimize the Role of the Insurance Industry*, Medium.com (Sept. 25, 2020).

Lessons Learned from COVID-19 Business Interruption Claims

The Pandemic Risk Insurance Act is expected to ensure the "widespread availability and affordability of business interruption coverage for losses resulting from a pandemic or outbreak of communicative disease."[2]

As Congresswoman Maloney explained when she introduced this Bill:[3]

> Millions of small businesses, nonprofits, mom-and-pop shops, retailers, and other businesses are being left out in cold and will never be able to financially recover from the coronavirus crisis because their businesses interruption insurance excludes pandemics. We cannot allow this to happen again. These employers and their employees need to know that they will be protected from future pandemics....

It is true PRIA would prevent a participating insurance company from attaching a virus or pandemic exclusion to a business interruption insurance policy without the consent of the policyholder.[4] However, we know from our experience with COVID-19 that the absence of a virus or pandemic exclusion is no assurance a business interruption claim will be paid.

Insurance companies are not paying COVID-19 business interruption claims even if the policy does not include a virus exclusion. The Insurance Information Institute has explained why:[5]

> Standard BI requires "direct physical loss or damage" to the business.... Loss or damage means structural alteration, such as in a fire. The coronavirus leaves no visible imprint or structural alteration....

As of the end of October, trial courts throughout the country have dismissed 21 COVID-19 business interruption claims. These courts have cited a lack of adequate "direct physical loss or damage" in more than 80% of those dismissals. Four of these dismissals are based on policies that do not contain a virus or pandemic exclusion.[6]

Insurance companies are also routinely raising general exclusions to deny COVID-19 business interruption claims such as the "loss of use", "law and ordinance", "acts or decisions", "pollution" and "contamination" exclusions found in nearly every property insurance policy.

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[2] Pandemic Risk Insurance Act of 2020, H.R. 7011, Sec. 2(1).
[3] *Rep. Maloney Joins with Industry and Trade Association Leaders to Introduce the Pandemic Risk Insurance Act*, Press Release (May 26, 2020) (emphasis supplied).
[4] Pandemic Risk Insurance Act of 2020, H.R. 7011, Sec. 4(c).
[5] *COVID-19 and Business Income (Interruption) Insurance*, Insurance Information Institute (June 10, 2020).
[6] *What COVID-19 Business Interruption Litigation Can Tell Us About How the Pandemic Risk Insurance Act (PRIA) Would Work (Or Not Work) for Small Businesses*, Medium.com (Nov. 2, 2020).

Nothing in PRIA would prevent insurers from denying future pandemic business interruption claims based on a lack of "direct physical loss or damage" or the application of any number of standard exclusions. Accordingly, **PRIA as drafted presents a high risk that small businesses, nonprofits, and local governments may purchase business interruption insurance without a virus exclusion yet find themselves with no actual protection from business interruption from a pandemic lockdown order.**[7]

The joint industry's *Business Continuity Protection Program (BCPP)* envisions the development of a "revenue replacement assistance" product fully funded by the Federal government.[8] The most recent version of the proposal adds an excess layer of "business continuity insurance" on terms similar to those proposed in PRIA.

Nothing in the BCPP proposal offers any assurance to policyholders purchasing this excess product that the insurer would pay a business interruption claim without proof of "direct physical loss or damage." Further, the proposal does not explain whether participating insurers would raise any of the myriad exclusions currently being raised as a barrier to COVID-19 payouts.[9]

Any pandemic business interruption insurance program legislation must include precise statutory language describing the coverage trigger, any applicable exclusions, and the benefit amount to be paid. Otherwise, small businesses, nonprofits and local governments will find themselves back to where their COVID-19 business interruption claims are now: in the courts.

Lessons Learned from the Terrorism Risk Insurance Act (TRIA)

Like the Terrorism Risk Insurance Act (TRIA) on which it is based,[10] PRIA would permit onshore captive insurance companies to participate in the program.[11] U.S. Treasury describes participating captives as:[12]

> Insurers formed to insure the risk exposures of their policyholder owners and regulated by the captive insurance laws of a particular state jurisdiction.

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[7] *What COVID-19 Business Interruption Litigation Can Tell Us About How the Pandemic Risk Insurance Act (PRIA) Would Work (Or Not Work) for Small Businesses*, Medium.com (Nov. 2, 2020).

[8] *Business Continuity Protection Program (BCPP)*, (updated September 2020); *The Insurance Industry's BCPP Proposal: Summary and Key Risks*, Medium.com (July 26, 2020).

[9] Chubb has introduced The Chubb Pandemic Business Interruption Program through which insurers would provide a form of parametric contract. *Chubb's Pandemic Insurance Proposal — Key Risks*, Medium.com (July 20, 2020).

[10] *Terrorism Risk Insurance Act of 2002*, Public Law 107–297, 116 Stat. 2322.

[11] *31. C.F.R. § 50.4 (o)(1)(i)(A)* (captive insurance companies licensed by a state meet the definition of "insurer" under the program).

[12] *Report on the Effectiveness of the Terrorism Risk Insurance Program*, U.S. Treasury (June 2020).

Typically, a large company such as Credit Suisse,[13] The New York Times,[14] Fox,[15] Moody's,[16] Town Sports International,[17] or Ports America,[18] incorporates a subsidiary insurance company that has only one customer – the corporation that formed it. According to the Insurance Information Institute, Vermont leads with the most onshore captive formations followed by Utah and Delaware.[19] Marsh is the nation's largest manager of onshore captives (1270) with Aon close behind (919).[20]

A captive "negotiates" the terms of coverage with its corporate parent. As Treasury has explained in the context of terrorism insurance: For captive insurers, the offer and acceptance of terrorism risk insurance under the Program is controlled by the insured. [21]

Indeed, the board of the captive is typically packed with executives from the corporate parent.[22]

Neither TRIA nor PRIA permit U.S. Treasury to examine these intra-company transactions.[23] In fact, Treasury has no means to learn the names of captives participating in the program or the identifies of their ultimate beneficial owners.[24] As a result, Treasury cannot confidently provide the number of captives participating in the Terrorism Risk Insurance Program but "estimates that the significant majority of captive insurers participating in the Program" comply with mandatory (effectively anonymous) annual data submission requirements.[25]

In a second layer of secrecy, captive-friendly states prohibit their insurance commissioners from cooperating with the federal government regarding individual captives. The National Association of Insurance Commissioners (NAIC) supports these laws because it sees "no public interest" justifying transparency.[26] The state insurance regulator's commitment to secrecy is so strong, the United States is currently suing the Commissioner of the Delaware Department of Insurance to comply with an IRS subpoena to produce information about captive structures suspected in a tax abuse scheme.[27]

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[13] *Captive of the Week: Terminus Insurance, Inc.*, Medium.com (July 25, 2020).
[14] *Captive of the Week: Midtown Insurance Co. (A New York Times Company)*, Medium.com (July 23, 2020).
[15] *Captive of the Week: 21CF Insurance Services*, Medium.com (July 31, 2020).
[16] *Moody's Assurance Company — The Case for Transparency in TRIA*, Medium.com (Aug. 27, 2020).
[17] *Captive of the Week — TSI Insurance Inc. and the Role of Captives under PRIA*, Medium .com (Oct. 1, 2020).
[18] *Ports Insurance Company — Crossing the River and Leaving Transparency Behind*, Medium.com (Oct. 9, 2020)
[19] *Captives by State, 2018-2019*, Insurance Information Institute.
[20] *Largest Captive Managers*, Business Insurance (January 1, 2020).
[21] *Report on the Effectiveness of the Terrorism Risk Insurance Program*, U.S. Treasury (June 2020) at 65.
[22] Treasury has characterized the negotiations as an internal corporate matter "as opposed to a market decision." *Report on the Effectiveness of the Terrorism Risk Insurance Program*, U.S. Treasury (June 2020) at footnote 78.
[23] Terrorism Risk Insurance Act of 2002, Public Law 107–297, 116 Stat. 2322, Sec. 104(h)(3). HR 7011 at Sec. 5(f)(3).
[24] *Report on the Effectiveness of the Terrorism Risk Insurance Program*, U.S. Treasury (June 2020) at 12-13.
[25] *Report on the Effectiveness of the Terrorism Risk Insurance Program*, U.S. Treasury (June 2020) at 13.
[26] *Captives and Special Purpose Vehicles*, NAIC White Paper (June 6, 2013) at 14.
[27] *United States of America v. Delaware Department of Insurance*, US District Court for the District of Delaware, Case #1:2020cv00829 (filed June 19, 2020).

Shielded from federal oversight and public view, captives and their corporate parents have taken full advantage of the Terrorism Risk Insurance Act by negotiating with themselves for exotic coverages, ultra-high limits and rock bottom pricing with 80% of the risk of loss quietly transferred onto the balance sheets of U.S. taxpayers.[28] According to Treasury's analysis of hypothetical terrorist attacks, captives would receive as much as 95 cents of every dollar paid out under the program:[29]

Scenario	Modality	Share of Program Dollars Paid to Captives
New York City	Truck Bomb	32%
Chicago	Truck and Suitcase Bombs	95%
San Francisco	Truck Bomb	32%
San Francisco	Radiological Bomb	86%
Dallas	Truck Bombs	45%

Captive managers are already pitching the benefits of PRIA to their clients.[30] In a recent interview, the President of Marsh Captive Solutions explained: [31]

> It is going to hit that sweet spot of companies that currently think perhaps they are too small for a captive … If it indeed passes in its current form and is like TRIA, it could be quite a significant number of new captives that form … We would be very strongly opposed if [captives] are not included.

Given the amount of taxpayer dollars at risk and the perception of corporate overreach with respect to the Paycheck Protection Program,[32] PRIA (or any other pandemic program) should not be allowed to perpetuate TRIA's architecture of secrecy and strategic obstacles to effective oversight.

At a minimum, PRIA must require a public registry including (a) the identity of participating insurers (including captives); (b) the identity of each participating insurer's ultimate beneficial owner; and (c) the amount the risk the insurer has shifted into the program. [33]

[28] *Terrorism Insurance Captives*, Medium.com (February 20, 2020).
[29] *TRIA — Analysis of Treasury's Modeled Loss Scenarios*, Medium.com (Aug. 2, 2020).
[30] *Marsh Captive Upside*, May 29, 2020 at 7 (Potential Captive Solution); *Pandemic Risk Insurance Act will mean surge in captive numbers, says Marsh's Ellen Charnley*, Captive International (May 1, 2020).
[31] *PRIA May Offer a Captives a Path to Pandemic Coverage*, Ellen Charney, President Marsh Captive Solutions, AM Best Webcast (Aug. 17, 2020).
[32] *In First Official Action, House Coronavirus Panel Demands That Large Public Corporations Return Taxpayer Funds Intended for Small Businesses*, Select Subcommittee on the Coronavirus Crisis (May 8, 2020).
[33] The Centers for Better Insurance previously submitted such a recommendation to Treasury with respect to the Terrorism Risk Insurance Program in May, 2020. TREAS-TRIP-2020-0010-0002.

Empty Promises for Small Businesses but Lavish Benefits for the Large Corporates

A careful look at the treatment of nuclear, biological, chemical and radiological (NBCR) terrorism under the TRIA illustrates how PRIA (or any other pandemic risk insurance program) risks falling disastrously short for small businesses, nonprofits and local governments while providing a taxpayer-funded windfall to large corporations.

A Return to Litigation for Small Businesses, Nonprofits and Local Governments

Although the Terrorism Risk Insurance Program covers NBCR terrorism losses, standard property insurance policies contain general exclusions for nuclear, pollution and contamination risks. According to the Government Accountability Office, property insurers are expected to rely on these exclusions to deny payment of claims following an NBCR terrorist attack:[34]

> [I]nsurers rely on long-standing standard exclusions for nuclear and pollution risks, although such exclusions may be subject to challenges in court because they were not specifically drafted to address terrorist attacks.

In the same way insurers would deny claims for NBCR terrorism despite the "make available" requirement under TRIA, insurers can be expected to deny pandemic business interruption claims under PRIA citing the requirement of "direct physical loss or damage" as well as standard exclusions such as for loss of use, acts or decisions, law and ordinance, pollution and contamination.

Whether suffering losses from NBCR terrorism under TRIA or pandemic business interruption under PRIA, small businesses, nonprofits and local governments appear destined to find themselves back in court with their insurance companies for years.

Write Your Own Taxpayer-Funded Insurance for Large Corporates

Of the more than 500 corporations that use captives to access the Terrorism Risk Insurance Program, Vornado Realty is the only one to publicly disclose its arrangements.[35] Vornado owns 70% of 1290 Avenue of the Americas in New York City.[36]

In 2007, Vornado incorporated Penn Plaza Insurance Company, LLC in Vermont.[37] The three managers of Penn Plaza are Vornado's Chief Financial Officer, General Counsel and Executive Vice

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[34] *Status of Coverage Availability for Attacks Involving Nuclear, Biological, Chemical, or Radiological Weapons*, GAO-09-039 (December 2008).
[35] 2019 Vornado Realty Annual Report at 14.
[36] President Trump owns the other 30%. Letter to Shareholders, 2006 at 10.
[37] Vermont Corporate Record 002445.

President of Financial Administration. The business of Penn Plaza is conducted on the fifth floor of 100 Bank Street in Burlington, Vermont. Penn Plaza shares this space with 54 other captive insurance companies and insurance broker Willis.[38]

Vornado's executives and Penn Plaza's managers (who are the same people) negotiated a $5 billion nuclear, biological, chemical and radiological terrorism policy covering 1290 Avenue of the Americas.[39] Penn Plaza is responsible for the first $1,430,413 of NBCR terrorism losses. The Terrorism Risk Insurance Program - and the taxpayers that back it - are committed to fund 80% of NBCR losses above that amount or $3,998,855,669.60.

If Penn Plaza were to issue Vornado a similar policy covering pandemic risk under PRIA, the taxpayer's exposure would leap to $4,749,660,276.91.

To put it another way, Vornado and Penn Plaza (who are run by the same individuals) "negotiated" with each other to commit American taxpayers to nearly $4 billion of NBCR terrorism risk. Under PRIA, Vornado and Penn Plaza could negotiate with each other to commit American taxpayers to assume another $4.75 billion of pandemic business interruption risk. Not only is Treasury not in the room during these negotiations, under state and federal law it is not supposed to know such a deal even exists.

According to U.S. Treasury, there are at least 539 other captives like Penn Plaza participating in the Terrorism Risk Insurance Program.[40] Captive managers expect that number to mushroom under the Pandemic Risk Insurance Program.

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[38] Captives List, Vermont Department of Financial Regulation (as of Sept. 30, 2020). These are considerably less cramped quarters than Marsh's offices on the third floor of 463 Mountain View Drive in Colchester, Vermont which it shares with 188 captives or Aon who is nestled into the 5th Floor of St. Paul Street in Burlington with 146 captives.
[39] 2019 Vornado Realty Annual Report at 14.
[40] *Report on the Effectiveness of the Terrorism Risk Insurance Program*, U.S. Treasury (June 2020) at 65.

Conclusion

The Pandemic Risk Insurance Act starts with a nearly two-decade old program that, thankfully, has never paid a claim. Over its first 17 years, the Terrorism Risk Insurance Program has generated some $51.9 billion in premium for participating insurers and turned Vermont and Delaware into leading domiciles for single-customer terrorism insurance companies.[41]

While TRIA is a sensible place to start in thinking about a pandemic risk program, it is not the place small businesses, nonprofits, local governments, or American taxpayers should hope it winds up.

For all of the good that it has done in stabilizing terrorism insurance markets, TRIA (and therefore PRIA) suffers from two profound weaknesses:

1. A program based on this model will not deliver the protections small businesses, nonprofits and local governments need to manage non-traditional risks (such as NBCR terrorism or business interruption and event cancellation from pandemics); and

2. A program based on this model shields captive insurance companies and their corporate parents from basic transparency, sound regulatory oversight, and effective taxpayer protections.

The Terrorism Risk Insurance Act "only" exposes the taxpayer to 80% of a $100 billion program. The Pandemic Risk Insurance Act would expose the taxpayer to 95% of a $750 billion program. We must address known defects in the former before we replicate and scale up to the latter.

Once a pandemic risk program has been designed to adequately protect small businesses, nonprofits and local governments, it would be appropriate to begin the far simpler discussion of the role of the insurance industry and potentially others in the administration of that program.

[41] *Report on the Effectiveness of the Terrorism Risk Insurance Program*, U.S. Treasury (June 2020) at 78.