

TERRORISM RISK PROTECTION ACT

NOVEMBER 19, 2001.—Ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means,  
submitted the following

R E P O R T

[To accompany H.R. 3210]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

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

- (a) **SHORT TITLE.**—This Act may be cited as the “Terrorism Risk Protection Act”.
- (b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.  
 Sec. 2. Congressional findings.  
 Sec. 3. Designation of Administrators.  
 Sec. 4. Submission of premium information to Administrator.  
 Sec. 5. Triggering determination and covered period.  
 Sec. 6. Federal cost-sharing for commercial insurers.  
 Sec. 7. Assessments.  
 Sec. 8. Terrorism loss repayment surcharge.  
 Sec. 9. Administration of assessments and surcharges.  
 Sec. 10. Study of reserves for property and casualty insurance for terrorist or other catastrophic events.  
 Sec. 11. State preemption.  
 Sec. 12. Consistent State guidelines for coverage for acts of terrorism.  
 Sec. 13. Consultation with State insurance regulators and NAIC.  
 Sec. 14. Sovereign immunity protections.  
 Sec. 15. Study of potential effects of terrorism on life insurance industry.  
 Sec. 16. Definitions.  
 Sec. 17. Extension of program.  
 Sec. 18. Regulations.

**SEC. 2. CONGRESSIONAL FINDINGS.**

The Congress finds that—

- (1) the terrorist attacks on the World Trade Center and the Pentagon of September 11, 2001, resulted in a large number of deaths and injuries, the destruction and damage to buildings, and interruption of business operations;
- (2) the attacks have inflicted possibly the largest losses ever incurred by insurers and reinsurers;
- (3) while the insurance and reinsurance industries have committed to pay the losses arising from the September 11 attacks, the resulting disruption has created widespread market uncertainties with regard to the risk of losses arising from possible future terrorist attacks;
- (4) such uncertainty threatens the continued availability of United States commercial property casualty insurance for terrorism risk at meaningful coverage levels;
- (5) the unavailability of affordable commercial property and casualty insurance for terrorist acts threatens the growth and stability of the United States economy, including impeding the ability of financial services providers to finance commercial property acquisitions and new construction;
- (6) in the past, the private insurance markets have shown a remarkable resiliency in adapting to changed circumstances;
- (7) given time, the private markets will diversify and develop risk spreading mechanisms to increase capacity and guard against possible future losses incurred by terrorist attacks;
- (8) it is necessary to create a temporary industry risk sharing loan program to ensure the continued availability of commercial property and casualty insurance and reinsurance for terrorism-related risks;
- (9) such action is necessary to limit immediate market disruptions, encourage economic stabilization, and facilitate a transition to a viable market for private terrorism risk insurance; and
- (10) in addition, it is necessary promptly to conduct a study of whether there is a need for reserves for property and casualty insurance for terrorist or other catastrophic events.

**SEC. 3. DESIGNATION OF ADMINISTRATORS.**

(a) **IN GENERAL.**—Not later than December 1, 2001, the President shall designate a Federal officer or officers to act as the Administrator or Administrators responsible for carrying out this Act and the responsibilities under this Act to be carried out by each such officer.

(b) **SENSE OF CONGRESS.**—It is the sense of the Congress that in determining the Administrator responsible for making any determinations, for purposes of this Act, as to whether a loss was caused by an act of terrorism and whether such loss was caused by one or multiple such events, pursuant to section 5(b), the President should consider the appropriate role of the Assistant to the President for Homeland Security.

**SEC. 4. SUBMISSION OF PREMIUM INFORMATION TO ADMINISTRATOR.**

To the extent such information is not otherwise available to the Administrators, the appropriate Administrator may require each insurer to submit, to the appropriate Administrator or to the NAIC, a statement specifying the aggregate premium amount of coverage written by such insurer for properties and persons in the United States under each line of commercial property and casualty insurance sold by such insurer during such periods as the appropriate Administrator may provide.

**SEC. 5. TRIGGERING DETERMINATION AND COVERED PERIOD.**

(a) **IN GENERAL.**—For purposes of this Act, a “triggering determination” is a determination by the appropriate Administrator that the insured losses resulting from the event of an act of terrorism occurring during the covered period (as such term is defined in subsection (b)), or the aggregate insured losses resulting from multiple events of acts of terrorism all occurring during the covered period, meet the requirements under either of the following paragraphs:

(1) **INDUSTRY-WIDE LOSS TEST.**—Such industry-wide losses exceed \$1,000,000,000.

(2) **CAPITAL SURPLUS AND INDUSTRY AGGREGATE TEST.**—Such industry-wide losses exceed \$100,000,000 and some portion of such losses for any single commercial insurer exceed—

(A) 10 percent of the capital surplus of such commercial insurer (as such term is defined by the appropriate Administrator); and

(B) 10 percent of the commercial property and casualty premiums written by such commercial insurer; except that this paragraph shall not apply to any commercial insurer that has been making commercial property and casualty insurance coverage available for less than 4 years as of the date of the determination under this subsection.

(b) **COVERED PERIOD.**—For purposes of this Act, the “covered period” is the period beginning on the date of the enactment of this Act and ending on January 1, 2003.

(c) **DETERMINATIONS REGARDING EVENTS.**—For purposes of subsection (a), the appropriate Administrator shall have the sole authority for determining whether—

(1) an occurrence or event was caused by an act of terrorism;

(2) insured losses from acts of terrorism were caused by one or multiple events or occurrences; and

(3) whether an act of terrorism occurred during the covered period.

**SEC. 6. FEDERAL COST-SHARING FOR COMMERCIAL INSURERS.**

(a) **IN GENERAL.**—Pursuant to a triggering determination, the appropriate Administrator shall provide financial assistance to commercial insurers in accordance with this section to cover insured losses resulting from acts of terrorism, which shall be repaid in accordance with subsection (e).

(b) **AMOUNT.**—Subject to subsection (c), with respect to a triggering determination, the amount of financial assistance made available under this section to each commercial insurer shall be equal to 90 percent of the amount of the insured losses of the insurer as a result of the triggering event involved.

(c) **AGGREGATE LIMITATION.**—The aggregate amount of financial assistance provided pursuant to this section may not exceed \$100,000,000,000.

(d) **LIMITATIONS.**—The appropriate Administrator may establish such limitations as may be necessary to ensure that payments under this section in connection with a triggering determination are made only to commercial insurers that are not in default of any obligation under section 7 to pay assessments or under section 8 to collect surcharges.

(e) **REPAYMENT.**—Financial assistance made available under this section shall be repaid through assessments under section 7 collected by the appropriate Administrator and surcharges remitted to the appropriate Administrator under section 8. Any such amounts collected or remitted shall be deposited into the general fund of the Treasury.

(f) **EMERGENCY DESIGNATION.**—Congress designates the amount of new budget authority and outlays in all fiscal years resulting from this section as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(e)). Such amount shall be available only to the extent that a request, that includes designation of such amount as an emergency requirement as defined in such Act, is transmitted by the President to Congress.

**SEC. 7. ASSESSMENTS.**

(a) **IN GENERAL.**—In the case of a triggering determination, each commercial insurer shall be subject to assessments under this section for the purpose of repaying financial assistance made available under section 6 in connection with such determination.

(b) **AGGREGATE ASSESSMENT.**—Pursuant to a triggering determination, the appropriate Administrator shall determine the aggregate amount to be assessed among all commercial insurers, which shall be equal to 90 percent of the lesser of—

(1) the amount of industry-wide losses resulting from the triggering event involved; and

(2) \$20,000,000,000.

(c) **ALLOCATION OF ASSESSMENT.**—

(1) **IN GENERAL.**—The appropriate Administrator shall allocate the aggregate assessment amount determined under subsection (b) among all commercial insurers. The portion of the aggregate assessment amount that is allocated as an assessment on each commercial insurer shall be based on the percentage, written by that insurer, of the aggregate written premium, for all commercial insurers, for the calendar year preceding the assessment.

(2) **PAYMENT REQUIREMENT.**—Upon notification by the appropriate Administrator of an assessment under this section, each commercial insurer shall be required to pay to the appropriate Administrator, in the manner provided under section 9 by the appropriate Administrator, the amount equal to the assessment on such commercial insurer (subject to the limitation under paragraph (3)).

(3) **ANNUAL LIMITATION ON AMOUNT ALLOCATED TO EACH COMMERCIAL INSURER.**—

(A) **IN GENERAL.**—Of any assessments under this section on a commercial insurer, the portion required to be paid by any commercial insurer during a calendar year shall not exceed the amount that is equal to 3 percent of the aggregate written premium for such insurer for the preceding calendar year.

(B) **MULTIPLE PAYMENTS.**—If any amounts required to be repaid under this section for a calendar year are limited by operation of subparagraph (A), the appropriate Administrator shall provide that all such remaining amounts shall be reallocated among all commercial insurers (in the manner provided in paragraph (1)) over such immediately succeeding calendar years, and repaid over such years, as may be necessary to provide for full payment of such remaining amounts, except that the limitation under subparagraph (A) shall apply to the amounts paid in any such successive calendar years.

(C) **ADMINISTRATIVE FLEXIBILITY.**—

(i) **TIMING OF ASSESSMENTS.**—Assessments under this section in connection with a triggering demonstration shall be made, to the extent that the appropriate Administrator considers practicable and appropriate, at the beginning of the calendar year immediately following the triggering determination.

(ii) **ESTIMATES AND CORRECTIONS.**—If the appropriate Administrator makes an assessment at a time other than provided under clause (i), the appropriate Administrator may—

(I) require commercial insurers to estimate their aggregate written premiums for the year in which the assessment is made; and

(II) make a subsequent refund or require additional payments to correct such estimation at the end of the calendar year.

(4) **DEFERRAL OF CONTRIBUTIONS.**—The appropriate Administrator may defer the payment of part or all of the assessment required under paragraph (2) to be paid by a commercial insurer, but only to the extent that the appropriate Administrator determines that such deferral is necessary to avoid the likely insolvency of the commercial insurer.

**SEC. 8. TERRORISM LOSS REPAYMENT SURCHARGE.**

(a) **IMPOSITION AND COLLECTION.**—If, pursuant to a triggering determination, the appropriate Administrator determines that the aggregate amount of industry-wide losses resulting from the triggering event involved exceeds \$20,000,000,000, the appropriate Administrator shall—

(1) establish and impose a policyholder premium surcharge, as provided under this section, on commercial property and casualty insurance written after such determination, for the purpose of repaying financial assistance made available under section 6 in connection with such triggering determination; and

(2) provide for commercial insurers to collect such surcharge and remit amounts collected to the appropriate Administrator.

(b) **AMOUNT AND DURATION.**—The surcharge under this section shall be established in such amount, and shall apply to commercial property and casualty insurance written during such period, as the appropriate Administrator determines is necessary to recover the aggregate amount of financial assistance provided under section 6 to cover insured losses resulting from the triggering event that exceed \$20,000,000,000.

(c) **OTHER TERMS.**—The surcharge under this section shall—

(1) be based on a percentage of the amount of commercial property and casualty insurance coverage that a policy provides; and

(2) be imposed with respect to all commercial property and casualty insurance coverage written during the period referred to in subsection (b).

**SEC. 9. ADMINISTRATION OF ASSESSMENTS AND SURCHARGES.**

(a) **MANNER AND METHOD.**—The appropriate Administrator shall provide for the manner and method of carrying out assessments under section 7 and surcharges under section 8, including the timing and procedures of making assessments and surcharges, notifying commercial insurers of assessments or surcharge requirements, collecting payments from and surcharges through commercial insurers, and refunding of any excess amounts paid or crediting such amounts against future assessments.

(b) **TIMING OF COVERAGES AND ASSESSMENTS.**—The appropriate Administrator may adjust the timing of coverages and assessments provided under this Act to provide for equivalent application of the provisions of this Act to commercial insurers and policies that are not based on a calendar year.

(c) **APPLICATION TO SELF-INSURANCE ARRANGEMENTS.**—The appropriate Administrator may, in consultation with the NAIC, apply the provisions of this Act, as appropriate, to self-insurance arrangements by municipalities and other entities, but only if such application is determined before the occurrence of a triggering event and all of the provisions of this Act are applied uniformly to such entities.

(d) **ADJUSTMENT.**—The appropriate Administrator may adjust the assessments charged under section 7 or the percentage imposed under the surcharge under section 8 at any time, as the appropriate Administrator considers appropriate to protect the national interest, which may include avoiding unreasonable economic disruption or excessive market instability.

**SEC. 10. STUDY OF RESERVES FOR PROPERTY AND CASUALTY INSURANCE FOR TERRORIST OR OTHER CATASTROPHIC EVENTS.**

(a) **IN GENERAL.**—The Secretary of the Treasury shall conduct a study of issues relating to permitting property and casualty insurance companies to establish deductible reserves against losses for future acts of terrorism, including—

(1) whether such tax-favored reserves would promote (A) insurance coverage of risks of terrorism and (B) the accumulation of additional resources needed to satisfy potential claims resulting from such risks,

(2) the lines of business for which such reserves would be appropriate, including whether such reserves should be applied to personal or commercial lines of business,

(3) how the amount of such reserves would be determined,

(4) how such reserves would be administered,

(5) a comparison of the Federal tax treatment of such reserves with other insurance reserves permitted under Federal tax laws,

(6) an analysis of the use of tax-favored reserves for catastrophic events, including acts of terrorism, under the tax laws of foreign countries, and

(7) whether it would be appropriate to permit similar reserves for other future catastrophic events, such as natural disasters, taking into account the factors under the preceding paragraphs.

(b) **REPORT.**—Not later than 4 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to Congress on the results of the study under subsection (a), together with recommendations for amending the Internal Revenue Code of 1986 or other appropriate action.

**SEC. 11. STATE PREEMPTION.**

(a) **COVERED PERILS.**—A commercial insurer shall be considered to have complied with any State law that requires or regulates the provision of insurance coverage for acts of terrorism if the insurer provides coverage in accordance with the definitions regarding acts of terrorism under the regulations issued by the Administrators.

(b) **RATE LAWS.**—If any provision of any State law prevents an insurer from increasing its premium rates in an amount necessary to recover any assessments pursuant to section 7, such provision is preempted only to the extent necessary to provide for such insurer to recover such losses.

(c) **FILE AND USE.**—With respect only to commercial property and casualty insurance covering acts of terrorism, any provision of State law that requires, as a condition precedent to the effectiveness of rates or policies for such insurance that is made available by an insurer licensed to transact such business in the State, any action (including prior approval by the State insurance regulator for such State) other than filing of such rates and policies and related information with such State insurance regulator is preempted to the extent such law requires such additional actions for such insurance coverage. This subsection shall not be considered to preempt a provision of State law solely because the law provides that rates and policies for such insurance coverage are, upon such filing, subject to subsequent review and action, which may include actions to disapprove or discontinue use of such rates or policies, by the State insurance regulator.

**SEC. 12. CONSISTENT STATE GUIDELINES FOR COVERAGE FOR ACTS OF TERRORISM.**

(a) **SENSE OF CONGRESS REGARDING COVERED PERILS.**—It is the sense of the Congress that—

(1) the NAIC, in consultation with the appropriate Administrator, should develop appropriate definitions for acts of terrorism and appropriate standards for making determinations regarding events or occurrences of acts of terrorism;

(2) each State should adopt the definitions and standards developed by the NAIC for purposes of regulating insurance coverage made available in that State;

(3) in consulting with the NAIC, the appropriate Administrator should advocate and promote the development of definitions and standards that are appropriate for purposes of this Act; and

(4) after consultation with the NAIC, the appropriate Administrator should adopt definitions for acts of terrorism and standards for determinations that are appropriate for this Act.

(b) **INSURANCE RESERVE GUIDELINES.**—

(1) **SENSE OF CONGRESS REGARDING ADOPTION BY STATES.**—It is the sense of the Congress that—

(A) the NAIC should develop appropriate guidelines for commercial insurers and pools regarding maintenance of reserves against the risks of acts of terrorism; and

(B) each State should adopt such guidelines for purposes of regulating commercial insurers doing business in that State.

(2) **CONSIDERATION OF ADOPTION OF NATIONAL GUIDELINES.**—Upon the expiration of the 6-month period beginning on the date of the enactment of this Act, the appropriate Administrator shall make a determination of whether the guidelines referred to in paragraph (1) have, by such time, been developed and adopted by nearly all States in a uniform manner. If the appropriate Administrator determines that such guidelines have not been so developed and adopted, the appropriate Administrator shall consider adopting, and may adopt, such guidelines on a national basis in a manner that would supercede any State law regarding maintenance of reserves against such risks.

(c) **GUIDELINES REGARDING DISCLOSURE OF PRICING AND TERMS OF COVERAGE.**—

(1) **SENSE OF CONGRESS.**—It is the sense of the Congress that the States should require, by laws or regulations governing the provision of commercial property and casualty insurance that includes coverage for acts of terrorism, that the price of any such terrorism coverage, including the costs of any terrorism related assessments or surcharges under this Act, be separately disclosed.

(2) **ADOPTION OF NATIONAL GUIDELINES.**—If the appropriate Administrator determines that the States have not enacted laws or adopted regulations adequately providing for the disclosures described in paragraph (1) within a reasonable period of time after the date of the enactment of this Act, the appropriate Administrator shall, after consultation with the NAIC, adopt guidelines on a national basis requiring such disclosure in a manner that supercedes any State law regarding such disclosure.

**SEC. 13. CONSULTATION WITH STATE INSURANCE REGULATORS AND NAIC.**

The Administrators shall consult with the State insurance regulators and the NAIC in carrying out this Act. The Administrators may take such actions, including entering into such agreements and providing such technical and organizational assistance to insurers and State insurance regulators, as may be necessary to provide for the distribution of financial assistance under section 6 and the collection of assessments under section 7 and surcharges under section 8.

**SEC. 14. SOVEREIGN IMMUNITY PROTECTIONS.**

(a) **FEDERAL CAUSE OF ACTION FOR DAMAGES FROM TERRORIST ACTS RESULTING IN TRIGGERING DETERMINATION.**—

(1) **IN GENERAL.**—If a triggering determination occurs requiring an assessment under section 7 or a surcharge under section 8, there shall exist a Federal cause of action, which shall be the exclusive remedy, for damages claimed pursuant to, or in connection with, any acts of terrorism that caused the insured losses resulting in such triggering determination.

(2) **SUBSTANTIVE LAW.**—The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such act of terrorism occurred, unless such law is inconsistent with or preempted by Federal law.

(3) **JURISDICTION.**—Pursuant to each triggering determination, the Judicial Panel on Multidistrict Litigation shall designate one or more district courts of the United States which shall have original and exclusive jurisdiction over all

actions brought pursuant to this subsection that arise out of the triggering event involved.

(4) **OFFSET FOR RELIEF PAYMENTS.**—Any recovery by a plaintiff in an action under this subsection shall be offset by the amount, if any, received by the plaintiff from the United States pursuant to any emergency or disaster relief program, or from any other collateral source, for compensation of losses related to the act of terrorism involved.

(b) **DAMAGES IN ACTIONS REGARDING INSURANCE CLAIMS.**—In an action brought under this section for damages claimed by an insured pursuant to, or in connection with, any commercial property and casualty insurance providing coverage for acts of terrorism that resulted in a triggering determination:

(1) **PROHIBITION OF PUNITIVE DAMAGES.**—No punitive damages intended to punish or deter may be awarded.

(2) **NONECONOMIC DAMAGES.**—

(A) **IN GENERAL.**—Each defendant in such an action shall be liable only for the amount of noneconomic damages allocated to the defendant in direct proportion to the percentage of responsibility of the defendant for the harm to the claimant.

(B) **DEFINITION.**—For purposes of subparagraph (A), the term “noneconomic damages” means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other non-pecuniary losses of any kind or nature.

(c) **RIGHT OF SUBROGATION.**—The United States shall have the right of subrogation with respect to any claim paid by the United States under this Act.

(d) **PROTECTIVE ORDERS.**—The United States or any appropriate Administrator carrying out responsibilities under this Act may seek protective orders or assert privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege.

**SEC. 15. STUDY OF POTENTIAL EFFECTS OF TERRORISM ON LIFE INSURANCE INDUSTRY.**

(a) **ESTABLISHMENT.**—Not later than 30 days after the date of enactment of this Act, the President shall establish a commission (in this section referred to as the “Commission”) to study and report on the potential effects of an act or acts of terrorism on the life insurance industry in the United States and the markets served by such industry.

(b) **MEMBERSHIP AND OPERATIONS.**—

(1) **APPOINTMENT.**—The Commission shall consist of 5 members, as follows:

(A) The appropriate Administrator, as designated by the President.

(C) 4 members appointed by the President, who shall be—

(i) a representative of direct underwriters of life insurance within the United States;

(ii) a representative of reinsurers of life insurance within the United States;

(iii) an officer of the NAIC; and

(iv) a representative of insurance agents for life underwriters.

(2) **OPERATIONS.**—The chairperson of the Commission shall determine the manner in which the Commission shall operate, including funding, staffing, and coordination with other governmental entities.

(c) **STUDY.**—The Commission shall conduct a study of the life insurance industry in the United States, which shall identify and make recommendations regarding—

(1) possible actions to encourage, facilitate, and sustain provision by the life insurance industry in the United States of coverage for losses due to death or disability resulting from an act or acts of terrorism, including in the face of threats of such acts; and

(2) possible actions or mechanisms to sustain or supplement the ability of the life insurance industry in the United States to cover losses due to death or disability resulting from an act or acts of terrorism in the event that—

(A) such acts significantly affect mortality experience of the population of the United States over any period of time;

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

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

(d) **RECOMMENDATIONS.**—The Commission may make a recommendation pursuant to subsection (c) only upon the concurrence of a majority of the members of the Commission.

(e) **REPORT.**—Not later than 120 days after the date of enactment of this Act, the Commission shall submit to the House of Representatives and the Senate a report describing the results of the study and any recommendations developed under subsection (c).

(f) **TERMINATION.**—The Commission shall terminate 60 days after submission of the report as provided for in subsection (e).

**SEC. 16. DEFINITIONS.**

For purposes of this Act, the following definitions shall apply:

(1) **ACT OF TERRORISM.**—

(A) **IN GENERAL.**—The term “act of terrorism” means any act that the appropriate Administrator determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the appropriate Administrator in consultation with the NAIC.

(B) **REQUIREMENTS.**—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States;

(iii) is committed by a group of persons or associations who—

(I) are not a government of a foreign country or the de facto government of a foreign country; and

(II) are recognized by the Department of State or the appropriate Administrator as a terrorist group or have conspired with such a group or the group’s agents or surrogates; and

(iv) has as its purpose to overthrow or destabilize the government of any country or to influence the policy or affect the conduct of the government of the United States by coercion.

(2) **APPROPRIATE ADMINISTRATORS.**—The term “appropriate Administrator” means, with respect to any function or responsibility of the Federal Government under this Act, the Federal officer designated by the President pursuant to section 3 as responsible for carrying out such function or responsibility.

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

(4) **AGGREGATE WRITTEN PREMIUM.**—The term “aggregate written premium” means, with respect to a year, the aggregate premium amount of all commercial property and casualty insurance coverage written during such year for persons or properties in the United States under all lines of commercial property and casualty insurance.

(5) **COMMERCIAL INSURANCE.**—The term “commercial insurance” means property and casualty insurance that is not insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, or other insurance for personal, family, or household needs.

(6) **COMMERCIAL INSURER.**—The term “commercial insurer” means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that is engaged in the business of providing commercial property and casualty insurance for persons or properties in the United States. Such term includes any affiliates of a commercial insurer.

(7) **COMMERCIAL PROPERTY AND CASUALTY INSURANCE.**—The term “commercial property and casualty insurance” means property and casualty insurance that is commercial insurance.

(8) **CONTROL.**—A company has control over another company if—

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

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

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

(9) **COVERED PERIOD.**—The term “covered period” has the meaning given such term in section 5(b).

(10) **INDUSTRY-WIDE LOSSES.**—The term “industry-wide losses” means the aggregate insured losses sustained by all insurers, from coverage written for per-

sons or properties in the United States, under all lines of commercial property and casualty insurance.

(11) **INSURED LOSS.**—The term “insured loss” means any loss in the United States covered by commercial property and casualty insurance.

(12) **INSURER.**—The term “insurer” means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that is engaged in the business of providing property and casualty insurance for persons or properties in the United States. Such term includes any affiliates of an insurer.

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

(14) **PROPERTY AND CASUALTY INSURANCE.**—The term “property and casualty insurance” means insurance against—

- (A) loss of or damage to property;
- (B) loss of income or extra expense incurred because of loss of or damage to property; and
- (C) third party liability claims caused by negligence or imposed by statute or contract.

Such term does not include health or life insurance.

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

(16) **STATE INSURANCE REGULATOR.**—The term “State insurance regulator” means, with respect to a State, the principal insurance regulatory authority of the State.

(17) **TRIGGERING DETERMINATION.**—The term “triggering determination” has the meaning given such term in section 5(a).

(18) **TRIGGERING EVENT.**—The term “triggering event” means, with respect to a triggering determination, the event of an act of terrorism, or the events of such acts, that caused the insured losses resulting in such triggering determination.

(19) **UNITED STATES.**—The term “United States” means, collectively, the States (as such term is defined in this section).

#### **SEC. 17. EXTENSION OF PROGRAM.**

(a) **AUTHORITY.**—If the appropriate Administrator determines that action under this section is necessary to ensure the adequate availability in the United States of commercial property and casualty insurance coverage for acts of terrorism, the appropriate Administrator may provide that the provisions of this Act shall continue to apply with respect to a period or periods, as established by the Administrator, that begin after the expiration of the covered period specified in section 5(b) and end before January 1, 2005.

(b) **COVERED PERIOD.**—If the appropriate Administrator exercises the authority under subsection (a), notwithstanding section 5(b) and section 16(9), the period or periods established by the appropriate Administrator shall be considered to be the covered period for purposes of this Act.

#### **SEC. 18. REGULATIONS.**

The appropriate Administrators shall issue any regulations necessary to carry out this Act.

## **I. SUMMARY AND BACKGROUND**

### **A. PURPOSE AND SUMMARY**

The bill, H.R. 3210, as amended (the “Terrorism Risk Protection Act”), serves to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

The revenue provisions of the bill provide for a study relating to tax reserves for property and casualty insurance for terrorist or other catastrophic events.

### **B. BACKGROUND AND NEED FOR LEGISLATION**

The terrorist attacks of September 11, 2001, in addition to causing injuries and loss of life, have caused destruction and damage

to buildings and interruption of business operations. The attacks resulted in new uncertainties with regard to the risk of losses arising from possible future terrorist attacks, necessitating a study of issues relating to tax reserves for property and casualty insurance for terrorist or other catastrophic events.

### C. LEGISLATIVE HISTORY

H.R. 3210, the “Terrorism Risk Protection Act,” was introduced November 1, 2001, by Mr. Oxley, and referred to the Committee on Financial Services, and in addition to the Committees on Ways and Means, and the Budget. The bill was marked up in the Financial Services Committee of the House on November 7, 2001, and ordered to be reported as amended. The bill, as introduced, includes a provision relating to a tax reserve for terrorism coverage under commercial lines of business that is within the jurisdiction of the Committee on Ways and Means of the House.

### COMMITTEE ACTION

The Committee on Ways and Means marked up the revenue provisions of the bill on November 16, 2001, and reported the provisions, as amended, on November 16, 2001, by a voice vote, with a quorum present.

## II. EXPLANATION OF THE REVENUE PROVISIONS OF THE BILL

### A. STUDY OF RESERVES FOR PROPERTY AND CASUALTY INSURANCE FOR TERRORIST OR OTHER CATASTROPHIC EVENTS (SEC. 10 OF THE BILL)

#### PRESENT LAW AND BACKGROUND

##### *Present law*

In determining taxable income, a property and casualty insurance company includes its underwriting and investment income or loss (sec. 832(b)(1)(A)). Underwriting income generally means the premiums earned on insurance contracts during the taxable year, reduced by the amount of the deduction allowed for additions to reserves for losses incurred and for expenses incurred (sec. 832(b)(2)). The amount of premiums earned means gross premiums for the year, reduced by the increase in unearned premiums (those which are treated as earned in a future year).<sup>1</sup> The amount of losses incurred includes the increase in discounted unpaid losses (sec. 832(b)(5)(A) (ii)). Unpaid losses are discounted separately for each line of business, applying tax discounting rules that take account partially of the time value of money (sec. 846). In general, unpaid losses mean the amount of unpaid losses reflected on the annual statement approved by the National Association of Insurance Commissioners that the taxpayer is required to file with insurance regulatory authorities of a State. Generally, this amount includes losses incurred that have been reported to the company, and also

<sup>1</sup>Section 832(b)(4). A property and casualty insurance company generally is required to reduce its deduction for increases in unearned premiums by 20 percent, to limit mismatching of income and expenses.

losses that have been incurred but not reported, but not losses that have not been incurred.

*Description of H.R. 3210 as introduced*

*Non-tax provisions*

The bill, as introduced, provides for temporary Federal government cost-sharing for commercial insurers of up to \$100 billion, for 90 percent of the amount of insured losses resulting from acts of terrorism in the event of a “triggering determination” during the period from date of enactment to January 1, 2003. The financial assistance is to be repaid through assessments and surcharges. The bill provides for assessments by a Federal government administrator against property and casualty insurers, and surcharges against property and casualty insurance policyholders, following the occurrence of a triggering determination. The triggering determinations include the events that (1) industry-wide terrorism losses exceed \$1 billion for the year; and (2) industry-wide losses exceed \$100 million for the year and exceed 10 percent of the capital surplus of, and 10 percent of the commercial insurance premiums written by, any single insurer (among other criteria).

*Tax provisions*

The bill as introduced provides a permanent rule allowing an additional deduction to property and casualty insurers for increases in a “terrorism commercial business reserve.” Under the bill, the terrorism commercial business reserve means an amount held in a segregated account (or other separately identifiable arrangement or account) that is set aside to pay or to reinsure future unaccrued claims arising from declared terrorism losses, or to pay other claims if directed by a State insurance commissioner to avoid the company’s insolvency. An increase in the reserve for any taxable year is treated as deductible, and a decrease in the reserve for a taxable year is includable in the company’s income.

The amount of the reserve allowed to any particular property and casualty insurance company is determined as that company’s allocable share of a national limit of \$40 billion (\$13.34 billion for 2002). The \$40 billion amount is a cumulative total, and is increased for inflation after 2002. The company’s share of this national limit for any calendar year is determined by the ratio of (1) the company’s net written premiums for commercial lines of business that cover declared terrorism losses, to (2) net written premiums for all companies for commercial lines of business that cover declared terrorism losses.

If in any taxable year, a company’s deduction exceeds its share of the national limit, then the excess is included in income for the next taxable year. If the excess is distributed out of the account for the reserve, then the excess is not taken into account in determining the opening balance of the reserve for the next year.

Under the bill, a declared terrorism loss means the amount of losses and loss adjustment expenses incurred in commercial lines of business, as well as any nonrecoverable assessments, surcharges, or other liabilities that are borne by the company, that are attributable to a declared terrorism event. A declared terrorism event

means any event declared by the President to be an act of terrorism against the United States for purposes of this provision.

*Effective date.*—The tax provisions of the bill are effective for taxable years beginning after December 31, 2001.

#### REASONS FOR CHANGE

The Committee believes that changes in the market for property and casualty insurance covering risks of terrorist acts following the events of September 11, 2001, necessitate a prompt study of the issues relating to permitting property and casualty insurance companies to establish deductible reserves against losses for future acts of terrorism (as well as for other future catastrophes, such as natural disasters).

#### EXPLANATION OF PROVISION

The provision deletes the tax provisions of H.R. 3210 as introduced.

The provision requires the Secretary of the Treasury to conduct a study of issues relating to permitting property and casualty insurance companies to establish deductible reserves against losses for future acts of terrorism. No later than 4 months after the date of enactment, the Secretary is required to report to Congress the results of the study, with recommendations for changes to the Internal Revenue Code of 1986 or other appropriate action. The issues to be studied include—

- (1) Whether such tax-favored reserves for property and casualty insurance companies would promote insurance coverage of risks of terrorism and the accumulation of additional resources needed to satisfy potential claims resulting from such risks,
- (2) The lines of business for which such reserves would be appropriate, including whether the reserves should be applied to personal or commercial lines of business,
- (3) How the amount of such reserves would be determined,
- (4) How such reserves would be administered,
- (5) A comparison of the Federal tax treatment of such reserves and of other insurance reserves permitted under present Federal tax law,
- (6) An analysis of the use of tax-favored reserves for catastrophic events, including acts of terrorism, under the tax laws of foreign countries, and
- (7) Whether it would be appropriate to permit similar reserves for other future catastrophic events, such as natural disasters, taking into account the factors under the preceding paragraphs.

### III. VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the revenue provisions of the bill, H.R. 3210.

## MOTION TO REPORT THE BILL

The bill was ordered reported by voice vote, with a quorum present.

**IV. BUDGET EFFECTS OF THE BILL****A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS**

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provision of the bill, H.R. 3210, as reported.

The revenue provision of the bill, as reported, is estimated to have no effect on budget receipts for fiscal years 2002–2006.

**B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY**

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the revenue provisions of the bill involve no new or increased budget authority (as detailed in the statement by the Congressional Budget Office (“CBO”); see Part IV.C., below). The Committee further states that the revenue provisions involve no increased tax expenditures. (See Part IV.A., above.)

**C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE**

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 19, 2001.*

Hon. WILLIAM “BILL” M. THOMAS,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3210, the Terrorism Risk Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Megan Carroll (for federal costs), Susan Sieg Tompkins (for the state and local impact), and Jean Talarico (for the private-sector impact).

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

*H.R. 3210—Terrorism Risk Protection Act*

Summary: H.R. 3210 would require an administrator appointed by the President to provide up to \$100 billion in financial assistance to commercial property and casualty insurers for losses from terrorist acts committed after enactment of the bill and prior to

January 1, 2003. (The administrator would have the authority to extend the program for two more years.) The administrator would provide such assistance only after insured losses exceed \$1 billion for the entire industry (or lesser amounts if individual insurance companies are particularly affected as specified by the bill). After either threshold is met, the administrator would pay insurance companies 90 percent of subsequent covered losses. Under the bill, if insured losses from a terrorist act required the administrator to provide financial assistance, the administrator could recoup that cost through charges assessed on the insurance industry and purchasers of commercial property and casualty insurance.

CBO cannot predict how much insured damage terrorists would cause in any specific year. Instead our estimate of the cost of financial assistance provided under H.R. 3210 represents an expected value of payments from the program—a weighted average that reflects the probabilities of various outcomes, from zero damages up to very large damages due to possible future terrorist attacks. The expected value can be thought of as the amount of an insurance premium that would be necessary to just offset the risk of providing this insurance; indeed, our estimate of the expected cost for H.R. 3210 is based on premiums collected for terrorism insurance in the United Kingdom and insurance practices in the United States.

On this basis, CBO estimates that enacting section 6 of H.R. 3210 would increase direct spending by about \$7.3 billion over the 2002–2006 period and by \$8.5 billion over the next 10 years. Under the bill, the administrator could recoup the cost of providing financial assistance through assessments and surcharges; hence, over many years, CBO expects that an increase in spending for financial assistance would be nearly offset (on a cash basis) by a corresponding increase in governmental receipts (revenues). We assume, however, that the administrator would not impose any assessments or surcharges until one year after federal assistance is provided and that those amounts would be collected over several years. Thus, CBO estimates that H.R. 3210 would increase governmental receipts by about \$1.4 billion over the 2002–2006 period and by \$5.3 billion over the next 10 years. Because H.R. 3210 would affect direct spending and receipts, pay-as-you-go procedures would apply.

H.R. 3210 contains several intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on insurers and policy holders of commercial property and casualty insurance. CBO estimates that the aggregate net costs of complying with those mandates would not exceed the annual thresholds established by UMRA (\$56 million for intergovernmental mandates and \$113 million for private-sector mandates in 2001, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3210 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN DIRECT SPENDING					
Estimated budget authority .....	800	1,700	2,200	1,700	900
Estimated outlays .....	800	1,700	2,200	1,700	900
CHANGES IN REVENUES					
Assessments and surcharges .....	0	100	200	500	600

Basis of estimate: For this estimate, CBO assumes that H.R. 3210 will be enacted by the end of 2001 and its provisions will remain in effect until December 31, 2004. We estimate that H.R. 3210 would increase direct spending by \$8.5 billion and governmental receipts by \$5.3 billion over 2002–2011 period.

#### *Direct spending*

H.R. 3210 would require the administrator to provide up to \$100 billion in financial assistance to commercial property and casualty insurers for losses above certain thresholds due to future terrorist acts. Under the bill, the administrator would provide such assistance as a result of terrorist acts that occur before January 1, 2003, but the administrator could extend the program to cover events through calendar year 2004. (If the program is extended beyond 2002, we interpret the \$100 billion as being an annual limit.) For this estimate, CBO assumes that the administrator would extend the program through 2004.

By offering financial assistance to commercial property and casualty insurers for acts of terrorism, H.R. 3210 would expose the federal government to potentially huge liabilities. For any year, CBO has no basis for estimating the likelihood of terrorist attacks or the amount of insured damage they may cause. Instead, our estimate of the cost of these provisions reflects how much the government might be expected to pay to insurers on average.

In the following sections, we describe our method for estimating the expected-value cost of providing financial assistance under H.R. 3210, explain how we convert that expected-value cost to annual estimates of cash outlays, and discuss some of the reasons why the cost to the federal government is so uncertain.

*Terrorism Insurance in the United Kingdom.*—Because very limited information is available about how the insurance industry would set premiums for terrorism insurance in the United States, we examined the government-backed insurance pool that spreads the risk of terrorist acts among insurers in the United Kingdom (this program is called Pool Re).

CBO could not estimate the cost of H.R. 3210 to the federal government by examining the U.S. insurance industry's perception of the likelihood of terrorist acts. Representatives of the insurance industry have testified that estimating the risk of terrorist acts is nearly impossible because sufficient historical data do not exist. We explored the possibility of using premiums paid in the U.S. for terrorism insurance prior to September 11, 2001, to estimate the minimum premium required to compensate the government for its risk; however, such information is not available. This led us to examine the United Kingdom's experience with terrorism insurance.

In 1993, the British government created Pool Re to provide terrorism reinsurance (insurance for insurance companies) to the com-

mercial property insurance market in the United Kingdom. Participating insurers must offer terrorism coverage at risk-based rates established by Pool Re and then remit any premiums collected from their customers to the pool. After a small deductible, Pool Re pays 100 percent of the costs of a terrorist act. If claims from terrorist acts exhaust the pool's resources, the British government is liable for the shortfall.

*Calculating the Expected Value of Claims.*—Over the 1993–2000 period, annual premiums collected by Pool Re have ranged from about \$530 million in the early years of the program to about \$75 million in 2000. On average, annual premiums have been roughly \$325 million. The pool has reduced its premium rates in recent years as the number of terrorist attacks in the United Kingdom (and the perceived threat of future attacks) dropped. For this estimate, CBO assumes that the average premiums over the eight-year period accurately reflect the terrorist risk to covered losses in the United Kingdom. In some years, there may be many costly attacks; in others, there may be none.

To compare premiums collected by Pool Re to those that would be required to compensate the federal government for its risk under H.R. 3210, we made adjustments to account for differences between Pool Re and the proposed U.S. program. CBO expects that, if premiums were charged to cover the potential costs of H.R. 3210, they would have to be significantly larger than those collected by Pool Re. Pool Re covers losses only for property damage and business interruption, while the program proposed under the bill also would cover casualty and related risks. Based on information from the insurance industry about the relative proportion of property and casualty insurance, we estimate that including these lines would roughly double the premiums required under Pool Re. In addition, CBO increased the average premium amount for Pool Re by a factor of 7 to account for differences in the sizes of the two countries' economies and insurance markets. We did not make any adjustments for differences in the risk of terrorist acts that each country faces because we cannot quantify such differences.

After making the adjustments described above, CBO estimates that the expected-value cost of a federal program that is analogous to Pool Re would be about \$4.5 billion a year. However, two key differences between Pool Re and the program outlined in H.R. 3210 require additional adjustments. First, H.R. 3210 would require the industry to absorb losses of \$1 billion before the administrator would provide any assistance. By comparison, deductibles required by Pool Re are negligible. Second, H.R. 3210 would cap federal assistance at \$100 billion a year; coverage under Pool Re has no cap.

To make these further adjustments, we assumed that the probability of terrorist attacks is skewed toward events that would cost less than \$4.5 billion a year. After taking into account the \$1 billion industry-wide deductible and the \$100 billion cap on federal assistance, CBO estimates that the administrator would need to charge about \$3 billion annually for coverage over the 2002–2004 period to fully compensate the government for the risk it would assume under H.R. 3210. Assuming the program operates for three years, the expected cost to the government would total \$9 billion. Those outlays, however, would be spread out over many years, as explained below.

*Timing of Federal Spending.*—To estimate federal spending for this program on a cash basis, CBO used information from insurance experts on historical rates at which property and casualty claims are paid. Based on such information, CBO estimates that the expected value of federal spending under H.R. 3210 would total \$8.5 billion over the 2002–2011 period, and about \$500 million after 2011. In general, following a catastrophic loss, it takes many years to complete insurance payments because of disputes over the value of covered losses by property and business owners. For this estimate, we assumed that financial assistance to property and casualty insurers would be paid over several years, with most of the spending occurring within the first five years.

*Costs Are Uncertain.*—While this estimate reflects CBO’s best judgment on the basis of available information, costs are a function of inherently unpredictable future terrorist attacks. As such, actual costs could cover an extremely broad range. Moreover, there is a greater risk that our estimated costs are too low rather than too high.

Our expected losses under this program could be too low because we assumed losses would have to exceed \$1 billion before the administrator would provide assistance. Under the bill, however, the administrator also could provide assistance if aggregate losses exceed \$100 million and at least one company is particularly adversely affected. In addition, there are a number of differences between Pool Re and the program that would be established under this legislation that are unknown—for example, the difference between U.S. and British tort law—but these differences would push the likely cost of the bill higher.

#### *Revenues*

CBO estimates that under H.R. 3210 the administrator would collect \$5.3 billion over the 2002–2011 period through assessments on the insurance industry and surcharges on policy holders.

*Assessments.*—If a terrorist act requires the administrator to provide financial assistance, the administrator would recoup that cost through charges paid by the insurance industry and purchasers of commercial property and casualty insurance. The first \$18 billion of financial assistance could be recovered by assessing each insurer based on its portion of aggregate property and casualty insurance premiums for the preceding calendar year. Each company’s assessment would be limited to 3 percent of aggregate premiums. The administrator could delay when a company would be required to pay the assessment if such a delay were necessary to prevent the insurer from becoming insolvent. Because we assume the probability of terrorist attacks would be skewed toward events that would cost less than \$4.5 billion, we anticipate that assessments would account for most of the amounts the administrator would collect. On an expected-value basis, CBO estimates that assessments to recover the cost of federal assistance would generate revenues totaling \$4.3 billion over the next 10 years.

*Surcharges.*—The administrator would recover any assistance provide between \$20 billion and \$100 billion by imposing a surcharge on all premiums for commercial property and casualty insurance. Surcharges would apply to insurance sold following a terrorist attack that necessitated federal assistance. H.R. 3210 would

require the administrator to impose surcharges for as long as is necessary to recover the aggregate financial assistance. Thus, the government could collect surcharges for many years depending on the level of financial assistance. We estimate that surcharges would total \$1 billion over the next 10 years.

*Timing.*—CBO expects that the administrator probably would not recoup the entire cost of financial assistance during the 2002–2011 period. Based on information from the insurance industry on aggregate premiums collected in recent years, CBO estimates that the administrator could recoup no more than about \$10 billion a year. The bill would allow the administrator to reduce annual charges to avoid unreasonable economic disruption, excessive market instability, or undue burdens on small businesses. Therefore, if annual losses are very high, we expect that the administrator would limit annual collections by spreading them over many years. CBO assumes it would take the administrator at least 10 years to recoup the costs of any financial provided under H.R. 3210. Thus, we estimate that many of the collections from assessments and surcharges would occur after 2011.

*Risk of Insolvency.*—In addition, although the bill would allow the administrator to delay when an insurance company pays its assessment, the bill would not provide the administrator with the authority to increase the assessment on the remaining insurance companies if a company is unable to pay. Thus, the federal government also would bear the risk that an insurance company would become insolvent during the assessment period. Historically, the credit risk of insurance companies has been very low, but the government would be exposed to such risk only following a very costly attack. Because we expect the probability of such a costly attack is very low, we included a small adjustment for the risk of insolvency in our estimate.

*Credit Reform Does Not Apply.*—The provisions of the Federal Credit Reform Act do not apply to H.R. 3210. Under that act, a direct loan is defined as a defined as a disbursement of funds to a nonfederal borrower under a contract that requires the repayment. A disbursement cannot be considered a direct loan, however, if the duty to repay the government arises from an exercise of sovereign power, tort liability, or some other noncontract obligation. H.R. 3210 would require insurance companies and potentially policy holders to compensate the government for its costs, but it would do so through an exercise of sovereign power, not through loan repayment contracts. Therefore, CBO believes that the financial assistance and subsequent collections would not constitute a loan program.

Pay-as-you-go considerations: The Balance Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. Only the effects in the current year and the following four years are counted for pay-as-you-go purposes.

	By fiscal year, in millions of dollars—									
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays .....	800	1,700	2,200	1,700	900	500	300	200	100	100
Changes in receipts .....	0	100	200	500	600	700	800	800	800	800

Intergovernmental and private-sector impact: H.R. 3210 contains several intergovernmental and private-sector mandates as defined by UMRA. CBO estimates that the costs to comply with all of the mandates in the bill would not exceed the thresholds established by UMRA (\$56 million for intergovernmental mandates and \$113 for private-sector mandates in 2001, adjusted annually for inflation).

#### *Assessments and surcharges*

The bill would require the administrator, through the use of the federal government's sovereign power, to recoup the costs of financial assistance provided to certain insurers through assessments paid by the insurance industry and surcharges paid by purchasers of commercial property and casualty insurance. This requirement to repay the federal government for financial assistance received would be both an intergovernmental and private-sector mandate under UMRA because both private entities and state and local governments would be affected.

Specifically, section 7 would require commercial property and casualty insurers as well as self-insured risk pools to pay back, through assessments, 90 percent of either total industry-wide losses or \$20 billion, whichever is less. Taken individually, some insurers may benefit from the financial assistance while others face only the cost of the assessment. But for the insurance industry as a whole, the cost of the assessment would be no greater than the financial assistance received, so the net cost of this mandate would be zero.

In addition, section 8 would require purchasers of commercial property and casualty insurance to repay, in the form of a surcharge, any federal assistance provided to certain insurers between \$18 billion and \$100 billion. Some purchasers of commercial property and casualty insurance would not receive a direct benefit under the bill or protection from higher premiums in its absence. Therefore, the surcharge would be a mandate that imposes costs on both private-sector purchasers and state and local governments (in their capacity as purchasers of insurance). CBO estimates that the expected value of the surcharges on policyholders would total less than \$120 million annually over the next five years.

#### *Preemptions*

Section 12 would preempt certain state insurance laws by providing that any insurer that complies with the provisions of the bill would be deemed to comply with any state law that regulates insurance for acts of terrorism. This section also would expressly preempt any state laws that limit the amount an insurer could add to premiums to recover any assessments, and laws that require certain actions by insurers in order for rates or policies to be effective.

Section 13 of the bill would require states to adopt uniform guidelines for maintaining certain reserves and disclosing premium costs. Should states fail to adopt these guidelines, the adminis-

trator could adopt them on a national basis, superseding any related state laws. Neither the preemptions in section 12 nor the requirements of section 13, which are intergovernmental mandates as defined by UMRA, would impose significant costs on state, local, or tribal governments.

Previous CBO estimate: On November 16, 2001, CBO transmitted a cost estimate for H.R. 3210, the Terrorism Risk Protection Act, as ordered reported by the House Committee on Financial Services on November 7, 2001. CBO estimates that the effects on direct spending would be the same under the two versions, but the revenue provisions and their estimated effects would differ. Both versions would increase governmental receipts from assessments and surcharges by an estimated \$5.3 billion over the 2002–2011 period. However, the version of the bill ordered reported by the Committee on Financial Services also included provisions that the Joint Committee on Taxation estimated would reduce tax revenues from non-life insurance companies by \$21.4 billion over that period. Hence, we estimated that enacting that version would have the net effect of reducing governmental receipts by \$7.1 billion over the next 10 years. Because the House Committee on Ways and Means did not include those provisions, CBO estimates that its version of H.R. 3210 would increase governmental receipts by \$5.3 billion over the 2002–2011 period.

In addition, while our estimate of total assessments and surcharges under both versions is the same, we estimate that, under the version ordered reported by the House Committee on Ways and Means, a greater proportion of the collections would come from surcharges than under the House Committee on Financial Services' version. While the mandates in both versions of the bill are the same, the higher surcharges would increase the cost of the mandate on purchasers of insurance. However, the aggregate costs of the mandates in both versions would not exceed the thresholds established in UMRA.

Estimate prepared by: Federal costs: Mark Hadley, Megan Carroll, and Ken Johnson; impact on State, local, and tribal governments: Susan Sieg Tompkins; impact on the private sector: Jean Talarico.

Estimated approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

## **V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE**

### **A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS**

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review of any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation within its jurisdiction that the Committee determined that it is appropriate and timely to enact the study relating to tax reserves for property and casualty insurance for terrorist or other catastrophic events that is provided for in the bill, in light of the events of September 11, 2001.

#### B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no revenue measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

#### C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises \* \* \*"), and from the 16th Amendment to the Constitution.

#### D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104-4).

The Committee has determined that the revenue provisions of the bill do not contain Federal mandates on the private sector. The Committee has determined that the revenue provisions of the bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments.

#### E. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the revenue provisions of the bill, and states that those provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

#### F. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the "Code") and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the revenue provisions of the bill contain no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses.

**VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS  
REPORTED**

In compliance with clause 3(e) of rule XIII of the Rule of the House of Representatives, the Committee states that no changes in existing law are made by the revenue provision of the bill, as reported.

