

TERRORISM RISK INSURANCE REVISION AND EXTENSION  
ACT OF 2007

SEPTEMBER 6, 2007.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial  
Services, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 2761]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2761) to extend the Terrorism Insurance Program of the Department of the Treasury, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

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## AMENDMENT

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Terrorism Risk Insurance Revision and Extension Act of 2007”.

### SEC. 2. TERMINATION OF PROGRAM.

Subsection (a) of section 108 of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) is amended by striking “December 31, 2007” and inserting “December 31, 2022”.

### SEC. 3. REVISION OF TERRORISM INSURANCE PROGRAM.

(a) IN GENERAL.—The Terrorism Risk Insurance Act of 2002 is amended—

(1) by striking sections 101, 102, and 103 and inserting the following new sections:

#### “SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

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

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

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

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

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

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

“(6) the United States Government should coordinate with insurers to provide financial compensation to insured parties for losses from acts of terrorism, contributing to the stabilization of the United States economy in a time of national crisis, and periodically assess the ability of the financial services industry to develop the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance that will lessen the financial participation of the United States Government;

“(7) in addition to a terrorist attack on the United States using conventional means or weapons, there is and continues to be a potential threat of a terrorist attack involving the use of unconventional means or weapons, such as nuclear, biological, chemical, or radiological agents;

“(8) as nuclear, biological, chemical, or radiological acts of terrorism (known as NBCR terrorism) present a threat of loss of life, injury, disease, and property damage potentially unparalleled in scope and complexity by any prior event, natural or man-made, the Federal Government’s responsibility in providing for and preserving national economic security calls for a strong Federal role in ensuring financial compensation and economic recovery in the event of such an attack;

“(9) a report issued by the Government Accountability Office in September 2006 concluded that ‘any purely market-driven expansion of coverage’ for NBCR terrorism risk is ‘highly unlikely in the foreseeable future’, and the September 2006 report from the President’s Working Group on Financial Markets concluded that reinsurance for NBCR terrorist events is virtually unavailable and that ‘[g]iven the general reluctance of insurance companies to provide coverage for these types of risks, there may be little potential for future market development’;

“(10) group life insurance companies are important financial institutions whose products make life insurance coverage affordable for millions of Americans and often serve as their only life insurance benefit;

“(11) the group life insurance industry, in the event of a severe act of terrorism, is vulnerable to insolvency because high concentrations of covered employees work in the same locations, because primary group life insurers do not exclude conventional and NBCR terrorism risks while most catastrophic reinsurance does exclude such terrorism risks, and because a large-scale loss of life would fall outside of actuarial expectations of death; and

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

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

“(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance and group life insurance for all types of terrorism risk, including conventional terrorism risk and nuclear, biological, chemical, and radiological terrorism risk;

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

“(3) provide finite liability limits for terrorism insurance losses for insurers and the United States Government.

**“SEC. 102. DEFINITIONS.**

“In this title, the following definitions shall apply:

“(1) ACT OF TERRORISM.—

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

“(i) to be an act of terrorism;

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

“(I) human life;

“(II) property; or

“(III) infrastructure;

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

“(I) an air carrier or vessel described in paragraph (9)(B); or

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

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

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

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

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

“(C) CERTIFICATION OF ACT OF NBCR TERRORISM.—Upon certification of an act of terrorism, the Secretary, in concurrence with the Secretary of State, the Secretary of Homeland Security, and the Attorney General of the United States, shall determine whether the act of terrorism meets the definition of NBCR terrorism in this section. If such determination is that the

act does meet such definition, the Secretary shall further certify such act of terrorism as an act of NBCR terrorism.

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

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

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

“(3) AMOUNT AT RISK.—The term ‘amount at risk’ means face amount less statutory policy reserves for group life insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraph (A) of paragraph (9).

“(4) CONTROL.—An entity has ‘control’ over another entity, if—

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

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

“(C) the Secretary determines, after notice and opportunity for hearing, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity; except that for purposes of any proceeding under this subparagraph, there shall be a presumption that any entity which directly or indirectly owns, controls, or has power to vote less than 5 percent of any class of voting securities of another entity does not have control over that entity.

“(5) COVERED LINES.—The term ‘covered lines’ means property and casualty insurance and group life insurance, as defined in this section.

“(6) DIRECT EARNED PREMIUM.—The term ‘direct earned premium’ means a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraph (A) of paragraph (9).

“(7) EXCESS INSURED LOSS.—The term ‘excess insured loss’ means, with respect to a Program Year, any portion of the amount of insured losses during such Program Year that exceeds the cap on annual liability under section 103(e)(2)(A).

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

“(9) INSURED LOSS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘insured loss’ means any loss resulting from an act of terrorism (including an act of war, in the case of workers’ compensation) that is covered by primary or excess property and casualty insurance, or group life insurance to the extent of the amount at risk, issued by an insurer, if such loss—

“(i) occurs within the United States; or

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

“(B) LIMITATION FOR GROUP LIFE INSURANCE.—Such term shall not include any losses of an insurer resulting from coverage of any single certificate holder under any group life insurance coverages of the insurer to the extent such losses are not compensated under the Program by reason of section 103(e)(1)(D).

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

- “(A) that is—
- “(i) licensed or admitted to engage in the business of providing primary or excess insurance, or group life insurance, in any State;
  - “(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;
  - “(iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity;
  - “(iv) a State residual market insurance entity or State workers’ compensation fund; or
  - “(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);
- “(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, or, in the case of group life insurance, that receives direct premiums, other than in the case of entities described in sections 103(d) and 103(f); and
- “(C) that meets any other criteria that the Secretary may reasonably prescribe.
- “(11) INSURER DEDUCTIBLE.—The term ‘insurer deductible’ means—
- “(A) for the Transition Period, the value of an insurer’s direct earned premiums over the calendar year immediately preceding the date of enactment of this Act, multiplied by 1 percent;
  - “(B) for Program Year 1, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 1, multiplied by 7 percent;
  - “(C) for Program Year 2, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 2, multiplied by 10 percent;
  - “(D) for Program Year 3, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 3, multiplied by 15 percent;
  - “(E) for Program Year 4, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 4, multiplied by 17.5 percent;
  - “(F) for Program Year 5, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 5, multiplied by 20 percent;
  - “(G) for each additional Program Year—
    - “(i) with respect to property and casualty insurance, the value of an insurer’s direct earned premiums over the calendar year immediately preceding such Program Year, multiplied by 20 percent; and
    - “(ii) with respect to group life insurance, the value of an insurer’s amount at risk over the calendar year immediately preceding such Program Year, multiplied by 0.0351 percent;
  - “(H) notwithstanding subparagraphs (A) through (G), for the Transition Period or any Program Year, if an insurer has not had a full year of operations during the calendar year immediately preceding such Period or Program Year, such portion of the direct earned premiums with respect to property and casualty insurance, and such portion of the amounts at risk with respect to group life insurance, of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums and amounts at risk;
  - “(I) notwithstanding subparagraphs (A) through (H) and (J), in the case of any act of NBCR terrorism, for any additional Program Year—
    - “(i) with respect to property and casualty insurance, the value of an insurer’s direct earned premiums over the calendar year immediately preceding such Program Year, multiplied by a percentage, which—
      - “(I) for the second additional Program Year, shall be 3.5 percent;
      - and
      - “(II) for each succeeding Program Year thereafter, shall be 50 basis points greater than the percentage applicable to the preceding additional Program Year; and
    - “(ii) with respect to group life insurance, the value of an insurer’s amount at risk over the calendar year immediately preceding such Program Year, multiplied by a percentage, which—
      - “(I) for the first additional Program Year, shall be 0.00614 percent; and

“(II) for each succeeding Program Year thereafter, shall be 0.088 basis point greater than the percentage applicable to the preceding additional Program Year; and

“(J) notwithstanding subparagraph (G)(i), if aggregate industry insured losses resulting from a certified act of terrorism exceed \$1,000,000,000, for any insurer that sustains insured losses resulting from such act of terrorism, the value of such insurer’s direct earned premiums over the calendar year immediately preceding the Program Year, multiplied by a percentage, which—

“(i) for the first additional Program Year shall be 5 percent;

“(ii) for each additional Program Year thereafter, shall be 50 basis points greater than the percentage applicable to the preceding additional Program Year, except that if an act of terrorism occurs during any additional Program Year that results in aggregate industry insured losses exceeding \$1,000,000,000, the percentage for the succeeding additional Program Year shall be 5 percent and the increase under this clause shall apply to additional Program Years thereafter;

except that for purposes of determining under this subparagraph whether aggregate industry insured losses exceed \$1,000,000,000, the Secretary may combine insured losses resulting from two or more certified acts of terrorism occurring during such Program Year in the same geographic area (with such area determined by the Secretary), in which case such insurer shall be permitted to combine insured losses resulting from such acts of terrorism for purposes of satisfying its insurer deductible under this subparagraph; and except that the insurer deductible under this subparagraph shall apply only with respect to compensation of insured losses resulting from such certified act, or combined certified acts, and that for purposes of compensation of any other insured losses occurring in the same Program Year, the insurer deductible determined under subparagraph (G)(i) or (I) shall apply.

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

“(13) NBCR TERRORISM.—The term ‘NBCR terrorism’ means an act of terrorism that involves nuclear, biological, chemical, or radiological reactions, releases, or contaminations, to the extent any insured losses result from any such reactions, releases, or contaminations.

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

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

“(16) PROGRAM YEARS.—

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

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

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

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

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

“(F) PROGRAM YEAR 5.—The term ‘Program Year 5’ means the period beginning on January 1, 2007 and ending on December 31, 2007.

“(G) ADDITIONAL PROGRAM YEAR.—The term ‘additional Program Year’ means any additional one-year period after Program Year 5 during which the Program is in effect, which period shall begin on January 1 and end on December 31 of the same calendar year.

“(17) PROPERTY AND CASUALTY INSURANCE.—The term ‘property and casualty insurance’—

“(A) means commercial lines of property and casualty insurance, including excess insurance, workers’ compensation insurance, and directors and officers liability insurance; and

“(B) does not include—

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

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

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

“(iv) insurance for medical malpractice;

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

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

“(vii) reinsurance or retrocessional reinsurance;

“(viii) commercial automobile insurance;

“(ix) burglary and theft insurance;

“(x) surety insurance; or

“(xi) professional liability insurance.

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

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

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

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

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

“(B) to end at midnight on that date.

**“SEC. 103. TERRORISM INSURANCE PROGRAM.**

“(a) ESTABLISHMENT OF PROGRAM.—

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

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

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

“(4) NBCR EXEMPTION FOR CERTAIN INSURERS.—Notwithstanding the requirements of paragraph (3):

“(A) ELIGIBILITY.—Upon request, the Secretary may provide an exemption from the requirements of subparagraph (B) of subsection (c)(1) in the Program to an entity that otherwise meets the definition of an insurer under this title if—

“(i) such insurer’s direct earned premium is less than \$50,000,000 in the calendar year immediately preceding the current additional Program Year; and

“(ii) the Secretary makes the determination set forth in subparagraph (D).

“(B) INSURER GROUP.—For purposes of subparagraph (A)(i), the direct earned premium of any insurer shall include the direct earned premiums of every affiliate of that insurer.

“(C) INFORMATION AND CONSULTATION.—Any insurer requesting an exemption pursuant to this paragraph shall provide any information the Secretary may require to establish its eligibility for the exemption. In developing standards for evaluating eligibility for the exemption under this paragraph, the Secretary shall consult with the NAIC.

“(D) DETERMINATION.—In making any determination regarding eligibility for exemption under this paragraph, the Secretary shall consult with the insurance commissioner of the State or other appropriate State regulatory authority where the insurer is domiciled and determine whether the insurer has demonstrated that it would become insolvent if it were required, in the event of an act of NBCR terrorism, to satisfy—

“(i) its deductible and maximum applicable share above the deductible pursuant to sections 102(11)(I) and 103(e)(1)(B), respectively, for such act of NBCR terrorism resulting in aggregate industry insured losses above the trigger established in section 103(e)(1)(C); or

“(ii) its maximum payment obligations for insured losses for such act of NBCR terrorism resulting in aggregate industry insured losses below the trigger established in section 103(e)(1)(C).

“(E) WORKERS’ COMPENSATION AND OTHER COMPULSORY INSURANCE LAW.—In granting an exemption under this paragraph, the Secretary shall not approve any request for exemption with regard to State workers’ compensation insurance or other compulsory insurance law requiring coverage of the risks described in subparagraph (B) of subsection (c)(1).

“(F) EXEMPTION PERIOD.—

“(i) IN GENERAL.—Any exemption granted to an insurer by the Secretary under this paragraph shall have a duration of not longer than 2 years.

“(ii) EXTENSION.—Notwithstanding clause (i), the Secretary may, upon application by an insurer granted an exemption under this paragraph, extend such exemption for additional periods of not longer than 2 years.

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

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

“(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program (including the additional premium, if any, charged for the coverage for insured losses resulting from acts of NBCR terrorism as made available pursuant to subsection (c)(1)(B)) and the Federal share of compensation for insured losses under the Program—

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

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

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

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

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

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

“(B) written certification—

“(i) of the underlying claim; and

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

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

“(c) MANDATORY AVAILABILITY.—

“(1) AVAILABILITY OF COVERAGE FOR INSURED LOSSES.—Subject to paragraph (3), during each Program Year, each entity that meets the definition of an insurer under section 102 shall make available—

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

“(B) in insurance policies for covered lines for which the coverage described in subparagraph (A) is provided, exceptions to the pollution and nuclear hazard exclusions of such policies that render such exclusions inapplicable only as to insured losses arising from acts of NBCR terrorism.

“(2) ALLOWABLE EXCLUSIONS IN OTHER COVERAGE.—Subject to paragraph (3) and notwithstanding any other provision of Federal or State law, including any State workers’ compensation and other compulsory insurance law, if a person elects not to purchase an insurance policy with the coverage described in paragraph (1)—

“(A) an insurer may exclude coverage for all losses from acts of terrorism including acts of NBCR terrorism, except for State workers’ compensation and other compulsory insurance law requiring coverage of the risks described in subsection (c)(1) (unless permitted by State law); or

“(B) an insurer may offer other options for coverage that differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism; except that nothing in this paragraph shall affect paragraph (4).

“(3) APPLICABILITY FOR NBCR TERRORISM.—Notwithstanding any other provision of this Act, paragraphs (1)(B) and (2) shall apply, beginning upon January 1, 2009, with respect to coverage for acts of NBCR terrorism, that is purchased or renewed on or after such date.

“(4) AVAILABILITY OF LIFE INSURANCE WITHOUT REGARD TO LAWFUL FOREIGN TRAVEL.—During each Program Year, each entity that meets the definition of an insurer under section 102 shall make available, in all of its life insurance policies issued after the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007 under which the insured person is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, coverage that neither considers past, nor precludes future, lawful foreign travel by the person insured, and shall not decline such coverage based on past or future, lawful foreign travel by the person insured or charge a premium for such coverage that is excessive and not based on a good faith actuarial analysis, except that an insurer may decline or, upon inception or renewal of a policy, limit the amount of coverage provided under any life insurance policy based on plans to engage in future lawful foreign travel to occur within 12 months of such inception or renewal of the policy but only if, at time of application—

“(A) such declination is based on, or such limitation applies only with respect to, travel to a foreign destination—

“(i) for which the Director of the Centers for Disease Control and Prevention of the Department of Health and Human Services has issued a highest level alert or warning, including a recommendation against non-essential travel, due to a serious health-related condition;

“(ii) in which there is an ongoing military conflict involving the armed forces of a sovereign nation other than the nation to which the insured person is traveling; or

“(iii)(I) that the insurer has specifically designated in the terms of the life insurance policy at the inception of the policy or at renewal, as applicable; and

“(II) with respect to which the insurer has made a good-faith determination that—

“(aa) a serious unlawful situation exists which is ongoing; and

“(bb) the credibility of information by which the insurer can verify the death of the insured person is compromised; and

“(B) in the case of any limitation of coverage, such limitation is specifically stated in the terms of the life insurance policy at the inception of the policy or at renewal, as applicable.

“(d) STATE RESIDUAL MARKET INSURANCE ENTITIES.—

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

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

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

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

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

“(e) INSURED LOSS SHARED COMPENSATION.—

“(1) FEDERAL SHARE.—

“(A) CONVENTIONAL TERRORISM.—Except as provided in subparagraph (B), the Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during any additional Program Year shall be equal to the sum of—

“(i) 85 percent of that portion of the amount of such insured losses that—

“(I) exceeds the applicable insurer deductible required to be paid during such Program Year; and

“(II) based upon pro rata determinations pursuant to paragraph (2)(B), does not result in aggregate industry insured losses during such Program Year exceeding \$100,000,000,000; and

“(ii) 100 percent of the insured losses of the insurer that, based upon pro rata determinations pursuant to paragraph (2)(B), result in aggregate industry insured losses during such Program Year exceeding \$100,000,000,000, up to the limit under paragraph (2)(A).

“(B) NBCR TERRORISM.—

“(i) AMOUNT OF COMPENSATION.—The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer resulting from NBCR terrorism during any additional Program Year shall be equal to the sum of—

“(I) the amount of qualified NBCR losses (as such term is defined in clause (ii)) of the insurer, multiplied by a percentage based on the aggregate industry qualified NBCR losses for the Program Year, which percentage shall be—

“(aa) 85 percent of such aggregate industry qualified NBCR losses of less than \$10,000,000,000;

“(bb) 87.5 percent of such aggregate industry qualified NBCR losses between \$10,000,000,000 and \$20,000,000,000;

“(cc) 90 percent of such aggregate industry qualified NBCR losses between \$20,000,000,000 and \$40,000,000,000;

“(dd) 92.5 percent of such aggregate industry qualified NBCR losses of between \$40,000,000,000 and \$60,000,000,000; and

“(ee) 95 percent of such aggregate industry qualified NBCR losses of more than \$60,000,000,000;

and shall be prorated per insurer based on each insurer’s percentage of the aggregate industry qualified NBCR losses for such additional Program Year; and

“(II) 100 percent of the insured losses of the insurer resulting from NBCR terrorism that, based upon pro rata determinations pursuant to paragraph (2)(B), result in aggregate industry insured losses during such Program Year exceeding \$100,000,000,000, up to the limit under paragraph (2)(A).

“(ii) QUALIFIED NBCR LOSSES.—For purposes of this subparagraph, the term ‘qualified NBCR losses’ means, with respect to insured losses of an insurer resulting from NBCR terrorism during an additional Program Year, that portion of the amount of such insured losses that—

“(I) exceeds the applicable insurer deductible required to be paid during such Program Year; and

“(II) based upon pro rata determinations pursuant to paragraph (2)(B), does not result in aggregate industry insured losses during such Program Year exceeding \$100,000,000,000.

“(C) PROGRAM TRIGGER.—In the case of a certified act of terrorism occurring after March 31, 2006, no compensation shall be paid by the Secretary under subsection (a), unless the aggregate industry insured losses resulting from such certified act of terrorism exceed \$50,000,000, except that if a certified act of terrorism occurs for which resulting aggregate industry insured losses exceed \$1,000,000,000, the applicable amount for any subsequent certified act of terrorism shall be the amount specified in section 102(1)(B)(ii).

“(D) LIMITATION ON COMPENSATION FOR GROUP LIFE INSURANCE.—Notwithstanding any other provision of this Act, the Federal share of compensation under the Program paid by the Secretary for insured losses of an insurer resulting from coverage of any single certificate holder under any group life insurance coverages of the insurer may not during any additional Program Year exceed \$1,000,000.

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

“(2) CAP ON ANNUAL LIABILITY.—

“(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of Federal or State law, including any State workers’ compensation or other compulsory insurance law, if the aggregate amount of the Federal share of

compensation to be paid to all insurers pursuant to paragraph (1) exceeds \$100,000,000,000, during any additional Program Year (until such time as the Congress may act otherwise with respect to such losses)—

“(i) the Secretary shall not make any payment under this title for any portion of the amount of the aggregate insured losses during such Program Year for which the Federal share exceeds \$100,000,000,000; and

“(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of the aggregate insured losses during such Program Year that exceeds \$100,000,000,000.

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

“(C) CLAIMS ALLOCATIONS.—The Secretary shall, by regulation, provide for insurers to allocate claims payments for insured losses under applicable insurance policies in any case described in subparagraph (A). Such regulations shall include provisions for payment, for the purpose of addressing emergency needs of applicable individuals affected by an act of terrorism, of a portion of claims for insured losses promptly upon filing of such claims.

“(3) LIMITATION ON INSURER FINANCIAL RESPONSIBILITY.—

“(A) LIMITATION.—Notwithstanding any other provision of Federal or State law, including any State workers’ compensation or other compulsory insurance law, an insurer’s financial responsibility for insured losses from acts of terrorism shall be limited to its applicable insurer deductible and its applicable share of insured losses that exceed its applicable insurer deductible, subject to the requirements of paragraph (2).

“(B) FEDERAL REIMBURSEMENT.—Notwithstanding any other provision of Federal or State law, the Secretary shall—

“(i) reimburse insurers for any payment of excess insured losses made prior to publication of any notification pursuant to paragraph (4)(A);

“(ii) reimburse insurers for any payment of excess insured losses occurring on or after the date of any notification pursuant to paragraph (4)(A), but only to the extent that—

“(I) such payment is ordered by a court pursuant to subparagraph (C) of this paragraph or is directed by State law, notwithstanding this paragraph, or by Federal law;

“(II) such payment is limited to compensating insurers for their payment of excess insured losses and does not include punitive damages, or litigation or other costs; and

“(III) the insurer has made a good-faith effort to defend against any claims for such payment; and

“(iii) have the right to intervene in any legal proceedings relating to such claims specified in clause (ii)(III).

“(C) FEDERAL COURT JURISDICTION.—

“(i) CONDITIONS.—All claims relating to or arising out of an insurer’s financial responsibility for insured losses from acts of terrorism under this paragraph shall be within the original and exclusive jurisdiction of the district courts of the United States, in accordance with the procedures established in subparagraph (D), if the Secretary certifies that the following conditions have been met, or that there is a reasonable likelihood that the following conditions may be met:

“(I) The aggregate amount of the Federal share of compensation to be paid to all insurers pursuant to paragraph (1) exceeds \$100,000,000,000, pursuant to paragraph (2); and

“(II) the insurer has paid its applicable insurer deductible and its pro rata share of insured losses determined pursuant to paragraph (2)(B).

“(ii) REMOVAL OF STATE COURT ACTIONS.—If the Secretary certifies that conditions set forth in subclauses (I) and (II) of clause (i) have been met, all pending State court actions that relate to or arise out of an insurer’s financial responsibility for insured losses from acts of terrorism under this paragraph shall be removed to a district court of the United States in accordance with subparagraph (D).

“(D) VENUE.—For each certification made by the Secretary pursuant to subparagraph (C)(i), not later than 90 days after the Secretary’s determination the Judicial Panel on Multidistrict Litigation shall designate one district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim

relating to or arising out of an insurer's financial responsibility for insured losses from acts of terrorism under this paragraph.

“(4) NOTICES REGARDING LOSSES AND ANNUAL LIABILITY CAP.—

“(A) APPROACHING CAP.—If the Secretary determines estimated or actual aggregate Federal compensation to be paid pursuant to paragraph (1) equals or exceeds \$80,000,000,000 during any Program Year, the Secretary shall promptly provide notification in accordance with subparagraph (D)—

“(i) of such estimated or actual aggregate Federal compensation to be paid;

“(ii) of the likelihood that such aggregate Federal compensation to be paid for such Program Year will equal or exceed \$100,000,000,000; and

“(iii) that, pursuant to paragraph (2)(A)(ii), insurers are not required to make payments of excess insured losses.

“(B) EVENT LIKELY TO CAUSE LOSSES TO EXCEED CAP.—If any act of terrorism occurs that the Secretary determines is likely to cause estimated or actual aggregate Federal compensation to be paid pursuant to paragraph (1) to exceed \$100,000,000,000 during any Program Year, the Secretary shall, not later than 10 days after such act, provide notification in accordance with subparagraph (D)—

“(i) of such estimated or actual aggregate Federal compensation to be paid; and

“(ii) that, pursuant to paragraph (2)(A)(ii), insurers are not required to make payments for excess insured losses.

“(C) EXCEEDING CAP.—If the Secretary determines estimated or actual aggregate Federal compensation to be paid pursuant to paragraph (1) equals or exceeds \$100,000,000,000 during any Program Year—

“(i) the Secretary shall promptly provide notification in accordance with subparagraph (D)—

“(I) of such estimated or actual aggregate Federal compensation to be paid; and

“(II) that, pursuant to paragraph (2)(A)(ii), insurers are not required to make payments for excess insured losses unless the Congress provides for payments for excess insured losses pursuant to clause (ii) of this subparagraph; and

“(ii) the Congress shall determine the procedures for and the source of any payments for such excess insured losses.

“(D) PARTIES NOTIFIED.—Notification is provided in accordance with this subparagraph only if notification is provided—

“(i) to the Congress, in writing; and

“(ii) to insurers, by causing such notice to be published in the Federal Register.

“(E) DETERMINATIONS.—The Secretary shall make determinations regarding estimated and actual aggregate Federal compensation to be paid promptly after any act of terrorism as may be necessary to comply with this paragraph.

“(F) MANDATORY DISCLOSURE FOR INSURANCE CONTRACTS.—All policies for property and casualty insurance and group life insurance shall be deemed to contain a provision to the effect that no insurer that has met its applicable insurer deductible and its applicable share of insured losses that exceed its applicable insurer deductible but are not compensated pursuant to paragraph (1), shall be obligated to pay for any portion of excess insured loss. Notwithstanding the preceding sentence, insurers shall include a disclosure in their policies detailing the maximum level of Government assistance and the applicable insurer share.

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

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

“(7) INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.—For purposes of paragraph (8), the insurance marketplace aggregate retention amount shall be—

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

“(i) \$10,000,000,000; and

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

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

- “(i) \$12,500,000,000; and
  - “(ii) the aggregate amount, for all insurers, of insured losses during such Program Year;
  - “(C) for Program Year 3, the lesser of—
    - “(i) \$15,000,000,000; and
    - “(ii) the aggregate amount, for all insurers, of insured losses during such Program Year;
  - “(D) for Program Year 4, the lesser of—
    - “(i) \$25,000,000,000; and
    - “(ii) the aggregate amount, for all insurers, of insured losses during such Program Year;
  - “(E) for Program Year 5, the lesser of—
    - “(i) \$27,500,000,000; and
    - “(ii) the aggregate amount, for all insurers, of insured losses during such Program Year; and
  - “(F) for each additional Program Year—
    - “(i) for property and casualty insurance, the lesser of—
      - “(I) \$27,500,000,000; and
      - “(II) the aggregate amount, for all such insurance, of insured losses during such Program Year; and
    - “(ii) for group life insurance, the lesser of—
      - “(I) \$5,000,000,000; and
      - “(II) the aggregate amount, for all such insurance, of insured losses during such Program Year.
- “(8) RECOUPMENT OF FEDERAL SHARE.—
- “(A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount for each of the Program Years referred to in subparagraphs (A) through (F) of paragraph (7) shall be the difference between—
- “(i) the applicable insurance marketplace aggregate retention amount under paragraph (7) for such Program Year; and
  - “(ii) the aggregate amount, for all applicable insurers (pursuant to subparagraph (E)), of insured losses during such Program Year that are not compensated by the Federal Government because such losses—
    - “(I) are within the insurer deductible for the insurer subject to the losses; or
    - “(II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).
- “(B) NO MANDATORY RECOUPMENT IF UNCOMPENSATED LOSSES EXCEED APPLICABLE INSURANCE MARKETPLACE RETENTION.—Notwithstanding subparagraph (A), if the aggregate amount of uncompensated insured losses referred to in clause (ii) of such subparagraph for any Program Year referred to in any of subparagraphs (A) through (F) of paragraph (7) is greater than the applicable insurance marketplace aggregate retention amount under paragraph (7) for such Program Year, the mandatory recoupment amount shall be \$0.
- “(C) MANDATORY ESTABLISHMENT OF SURCHARGES TO RECOUP MANDATORY RECOUPMENT AMOUNT.—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers’ compensation) occurring during any of the Program Years referred to in any of subparagraphs (A) through (F) of paragraph (7), terrorism loss risk-spreading premiums in an amount equal to any mandatory recoupment amount for such Program Year.
- “(D) DISCRETIONARY RECOUPMENT OF REMAINDER OF FINANCIAL ASSISTANCE.—To the extent that the amount of Federal financial assistance provided exceeds any mandatory recoupment amount, the Secretary may—
- “(i) recoup, through terrorism loss risk-spreading premiums, such additional amounts; or
  - “(ii) submit a report to the Congress identifying such amounts that the Secretary believes cannot be recouped, based on—
    - “(I) the ultimate costs to taxpayers of no additional recoupment;
    - “(II) the economic conditions in the commercial marketplace, including the capitalization, profitability, and investment returns of the insurance industry and the current cycle of the insurance markets;
    - “(III) the affordability of commercial insurance for small- and medium-sized businesses; and

- “(IV) such other factors as the Secretary considers appropriate.
- “(E) SEPARATE RECOUPMENT.—“The Secretary shall provide that—
- “(i) any recoupment under this paragraph of amounts paid for Federal financial assistance for insured losses for property and casualty insurance shall be applied to property and casualty insurance policies; and
- “(ii) any recoupment under this paragraph of amounts paid for Federal financial assistance for insured losses for group life insurance shall be applied to group life insurance policies.
- “(9) POLICY SURCHARGE FOR TERRORISM LOSS RISK-SPREADING PREMIUMS.—
- “(A) POLICYHOLDER PREMIUM.—Subject to paragraph (8)(E), any amount established by the Secretary as a terrorism loss risk-spreading premium shall—
- “(i) be imposed as a policyholder premium surcharge on property and casualty insurance policies and group life insurance policies in force after the date of such establishment;
- “(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and
- “(iii) be based on—
- “(I) a percentage of the premium amount charged for property and casualty insurance coverage under the policy; and
- “(II) a percentage of the amount at risk for group life insurance coverage under the policy.
- “(B) COLLECTION.—The Secretary shall provide for insurers to collect terrorism loss risk-spreading premiums and remit such amounts collected to the Secretary.
- “(C) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium may not exceed, on an annual basis—
- “(i) with respect to property and casualty insurance, the amount equal to 3 percent of the premium charged under the policy; and
- “(ii) with respect to group life insurance, the amount equal to 0.0053 percent of the amount at risk under the policy.
- “(D) ADJUSTMENT FOR URBAN AND SMALLER COMMERCIAL AND RURAL AREAS AND DIFFERENT LINES OF INSURANCE.—
- “(i) ADJUSTMENTS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—
- “(I) the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;
- “(II) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and
- “(III) the various exposures to terrorism risk for different lines of insurance.
- “(ii) RECOUPMENT OF ADJUSTMENTS.—Any mandatory recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums.
- “(E) TIMING OF PREMIUMS.—The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.
- “(f) CAPTIVE INSURERS AND OTHER SELF-INSURANCE ARRANGEMENTS.—The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers’ compensation self-insurance programs and State workers’ compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.
- “(g) REINSURANCE TO COVER EXPOSURE.—
- “(1) OBTAINING COVERAGE.—This title may not be construed to limit or prevent insurers from obtaining reinsurance coverage for insurer deductibles or in-

sured losses retained by insurers pursuant to this section, nor shall the obtaining of such coverage affect the calculation of such deductibles or retentions.

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

(2) in section 104(a)—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(3) during the 90-day period beginning upon the certification of any act of terrorism, to issue such regulations as the Secretary considers necessary to carry out this Act without regard to the notice and comment provisions of section 553 of title 5, United States Code.”;

(3) in section 104, by adding at the end the following new subsection:

“(h) ANNUAL ADJUSTMENT.—

“(1) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary shall adjust, for the second additional Program Year and for each additional Program Year thereafter, based upon the percentage change in an appropriate index during the 12-month period preceding such Program Year, each of the following amounts (as such amount may have been previously adjusted):

“(A) The dollar amount in section 102(1)(B)(ii) (relating to act of terrorism).

“(B) The dollar amount in section 102(11)(J) (relating to aggregate industry insured losses in a previously impacted area).

“(C) The dollar amounts in subparagraphs (A) and (B) of section 103(e)(1) (relating to limitation on Federal share).

“(D) The dollar amounts in section 103(e)(1)(C) (relating to Program trigger).

“(E) The dollar amount in section 103(e)(1)(D) (relating to limitation on group life insurance compensation).

“(F) The dollar amounts in section 103(e)(2) (relating to cap on annual liability).

“(G) The dollar amounts in section 103(e)(3)(C) (relating to limitation on insurer financial liability).

“(H) The dollar amounts in section 103(e)(4) (relating to notices regarding losses and annual liability cap).

“(I) The dollar amounts in section 103(e)(7) (relating to insurance marketplace aggregate retention amount).

“(J) The dollar amounts in section 109(b)(1)(C) (relating to membership of Commission on Terrorism Insurance Risk).

“(2) PUBLICATION.—The Secretary shall make the dollar amounts for each additional Program Year, as adjusted pursuant to this subsection, publicly available in a timely manner.”;

(4) in section 106(a)(2)—

(A) in subparagraph (B), by striking “and” at the end;

(B) by redesignating subparagraph (C) as subparagraph (F); and

(C) by inserting after subparagraph (B) the following new subparagraphs:

“(C) during the period beginning on the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007 and ending on December 31, 2008, rates and forms for property and casualty insurance, and group life insurance, required by this title and providing coverage except for NBCR terrorism that are filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory, and, with respect to forms, where a State has prior approval authority, it shall apply to allow subsequent review of such forms;

“(D) during the period beginning on the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007, and ending on December 31, 2009, forms for property and casualty insurance, and group life insurance, covered by this title and providing coverage for NBCR terrorism that are filed with any State, to the extent of the addition of such

coverage for NBCR terrorism and where such coverage was not previously required, shall not be subject to prior approval or waiting period under any law of a State that would otherwise be applicable;

“(E) during the period beginning on the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007, and ending on December 31, 2010, rates for property and casualty insurance, and group life insurance, covered by this title and providing coverage for NBCR terrorism that are filed with any State, to the extent of the addition of such coverage for NBCR terrorism and where such coverage was not previously required, shall not be subject to prior approval or waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as inadequate or unfairly discriminatory; and”;

(5) in section 106, by adding at the end the following new subsection:

“(c) **RULE OF CONSTRUCTION REGARDING INSURER COORDINATION.**—Nothing in this Act shall be construed to prohibit, restrict, or otherwise limit an insurer from entering into an arrangement with another insurer to make available coverage for any portion of insured losses to fulfill the requirements of section 103(c). The Secretary shall develop, in consultation with the NAIC, minimum financial solvency standards and other standards the Secretary determines appropriate with respect to such arrangements. Nothing in this subsection shall be construed to establish any legal partnership.”; and

(6) in section 108(c)(1), by striking “paragraph (4), (5), (6), (7), or (8)” and inserting “paragraph (5), (6), (7), (8), or (9)”.

(b) **REGULATIONS ON CLAIMS ALLOCATIONS.**—The Secretary of the Treasury shall issue the regulations referred to in subparagraph (C) of section 103(e)(2) of the Terrorism Risk Insurance Act of 2002, as amended by subsection (a)(1) of this section, and to carry out subparagraph (B) of such section 103(e)(2), not later than the expiration of the 120-day period beginning upon the date of the enactment of this Act.

(c) **REGULATIONS ON NBCR EXEMPTIONS.**—The Secretary of the Treasury shall issue the regulations to carry out paragraph (4) of section 103(a) of the Terrorism Risk Insurance Act of 2002, as amended by subsection (a)(1) of this section, not later than the expiration of the 180-day period beginning upon the date of the enactment of this Act.

#### **SEC. 4. TERRORISM BUY-DOWN FUND.**

The Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) is amended—

(1) by inserting after section 106 the following new section:

##### **“SEC. 106A. TERRORISM BUY-DOWN FUND.**

“(a) **ESTABLISHMENT.**—The Secretary shall establish a Terrorism Buy-Down Fund (in this section referred to as the ‘Fund’) that shall make available additional terrorism coverage for the insured losses of insurers, which shall be available for purchase by insurers on a voluntary basis.

“(b) **PURCHASE OF DEDUCTIBLE, CO-SHARE, AND TRIGGER BUY-DOWN COVERAGE.**—

“(1) **IN GENERAL.**—An insurer may purchase deductible, co-share, and pre-trigger buy-down coverage (in this section referred to as ‘buy-down coverage’) through the Fund by making an election, in advance, to treat some or all of the premiums it has disclosed pursuant to section 103(b)(2) as fee charges for the Program imposed by the Secretary and remitting such amounts to the Fund.

“(2) **LIMITS.**—An insurer may not purchase buy-down coverage in an amount greater than the lesser of—

“(A) the highest amount specified in section 103(e)(1)(C); and

“(B) the insurer’s one-in-one-hundred-year risk exposure to acts of terrorism.

“(c) **BUY-DOWN COVERAGE.**—The Fund shall provide the buy-down coverage to an insurer for losses for acts of terrorism, without application of the insurer deductible and in addition to any otherwise payable Federal share of compensation pursuant to section 103(e).

“(d) **BUILD-UP.**—The buy-down coverage that shall be payable to an insurer for qualifying losses shall be the aggregate of the insurer’s buy-down coverage premiums plus interest accrued on such amounts.

“(e) **USE BY INSURERS.**—

“(1) **QUALIFYING LOSSES.**—For the purpose of this section, qualifying losses are insured losses by an insurer that are not excess losses and that do not include amounts for which Federal financial assistance pursuant to section 103(e) is received, notwithstanding any limits otherwise applicable regarding section 103(e)(1)(C) (regarding program triggers) or section 102(11) (regarding insurer deductibles).

“(2) USE OF BUY-DOWN COVERAGE.—An insurer may use any buy-down coverage payments received under subsection (f) to satisfy—

“(A) the applicable insurer deductibles for the insurer;

“(B) the portion of the insurer’s losses that exceed the insurer deductible but are not compensated by the Federal share; and

“(C) the insurer’s obligations to pay for insured losses if the Program trigger under section 103(e)(1)(C) is not satisfied.

“(3) BUY-DOWN COVERAGE DOES NOT REDUCE FEDERAL CO-SHARE.—The receipt by an insurer of buy-down coverage under this section for insured losses shall not be considered with respect to calculating the insurer’s insured losses with respect to the insurer’s deductible and eligibility for Federal financial assistance pursuant to section 103(e).

“(4) INSOLVENCY.—An insurer may sell its rights to buy-down coverage from the Fund to another insurer as part of or to avoid an insolvency or as part of a merger, sale, or major reorganization.

“(f) PAYMENT OF BUY-DOWN COVERAGE.—The Fund shall pay the qualifying losses of an insurer purchasing buy-down coverage up to the amount described in subsection (d).

“(g) GOVERNMENT BORROWING.—The Secretary may borrow the funds from the Fund to offset, in whole or in part, the Federal share of compensation provided to all insurers under the Program, except that—

“(1) the Fund shall always immediately provide any buy-down coverage payments required under subsection (f); and

“(2) any such amounts borrowed must be replenished with appropriate interest.

“(h) RISK-SHARING MECHANISMS.—The Secretary shall establish voluntary risk-sharing mechanisms for insurers purchasing buy-down coverage from the Fund to pool their reinsurance purchases and otherwise share terrorism risk.

“(i) TERMINATION.—Upon termination of the Program under section 108, and subject to the Secretary’s continuing authority under section 108(b) to adjust claims in satisfaction under the Program, the Secretary shall provide that the Fund shall become a privately-operated mutual terrorism reinsurance company owned by the insurers that have submitted buy-down coverage premiums in proportion to such premiums minus any buy-down coverage payments received.”; and

(2) in the table of contents in section 1(b), by inserting after the item relating to section 106 the following new item:

“Sec. 106A. Terrorism Buy-Down Fund.”.

#### SEC. 5. ANALYSIS AND STUDY.

(a) ANALYSIS OF MARKET CONDITIONS.—Section 108 of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) is amended by striking subsection (e) and inserting the following:

“(e) ANALYSIS OF MARKET CONDITIONS FOR TERRORISM RISK INSURANCE.—

“(1) IN GENERAL.—The Secretary, in consultation with the NAIC, representatives of the insurance industry, representatives of the securities industry, and representatives of policyholders, shall perform an analysis regarding the long-term availability and affordability of insurance for terrorism risk in the private marketplace, including coverage for—

“(A) property and casualty insurance;

“(B) group life insurance;

“(C) workers’ compensation;

“(D) nuclear, biological, chemical, and radiological events; and

“(E) commercial real estate.

“(2) BIENNIAL REPORTS.—The Secretary shall submit biennial reports to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, on its findings pursuant to the analysis conducted under paragraph (1). The first such report shall be submitted not later than the expiration of the 24-month period beginning on the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007.

“(3) TESTIMONY.—Upon submission of each biennial report under paragraph (2), the Secretary shall provide oral testimony to the Committee on Financial Services of the House of Representatives and Committee on Banking, Housing, and Urban Affairs of the United States Senate regarding the report and the analysis under this subsection for which the report is submitted.”.

(b) COMMISSION ON TERRORISM RISK INSURANCE.—Title I of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) is amended—

(1) by adding at the end the following new section:

**“SEC. 109. COMMISSION ON TERRORISM RISK INSURANCE.**

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

“(b) MEMBERSHIP.—

“(1) The Commission shall consist of 21 members, as follows:

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

“(B) One member who is a State insurance commissioner, designated by the NAIC.

“(C) 15 members, who shall be appointed by the President, who shall include—

“(i) a representative of group life insurers;

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

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

“(iv) a representative of multiline insurers;

“(v) a representative of independent insurance agents;

“(vi) a representative of insurance brokers;

“(vii) a policyholder representative;

“(viii) a representative of the survivors of the victims of the attacks of September 11, 2001;

“(ix) a representative of the reinsurance industry;

“(x) a representative of workers’ compensation insurers;

“(xi) a representative from the commercial mortgage-backed securities industry;

“(xii) a representative from a nationally recognized statistical rating organization;

“(xiii) a real estate developer;

“(xiv) a representative of workers’ compensation insurers created by State legislatures, selected in consultation with the American Association of State Compensation Insurance Funds from among its members; and

“(xv) a representative from the commercial real estate brokerage industry or the commercial property management industry.

“(D) Four members, who shall serve as liaisons to the Congress, who shall include two members jointly selected by the Chairman and Ranking Member of the Committee on Financial Services of the House of Representatives and two members jointly selected by the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate.

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

“(c) DUTIES.—

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

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

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

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

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

“(C) possible actions to significantly reduce the Federal role in covering losses resulting from acts of terrorism.

“(2) EVALUATIONS.—In identifying and making the recommendations required under paragraph (1), the Commission shall specifically evaluate the utility and viability of proposals aimed at improving the availability of insurance against terrorism risk in the private marketplace.

“(3) INITIAL MEETING.—The Commission shall hold its first meeting during the 3-month period that begins 15 months after the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007.

“(4) REPORTS.—

“(A) CONTENTS.—The Commission shall submit two reports to the Congress that—

“(i) evaluate and make recommendations regarding whether there is a need for a Federal terrorism risk insurance program;

“(ii) if so, include a specific, detailed recommendation for the replacement of the Program under this title; and

“(iii) include the identifications, evaluations, and recommendations required under paragraphs (1) and (2).

“(B) TIMING.—The first report required under subparagraph (A) shall be submitted before the expiration of the 60-month period beginning on the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007. The second such report shall be submitted before the expiration of the 96-month period beginning upon such date of enactment.”; and (2) in the table of contents in section 1(b), by inserting after the item relating to section 108 the following new item:

“Sec. 109. Commission on Terrorism Risk Insurance.”.

**SEC. 6. APPLICABILITY.**

The amendments made by this Act shall apply beginning on January 1, 2008. The provisions of the Terrorism Risk Insurance Act of 2002, as in effect on the day before the date of the enactment of this Act, shall apply through the end of December 31, 2007.

PURPOSE AND SUMMARY

H.R. 2761, the Terrorism Risk Insurance Revision and Extension Act of 2007, is intended to extend the Terrorism Risk Insurance Act of 2002 (TRIA) for a second time to ensure the continued availability of terrorism insurance coverage, limit market disruptions, encourage economic development and growth, and maintain the economic security of the United States.

In the aftermath of the terrorist attacks on September 11, 2001, TRIA initially was designed as a three-year program to provide a Federal backstop to the insurance industry through a system of shared public and private compensation for insured losses resulting from acts of terrorism. However, the developing private marketplace for terrorism insurance coverage was not sufficiently robust to obviate the need for TRIA. Congress therefore acted in late 2005 to pass the Terrorism Risk Insurance Extension Act (TRIEA), which extended TRIA for an additional two years until December 31, 2007.

H.R. 2761, as reported, would further extend TRIA beyond its current expiration date of December 31, 2007 for an additional 15-year period. H.R. 2761 would also make several revisions to the existing program, such as expanding the availability of terrorism insurance to protect against nuclear, biological, chemical, or radiological (NBCR) events; adding group life insurance as a line covered by the program; and covering domestic terrorism events.

BACKGROUND AND NEED FOR LEGISLATION

Prior to the events of September 11, 2001, insurers generally did not exclude terrorism losses from their insurance policies. After the 2001 attacks that caused more than \$35 billion of insured losses, however, reinsurers and insurers reassessed their terrorism exposure as a result of depleted surpluses and uncertainty over the likelihood and severity of future terrorist attacks. Many of them withdrew outright from the marketplace and placed developers and those with mortgages in a difficult position. To avoid technical default on their loan contracts, borrowers needed insurance against terrorism, but the private market for terrorism insurance coverage was initially extremely limited.

Congress enacted TRIA to make terrorism insurance coverage more widely available, with the Federal government sharing the risk of loss from future terrorist attacks with the insurance industry for a fixed period of time while the market readjusted and transitioned towards providing additional coverage. TRIA mandated insurer participation in the Terrorism Insurance Program and required that insurers make available terrorism coverage in all covered commercial property and casualty insurance policies.

While the initial TRIA did help address an economic need, the private marketplace did not recover as quickly as many had hoped. As a result, Congress enacted TRIEA in late 2005 to extend TRIA for an additional two years until December 31, 2007. This extension left much of the original TRIA program intact, but raised industry retention and insurer deductible levels, increased the event “trigger” of losses before requiring Federal involvement, and pared back the insurance lines covered by the program.

Despite the two-year extension by TRIEA, the terrorism insurance marketplace remains tenuous, according to many experts, and there remains a strong need for TRIA. At a June 21, 2007 hearing before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises (“Capital Markets Subcommittee”), a number of witnesses testified in support of a long-term or permanent extension of TRIA. At the same hearing, the Superintendent of the New York Insurance Department testified that the private sector will not offer terrorism insurance without TRIA. Also, a witness testifying on behalf of Independent Insurance Agents & Brokers of America expressed concern that insurance companies, particularly small and monoline insurers, may not continue to write terrorism risk insurance if the Federal backstop expires. Moreover, rating agencies that evaluate the solvency of insurers have already begun to ask what steps the companies will take to mitigate their potential exposures if the Program expires. While insurers and reinsurers have worked to improve their modeling and pricing systems, they remain uncertain with regard to their ability to reliably price the coverage for traditional terrorism events like bombing a building using conventional means.

Furthermore, terrorism insurance remains in short supply in places like lower Manhattan, as the developers of the new World Trade Center noted at a hearing before the Capital Markets Subcommittee on March 5, 2007. Insurers also report having limited capital available to cover terrorism losses. While the President’s Working Group on Financial Markets (PWG) observed in its September 2006 report that the availability and affordability of terrorism risk insurance has improved, it also noted that any prediction of the potential degree of long-term development of the terrorism risk insurance market is difficult.

Additional factors call for an extension of TRIA. From an economic perspective, terrorism insurance is a sector likely to experience market failure. Participants in the terrorism insurance marketplace have access to imperfect information, which hampers their decisions about whether to buy the product and how to price the product. The government’s classification of information related to terrorism for national security purposes further contributes to the difficulties that insurers and insureds face when assessing risk. Other factors contributing to market failure include a limited num-

ber of terrorism reinsurance providers and the virtual inability of insurers to alter a contract's terms or cancel a policy. TRIA and TRIEA have helped to overcome some of these economic difficulties, but the private marketplace in the United States is not yet mature enough to handle the risk without some type of assistance. Finally, the private marketplace cannot prevent or defend against acts of terrorism, and the private marketplace should not be expected to provide for recovery from acts of terrorism by itself. Providing economic security against acts of terrorism is a matter of national defense and national security, which is a uniquely governmental function. There is thus a strong need to extend TRIA.

Moreover, in the period since TRIA's enactment, the insurance markets and the economy have continued to grow. Aggregate industry direct earned premiums for TRIA-covered lines in 2002 were approximately \$130 billion and in 2006 were approximately \$170 billion for those same TRIA-covered lines. As a result, there is a corresponding need to modestly grow the program beyond its current cap of \$100 billion in aggregate insured losses.

Also, while TRIA only covers acts of terrorism committed on behalf of a foreign person or foreign interest, experience has shown that the distinction between foreign and domestic terrorism may be artificial. Witnesses at hearings before the Subcommittee have noted that post-TRIA events such as the London Underground bombing and the thwarted attack on John F. Kennedy Airport have demonstrated both the meaninglessness and the practical difficulty of making this distinction.

TRIA to date has not applied to group life insurance. After the 2005 extension of TRIA, the PWG analyzed the group life marketplace and found that "group life insurance still appears to be widely available in the private market and there has not been any impact on cost to policyholders." Indeed, the group life industry has maintained capacity. However, group life carriers face potential insolvency should a terrorist event affect a large group of insureds. Group life insurance is not written and priced with anticipation that an entire group would file claims in the same year. Moreover, terrorism reinsurance availability has greatly decreased since the events of September 11, 2001, and now has higher deductibles, more exclusions, and smaller overall coverage limits. It is important to the economic security of America's workers and their families that group life carriers remain solvent and capable of paying claims after a terrorist event.

Additionally, the metric used for the inclusion of group life in TRIA should be economically fair to group life insurers and their policyholders. If group life recoupment were based on premium, individuals with smaller policies and policies with higher work-related risks (e.g., roofers) will be assessed the most even though they are not necessarily at higher risk. Arguably, they may be at a slightly lower risk, since terrorists are more likely to select "white collar" targets. Moreover, group life premiums are not consistent across product lines. Therefore, if deductibles were based on premiums, group life insurers will meet their deductible at different levels depending on their mix of business.

In addition, many now fear NBCR terrorist attacks. For instance, according to testimony at a hearing before the Capital Markets Subcommittee on June 21, 2007, a 2005 survey of 85 non-prolifera-

tion and national security experts led by Senator Richard Lugar put the likelihood of a nuclear attack somewhere in the world within the next ten years at 20% and the likelihood of a radiological attack at 40%. The same testimony noted that the national terrorism insurance programs in France and the United Kingdom provide NBCR coverage.

The insurance market for NBCR terrorism coverage in the United States, however, is virtually non-existent. In fact, witnesses before the Subcommittee testified that NBCR terrorism exposures are essentially uninsurable without a Federal government program. These NBCR threats are distinctly different from those hazards that are predictable, measurable in dollar terms, and unlikely to result in catastrophic losses. As currently structured, TRIA only covers NBCR losses to the extent that insurers provide the coverage, such as in the case of workers' compensation. Difficulties in modeling and pricing, however, have resulted in most insurers generally not offering coverage to protect against NBCR terrorism. Some have referred to this gap in the nation's economic security plan as an Achilles' heel.

Moreover, the risk of an NBCR terrorism event is essentially uninsurable absent a Federal government program. A September 2006 Government Accountability Office report entitled "Terrorism Insurance: Measuring and Predicting Losses from Unconventional Weapons Is Difficult, but Some Industry Exposure Exists" found that "any purely market-driven expansion of coverage" for NBCR terrorism risk is "highly unlikely in the foreseeable future." Similarly, the 2006 PWG report also noted that reinsurance for NBCR terrorism events is virtually unavailable and observed that "[g]iven the general reluctance of insurance companies to provide coverage for these types of risks, there may be little potential for future market development."

Although the United States has avoided major terrorist attacks since 2001, recent attacks in London, Madrid, and Glasgow make it clear that the threat of terrorism will remain a national concern for the foreseeable future. As such, there is a need to extend the Federal backstop before the expiration of TRIEA at the end of 2007 to ensure continued availability of terrorism insurance coverage, address the gap in NBCR coverage, and remove the artificial distinction between foreign and domestic acts of terrorism. These actions, among others, would allow commercial property owners, developers, and lenders to obtain the insurance needed to protect their property, comply with mortgage covenants, and acquire project financing. They would also promote economic growth and stability as our nation maintains vigilance against the threat of future terrorist attacks at home.

The Committee received the following correspondence:

COALITION TO INSURE AGAINST TERRORISM,  
*Washington DC, July 30, 2007.*

Hon. BARNEY FRANK,  
*Chairman, House Financial Services Committee,  
Rayburn House Office Building, Washington, DC.*

DEAR CHAIRMAN FRANK: The Coalition to Insure Against Terrorism (CIAT), a broad-based coalition of business insurance policyholders representing a significant segment of the nation's GDP,

strongly endorses H.R. 2761, the Terrorism Risk Insurance Revision and Extension Act (TRIREA) of 2007 introduced by Representative Michael Capuano and others that would extend and improve the Terrorism Risk Insurance Extension Act (TRIEA). As the principal consumers of this vital insurance coverage, CIAT thanks you for your long-standing support and leadership on the issue of terrorism risk insurance.

The current federal terrorism risk insurance program has been a tremendous success. TRIEA has helped keep the economy going in the face of continued terrorist threats by allowing businesses across America to secure this commercially necessary product, saving countless jobs in the process. Moreover, it serves as an important tool to minimize the severe economic disruption that almost certainly will occur from a future terrorist attack.

With TRIEA's expiration looming at the end of 2007, CIAT earlier this year outlined a number of key enhancements to the program that we believe need to be part of any extension legislation. CIAT is pleased that H.R. 2761 includes these key provisions.

Most important to policyholders are four provisions. First, the program's term would be extended to ten years. We applaud H.R. 2761 for recognizing that such an extension affords policyholders with the certainty necessary for long-term projects and economic activity to move forward. With this in mind, CIAT strongly supports the amendment to be offered by Rep. Peter King to extend the program to fifteen years.

Second, H.R. 2761 would give businesses an important new option to purchase insurance for catastrophic non-conventional terrorism risks—the types of risks our government warns us about repeatedly—by making available to policyholders insurance against weapons of mass destruction—so-called NBCR risks—under “same terms and conditions” as “conventional” risks.

Third, this legislation would eliminate the distinction between foreign and domestic acts. As the London bombings and the foiled Kennedy Airport plot demonstrate, we must be prepared for “home-grown” terrorism as well as threats from abroad.

Fourth, H.R. 2761 would lower substantially the program's trigger level which will encourage smaller insurers, currently unable to participate in the program, to return to the terrorism risk insurance marketplace, thereby providing policyholders with a wider choice of insurance options.

Lastly, there is an additional issue of importance to CIAT. CIAT strongly opposes any increase in the “recoupment” provision contained in TRIEA. We consider any increase above the current amount to be an excessive burden on the victims of terrorism and has the potential to be a lengthy drag on the economy in the aftermath of the next terrorist attack.

CIAT thanks you for taking a significant step towards securing the economy against terrorism risk by scheduling this mark-up.

Sincerely,

THE COALITION TO INSURE AGAINST TERRORISM.

#### HEARINGS

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises of the Committee on Financial Serv-

ices held three hearings to examine the need for legislation, the policy options for legislation, and the legislation itself.

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing on March 5, 2007, entitled “The Need to Extend the Terrorism Risk Insurance Act.” The following witnesses testified: The Honorable Charles E. Schumer, United States Senator; The Honorable Michael R. Bloomberg, Mayor of New York City; Mr. Eric R. Dinallo, Acting Superintendent, New York Insurance Department; Dr. Roger W. Ferguson, Chairman, Swiss Re America Holding Corporation; Mr. John N. Lieber, Senior Vice President, World Trade Center Properties, LLC; Mr. Stephen L. Green, Chief Executive Officer, SL Green Realty Corporation; Mr. Steven K. Graves, Chief Operating Officer, Principal Real Estate Investors; Mr. Edmund F. Kelly, Chairman, President and Chief Executive Officer, Liberty Mutual Group; Mr. Warren Heck, CPCU, President & CEO, Greater New York Mutual Insurance Company; and Mr. Donald J. Bailey, Chief Executive Officer, Willis NA.

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing on April 24, 2007, entitled “Policy Options for Extending the Terrorism Risk Insurance Act.” The following witnesses testified: Mr. Leonard W. Cotton, Vice Chairman, Centerline Capital Group; Mr. Brian E. Dowd, Chief Executive Officer, Insurance—North America, ACE Group; Mr. Vincent T. Donnelly, President and Chief Executive Officer, PMA Insurance Group; Mr. Thomas R. Watjen, President and Chief Executive Officer, Unum Group; Mr. Joseph P. Ditchman, Jr., Partner, Colliers Ostendorff Morris, on behalf of the National Association of REALTORS; and Ms. Janice M. Abraham, President and Chief Executive Officer, United Educators.

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing on June 21, 2007, entitled “Examining a Legislative Solution to Extend and Revise the Terrorism Risk Insurance Act.” The following witnesses testified: The Honorable David G. Nason, Assistant Secretary for Financial Institutions, U.S. Department of the Treasury; The Honorable Eric R. Dinallo, Superintendent, New York Insurance Department; The Honorable Marc Racicot, Chief Executive Officer and President, American Insurance Association; Mr. Christopher J. Nassetta, President and Chief Executive Officer, Host Hotels & Resorts, Inc. and Chairman, The Real Estate Roundtable, on behalf of the Coalition to Insure Against Terrorism; Ms. Jill M. Dalton, Managing Director, Global Property & Multinational Practice, Marsh, Inc., on behalf of the Council of Insurance Agents and Brokers; Ms. Sharon Emek, Ph.D., C.I.C., Partner, CBS Coverage Group, Inc., on behalf of the Independent Insurance Agents & Brokers of America; Mr. Warren Heck, CPCU, Chairman and Chief Executive Officer, Greater New York Mutual Insurance Company, on behalf of the National Association of Mutual Insurance Companies and the Property Casualty Insurance Association of America; Dr. Howard Kunreuther, Ph.D., Cecilia Yen Koo Professor of Decision Sciences & Public Policy, Co-Director Risk Management and Decision Processes Center, Wharton School, University of Pennsylvania; Mr. Frank Nutter, President, Reinsurance Association of America; and

Mr. Dennis W. Smith, President and Chief Executive Officer, Missouri Employers Mutual Insurance.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on August 1, 2007, and ordered H.R. 2761, Terrorism Risk Insurance Revision and Extension Act of 2007, as amended, favorably reported to the House by a record vote of 49 yeas and 20 nays. Previously, the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises met in open session on July 24, 2007, and ordered H.R. 2761, as amended, forwarded to the Full Committee with a favorable recommendation by a record vote of 26 yeas and 17 nays.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 49 yeas and 20 nays (Record vote No. FC-66). The names of Members voting for and against follow:

#### RECORD VOTE NO. FC-66

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank .....	X	.....	.....	Mr. Bachus .....	.....	X	.....
Mr. Kanjorski .....	X	.....	.....	Mr. Baker .....	.....	X	.....
Ms. Waters .....	X	.....	.....	Ms. Pryce (OH) .....	X	.....	.....
Mrs. Maloney .....	X	.....	.....	Mr. Castle .....	.....	X	.....
Mr. Gutierrez .....	X	.....	.....	Mr. King (NY) .....	X	.....	.....
Ms. Velázquez .....	X	.....	.....	Mr. Royce .....	.....	X	.....
Mr. Watt .....	X	.....	.....	Mr. Lucas .....	.....	X	.....
Mr. Ackerman .....	X	.....	.....	Mr. Paul .....	.....	X	.....
Ms. Carson .....	X	.....	.....	Mr. Gillmor .....	X	.....	.....
Mr. Sherman .....	X	.....	.....	Mr. LaTourette .....	X	.....	.....
Mr. Meeks .....	X	.....	.....	Mr. Manzullo .....	.....	X	.....
Mr. Moore (KS) .....	X	.....	.....	Mr. Jones .....	X	.....	.....
Mr. Capuano .....	X	.....	.....	Mrs. Biggert .....	.....	X	.....
Mr. Hinojosa .....	X	.....	.....	Mr. Shays .....	X	.....	.....
Mr. Clay .....	X	.....	.....	Mr. Miller (CA) .....	X	.....	.....
Mrs. McCarthy .....	X	.....	.....	Mrs. Capito .....	X	.....	.....
Mr. Baca .....	.....	.....	.....	Mr. Feeney .....	.....	X	.....
Mr. Lynch .....	X	.....	.....	Mr. Hensarling .....	.....	X	.....
Mr. Miller (NC) .....	X	.....	.....	Mr. Garrett (NJ) .....	.....	X	.....
Mr. Scott .....	X	.....	.....	Ms. Brown-Waite .....	X	.....	.....
Mr. Green .....	X	.....	.....	Mr. Barrett (SC) .....	.....	X	.....
Mr. Cleaver .....	X	.....	.....	Mr. Gerlach .....	X	.....	.....
Ms. Bean .....	X	.....	.....	Mr. Pearce .....	.....	X	.....
Ms. Moore (WI) .....	X	.....	.....	Mr. Neugebauer .....	X	.....	.....
Mr. Davis (TN) .....	X	.....	.....	Mr. Price (GA) .....	.....	X	.....
Mr. Sires .....	X	.....	.....	Mr. Davis (KY) .....	X	.....	.....
Mr. Hodes .....	X	.....	.....	Mr. McHenry .....	X	.....	.....
Mr. Ellison .....	X	.....	.....	Mr. Campbell .....	.....	X	.....
Mr. Klein .....	X	.....	.....	Mr. Putnam .....	X	.....	.....
Mr. Mahoney (FL) .....	X	.....	.....	Mrs. Bachmann .....	.....	X	.....
Mr. Wilson .....	X	.....	.....	Mr. Roskam .....	.....	X	.....
Mr. Perlmutter .....	X	.....	.....	Mr. Marchant .....	.....	X	.....
Mr. Murphy .....	X	.....	.....	Mr. McCotter .....	.....	X	.....
Mr. Donnelly .....	X	.....	.....				
Mr. Wexler .....	X	.....	.....				
Mr. Marshall .....	.....	X	.....				

RECORD VOTE NO. FC-66—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Boren .....	X	.....	.....				

The following amendments to the amendment in the nature of a substitute recommended by the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises were decided by record votes. The names of Members voting for and against follow:

An amendment by Mr. Putnam, No. 5, inserting an 8+2 year extension of the program, was not agreed to by a record vote of 26 yeas and 39 nays (Record vote No. FC-63):

RECORD VOTE NO. FC-63

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank .....		X	.....	Mr. Bachus .....	X	.....	.....
Mr. Kanjorski .....		X	.....	Mr. Baker .....	X	.....	.....
Ms. Waters .....		X	.....	Ms. Pryce (OH) .....	X	.....	.....
Mrs. Maloney .....		X	.....	Mr. Castle .....	X	.....	.....
Mr. Gutierrez .....		X	.....	Mr. King (NY) .....		X	.....
Ms. Velázquez .....		X	.....	Mr. Royce .....	X	.....	.....
Mr. Watt .....		X	.....	Mr. Lucas .....	X	.....	.....
Mr. Ackerman .....		X	.....	Mr. Paul .....	X	.....	.....
Ms. Carson .....		X	.....	Mr. Gillmor .....		.....	.....
Mr. Sherman .....		X	.....	Mr. LaTourette .....		X	.....
Mr. Meeks .....		X	.....	Mr. Manzullo .....	X	.....	.....
Mr. Moore (KS) .....		X	.....	Mr. Jones .....		X	.....
Mr. Capuano .....		X	.....	Mrs. Biggert .....	X	.....	.....
Mr. Hinojosa .....		X	.....	Mr. Shays .....		.....	.....
Mr. Clay .....		X	.....	Mr. Miller (CA) .....		X	.....
Mrs. McCarthy .....		X	.....	Mrs. Capito .....	X	.....	.....
Mr. Baca .....		.....	.....	Mr. Feeney .....	X	.....	.....
Mr. Lynch .....		X	.....	Mr. Hensarling .....	X	.....	.....
Mr. Miller (NC) .....		X	.....	Mr. Garrett (NJ) .....	X	.....	.....
Mr. Scott .....		X	.....	Ms. Brown-Waite (FL) .....	X	.....	.....
Mr. Green .....		X	.....	Mr. Barrett (SC) .....	X	.....	.....
Mr. Cleaver .....		X	.....	Mr. Gerlach .....	X	.....	.....
Ms. Bean .....		X	.....	Mr. Pearce .....	X	.....	.....
Ms. Moore (WI) .....		X	.....	Mr. Neugebauer .....	X	.....	.....
Mr. Davis (TN) .....		X	.....	Mr. Price (GA) .....	X	.....	.....
Mr. Sires .....		X	.....	Mr. Davis (KY) .....	X	.....	.....
Mr. Hodes .....		X	.....	Mr. McHenry .....	.....	.....	.....
Mr. Ellison .....		X	.....	Mr. Campbell .....	X	.....	.....
Mr. Klein .....		X	.....	Mr. Putnam .....	X	.....	.....
Mr. Mahoney (FL) .....		X	.....	Mrs. Bachmann .....	X	.....	.....
Mr. Wilson .....		X	.....	Mr. Roskam .....	X	.....	.....
Mr. Perlmutter .....		X	.....	Mr. Marchant .....	X	.....	.....
Mr. Murphy .....		X	.....	Mr. McCotter .....	X	.....	.....
Mr. Donnelly .....		X	.....				
Mr. Wexler .....		.....	.....				
Mr. Marshall .....		X	.....				
Mr. Boren .....		X	.....				

An amendment by Mr. King (N.Y.), No. 6, extending the program by 15 years, was agreed to by a record vote of 39 yeas and 30 nays (Record vote No. FC-64):

RECORD VOTE NO. FC-64

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank .....	X	.....	.....	Mr. Bachus .....		X	.....
Mr. Kanjorski .....		X	.....	Mr. Baker .....		X	.....
Ms. Waters .....	X	.....	.....	Ms. Pryce (OH) .....		X	.....

## RECORD VOTE NO. FC-64—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mrs. Maloney	X			Mr. Castle		X	
Mr. Gutierrez	X			Mr. King (NY)	X		
Ms. Velázquez	X			Mr. Royce		X	
Mr. Watt	X			Mr. Lucas		X	
Mr. Ackerman	X			Mr. Paul		X	
Ms. Carson	X			Mr. Gillmor		X	
Mr. Sherman	X			Mr. LaTourette	X		
Mr. Meeks	X			Mr. Manzullo		X	
Mr. Moore (KS)	X			Mr. Jones	X		
Mr. Capuano		X		Mrs. Biggert		X	
Mr. Hinojosa	X			Mr. Shays	X		
Mr. Clay	X			Mr. Miller (CA)	X		
Mrs. McCarthy	X			Mrs. Capito		X	
Mr. Baca				Mr. Feeney		X	
Mr. Lynch	X			Mr. Hensarling		X	
Mr. Miller (NC)	X			Mr. Garrett (NJ)		X	
Mr. Scott	X			Ms. Brown-Waite (FL)		X	
Mr. Green	X			Mr. Barrett (SC)		X	
Mr. Cleaver	X			Mr. Gerlach		X	
Ms. Bean	X			Mr. Pearce		X	
Ms. Moore (WI)	X			Mr. Neugebauer		X	
Mr. Davis (TN)	X			Mr. Price (GA)		X	
Mr. Sires	X			Mr. Davis (KY)		X	
Mr. Hodes	X			Mr. McHenry	X		
Mr. Ellison	X			Mr. Campbell		X	
Mr. Klein	X			Mr. Putnam		X	
Mr. Mahoney (FL)	X			Mrs. Bachmann		X	
Mr. Wilson	X			Mr. Roskam		X	
Mr. Perlmutter	X			Mr. Marchant		X	
Mr. Murphy	X			Mr. McCotter		X	
Mr. Donnelly	X						
Mr. Wexler	X						
Mr. Marshall		X					
Mr. Boren	X						

An amendment by Mr. Garrett, No. 10, regarding a revised 5 percent deductible, was agreed to by a record vote of 42 yeas and 27 nays (Record vote No. FC-65):

## RECORD VOTE NO. FC-65

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski	X			Mr. Baker	X		
Ms. Waters	X			Ms. Pryce (OH)	X		
Mrs. Maloney		X		Mr. Castle	X		
Mr. Gutierrez		X		Mr. King (NY)		X	
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul	X		
Ms. Carson		X		Mr. Gillmor	X		
Mr. Sherman		X		Mr. LaTourette	X		
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)	X			Mr. Jones	X		
Mr. Capuano		X		Mrs. Biggert	X		
Mr. Hinojosa	X			Mr. Shays	X		
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca				Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling	X		
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite (FL)	X		
Mr. Green		X		Mr. Barrett (SC)	X		

## RECORD VOTE NO. FC-65—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Cleaver .....		X	.....	Mr. Gerlach .....	X	.....	.....
Ms. Bean .....	X	.....	.....	Mr. Pearce .....	X	.....	.....
Ms. Moore (WI) .....		X	.....	Mr. Neugebauer .....	X	.....	.....
Mr. Davis (TN) .....	X	.....	.....	Mr. Price (GA) .....	X	.....	.....
Mr. Sires .....		X	.....	Mr. Davis (KY) .....	X	.....	.....
Mr. Hodes .....		X	.....	Mr. McHenry .....	X	.....	.....
Mr. Ellison .....		X	.....	Mr. Campbell .....	X	.....	.....
Mr. Klein .....	X	.....	.....	Mr. Putnam .....	X	.....	.....
Mr. Mahoney (FL) .....		X	.....	Mrs. Bachmann .....	X	.....	.....
Mr. Wilson .....		X	.....	Mr. Roskam .....	X	.....	.....
Mr. Perlmutter .....		X	.....	Mr. Marchant .....	X	.....	.....
Mr. Murphy .....		X	.....	Mr. McCotter .....	X	.....	.....
Mr. Donnelly .....	X	.....	.....				
Mr. Wexler .....		X	.....				
Mr. Marshall .....	X	.....	.....				
Mr. Boren .....	X	.....	.....				

The following other amendments were also considered by the Committee:

An amendment in the nature of a substitute recommended by the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, making various technical and substantive changes, as amended, was agreed to by a voice vote.

The following amendments to the amendment in the nature of a substitute were considered:

An amendment by Mr. Frank, No. 1, a manager's amendment making various technical and substantive changes, was agreed to by a voice vote.

An amendment by Mr. Manzullo, No. 2, providing for NBCR small insurer exemption, was agreed to by a voice vote.

An amendment by Mr. Clay, No. 3, including farm owners' multiple peril insurance, was agreed to by a voice vote.

An amendment by Mr. Marchant, No. 4, inserting a rule of construction regarding insurer coordination, was agreed to by a voice vote.

An amendment by Ms. Brown-Waite, No. 7, requiring an annual adjustment, was agreed to by a voice vote.

An amendment by Mrs. Bachmann, No. 8, regarding discretionary recoupment, was agreed to by a voice vote.

An amendment by Mr. Garrett, No. 9, regarding a 5 per cent deductible, was not agreed to.

On Tuesday, July 24, 2007, the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises met in open session and ordered H.R. 2761, as amended, forwarded to the Full Committee with a favorable recommendation, by a record vote of 26 yeas and 17 nays (Record vote No. CM-4). The names of Members voting for and against follow:

## RECORD VOTE NO. CM-4

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Kanjorski .....	X	.....	.....	Ms. Pryce .....		X	.....
Mr. Ackerman .....	X	.....	.....	Mr. Baker .....		X	.....
Mr. Sherman .....	X	.....	.....	Mr. Shays .....	X	.....	.....
Mr. Meeks .....	X	.....	.....	Mr. Gillmor .....	X	.....	.....
Mr. Moore (KS) .....	X	.....	.....	Mr. Castle .....		X	.....
Mr. Capuano .....	X	.....	.....	Mr. King .....	X	.....	.....

RECORD VOTE NO. CM-4—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Hinojosa	X			Mr. Lucas			
Mrs. McCarthy	X			Mr. Manzullo		X	
Mr. Baca				Mr. Royce		X	
Mr. Lynch				Ms. Capito		X	
Mr. Miller (NC)	X			Mr. Putnam		X	
Mr. Scott	X			Mr. Barrett (SC)		X	
Ms. Velázquez	X			Ms. Brown-Waite		X	
Ms. Bean	X			Mr. Feeney			
Ms. Moore	X			Mr. Garrett (NJ)		X	
Mr. Davis (TN)	X			Mr. Gerlach		X	
Mr. Sires	X			Mr. Hensarling			
Mr. Hodes	X			Mr. Davis (KY)		X	
Mr. Klein	X			Mr. Campbell		X	
Mr. Mahoney	X			Mrs. Bachmann		X	
Mr. Perlmutter	X			Mr. Roskam		X	
Mr. Murphy	X			Mr. Marchant		X	
Mr. Donnelly	X			Mr. McCotter		X	
Mr. Wexler	X			Mr. Bachus, ex officio			
Mr. Marshall							
Mr. Boren	X						
Mr. Frank, ex officio							

During the Subcommittee markup, the following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment by Mr. Garrett, No. 1f, Section 2 changing of date, was not agreed to by a record vote of 14 yeas and 29 nays (Record vote No. CM-1):

RECORD VOTE NO. CM-1

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Kanjorski		X		Ms. Pryce		X	
Mr. Ackerman		X		Mr. Baker	X		
Mr. Sherman		X		Mr. Shays		X	
Mr. Meeks		X		Mr. Gillmor	X		
Mr. Moore (KS)		X		Mr. Castle	X		
Mr. Capuano		X		Mr. King		X	
Mr. Hinojosa		X		Mr. Lucas			
Mrs. McCarthy		X		Mr. Manzullo	X		
Mr. Baca				Mr. Royce	X		
Mr. Lynch				Ms. Capito		X	
Mr. Miller (NC)		X		Mr. Putnam	X		
Mr. Scott		X		Mr. Barrett (SC)	X		
Ms. Velázquez		X		Ms. Brown-Waite	X		
Ms. Bean		X		Mr. Feeney			
Ms. Moore		X		Mr. Garrett (NJ)	X		
Mr. Davis (TN)		X		Mr. Gerlach		X	
Mr. Sires		X		Mr. Hensarling			
Mr. Hodes		X		Mr. Davis (KY)		X	
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam	X		
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X		Mr. McCotter	X		
Mr. Wexler		X		Mr. Bachus, ex officio			
Mr. Marshall							
Mr. Boren		X					
Mr. Frank, ex officio							

An amendment by Mr. Putnam, No. 1g, striking section 2 and inserting new section setting new termination dates, was not agreed

to by a record vote of 18 yeas and 25 nays (Record vote No. CM-2):

RECORD VOTE NO. CM-2

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Kanjorski		X		Ms. Pryce	X		
Mr. Ackerman		X		Mr. Baker	X		
Mr. Sherman		X		Mr. Shays		X	
Mr. Meeks		X		Mr. Gillmor	X		
Mr. Moore (KS)		X		Mr. Castle	X		
Mr. Capuano		X		Mr. King		X	
Mr. Hinojosa		X		Mr. Lucas			
Mrs. McCarthy		X		Mr. Manzullo	X		
Mr. Baca				Mr. Royce	X		
Mr. Lynch				Ms. Capito	X		
Mr. Miller (NC)		X		Mr. Putnam	X		
Mr. Scott		X		Mr. Barrett (SC)	X		
Ms. Velázquez		X		Ms. Brown-Waite	X		
Ms. Bean		X		Mr. Feeney			
Ms. Moore		X		Mr. Garrett (NJ)	X		
Mr. Davis (TN)		X		Mr. Gerlach	X		
Mr. Sires		X		Mr. Hensarling			
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam	X		
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X		Mr. McCotter	X		
Mr. Wexler		X		Mr. Bachus, ex officio			
Mr. Marshall							
Mr. Boren		X					
Mr. Frank, ex officio							

An amendment by Mrs. Bachmann, No. 1h, requiring full recoupment of Federal financial assistance share, was not agreed to by a record vote of 19 yeas and 24 nays (Record vote No. CM-3):

RECORD VOTE NO. CM-3

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Kanjorski		X		Ms. Pryce	X		
Mr. Ackerman		X		Mr. Baker	X		
Mr. Sherman		X		Mr. Shays	X		
Mr. Meeks		X		Mr. Gillmor	X		
Mr. Moore (KS)		X		Mr. Castle	X		
Mr. Capuano		X		Mr. King		X	
Mr. Hinojosa		X		Mr. Lucas			
Mrs. McCarthy		X		Mr. Manzullo	X		
Mr. Baca				Mr. Royce	X		
Mr. Lynch				Ms. Capito	X		
Mr. Miller (NC)		X		Mr. Putnam	X		
Mr. Scott		X		Mr. Barrett (SC)	X		
Ms. Velázquez		X		Ms. Brown-Waite	X		
Ms. Bean		X		Mr. Feeney			
Ms. Moore		X		Mr. Garrett (NJ)	X		
Mr. Davis (TN)		X		Mr. Gerlach	X		
Mr. Sires		X		Mr. Hensarling			
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam	X		
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X		Mr. McCotter	X		
Mr. Wexler		X		Mr. Bachus, ex officio			

## RECORD VOTE NO. CM-3—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Marshall .....	.....	.....	.....				
Mr. Boren .....	.....	X	.....				
Mr. Frank, ex officio .....	.....	.....	.....				

During the Subcommittee markup, the following amendments were also considered:

An amendment by Mr. Kanjorski, No. 1, a manager's amendment in the nature of a substitute, was agreed to, as amended, by a voice vote.

An amendment by Ms. Pryce, No. 1a, striking Section 2 and inserting new termination dates for NBCR, was not agreed to by a voice vote.

An amendment by Mr. Ackerman, No. 1b, including the Secretary of Homeland Security in certification for acts of terrorism and acts of NBCR terrorism, was agreed to by a voice vote.

An amendment by Mr. Baker, No. 1c, regarding rates and disallowed claims at State level may go to Federal court, was withdrawn.

An amendment by Mr. Manzullo, No. 1d, regarding NBCR make-available exceptions for small businesses, was withdrawn.

An amendment by Mr. Marchant, No. 1e, to allow NBCR insurance partnering, was withdrawn.

An amendment by Mr. Baker, No. 1i, striking "in the same previously impacted areas" and "in the same impacted areas", was agreed to by a voice vote.

## COMMITTEE OVERSIGHT FINDINGS

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

## PERFORMANCE GOALS AND OBJECTIVES

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

H.R. 2761, the "Terrorism Risk Insurance Revision and Extension Act of 2007," is intended to extend the Terrorism Risk Insurance Act of 2002 (TRIA) to ensure the continued availability of terrorism insurance coverage, limit market disruptions, encourage economic development and growth, and maintain the economic security of the United States. As reported, H.R. 2761 would further extend TRIA beyond its current expiration date of December 31, 2007 for an additional 15-year period. H.R. 2761 would also make several revisions to the existing program, such as expanding the availability of insurance to protect against nuclear, biological, chemical, or radiological (NBCR) events; adding group life insurance as a line covered by the program; and covering domestic terrorism events.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX  
EXPENDITURES

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

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

SEPTEMBER 6, 2007.

Hon. BARNEY FRANK,  
*Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2761, the Terrorism Risk Insurance Revision and Extension Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

PETER ORSZAG.

Enclosure.

*H.R. 2761—Terrorism Risk Insurance Revision and Extension Act  
of 2007*

Summary: H.R. 2761 would extend the Terrorism Risk Insurance Act (TRIA) for 15 years—through calendar year 2022. The bill also would add group life insurance to the lines of coverage included under the program and would require insurers to make coverage available to property and casualty and group life insurance policyholders for losses resulting from domestic terrorism and, after January 1, 2009, terrorism involving nuclear, biological, chemical, and radioactive (NBCR) materials.

Enacted in 2002, TRIA requires insurance firms that sell commercial property and casualty insurance to offer clients insurance coverage for damages caused by foreign terrorist attacks. Under TRIA, the federal government would help insurers cover losses in the event of a terrorist attack under certain conditions, and would also impose assessments on the insurance industry to recover all or a portion of the federal payments. The program is set to expire at the end of calendar year 2007.

There is no reliable way to predict how much insured damage terrorists might cause in any specific year. Rather, CBO's estimate

of the cost of financial assistance provided under H.R. 2761 represents an expected value of payments from the program—a weighted average that reflects industry experts’ opinions of various outcomes ranging from zero damages up to very large damages resulting from 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 government’s losses from providing this insurance, although firms do not pay any premium for the federal assistance offered by TRIA.

On this basis, CBO estimates that enacting H.R. 2761 would increase direct spending by \$3.7 billion over the 2008–2012 period and by \$10.4 billion over the 2008–2017 period. An additional \$13.7 billion would be spent after 2017.

Under H.R. 2761, the Department of the Treasury would be directed to recoup some or all of the costs of providing financial assistance through taxes imposed on insurance firms (surcharges). Over many years, CBO expects that an increase in spending for financial assistance would be largely offset (on a cash basis) by a corresponding increase in governmental receipts (i.e., revenues) depending on the amount of insured losses. We assume, however, that the Secretary of the Treasury would not impose any surcharges until two years after federal assistance is provided and that those amounts would be collected over many years. Thus, CBO estimates that enacting the recoupment provision of H.R. 2761 would increase governmental receipts by about \$100 million over the 2008–2012 period and by \$2.0 billion over the 2008–2017 period, net of income and payroll tax offsets.

Considering both the direct spending and revenue impacts of the bill, CBO estimates that enacting H.R. 2761 would increase budget deficits or decrease surpluses by \$200 million in 2008, \$3.5 billion over the 2008–2012 period, and \$8.4 billion over the 2008–2017 period.

H.R. 2761 would extend and impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate costs of complying with those mandates would not exceed the annual thresholds established by UMRA (\$66 million for intergovernmental mandates and \$131 million for private-sector mandates in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2761 is shown in Table 1. The costs of this legislation fall within budget function 370 (commerce and housing credit).

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 2761, THE TERRORISM RISK INSURANCE REVISION AND EXTENSION ACT OF 2007

	By fiscal year, in billions of dollars—											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority ..	0.2	0.5	0.8	1.0	1.1	1.2	1.3	1.4	1.4	1.5	3.6	10.4
Estimated Outlays .....	0.2	0.5	0.8	1.0	1.1	1.2	1.3	1.4	1.4	1.5	3.6	10.4
CHANGES IN REVENUES												
Estimated Revenues .....	0	0	*	*	0.1	0.2	0.3	0.4	0.4	0.6	0.1	2.0

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 2761, THE TERRORISM RISK INSURANCE REVISION AND EXTENSION ACT OF 2007—Continued

	By fiscal year, in billions of dollars—												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017	
NET IMPACT													
Estimated Change in the Deficit or Surplus <sup>1</sup> .....	-0.2	-0.5	-0.8	-1.0	-1.0	-1.0	-1.0	-1.0	-1.0	-0.9	-3.5	-8.4	

Note: \* = less than \$50 million.

<sup>1</sup> Negative numbers indicate an increase in the deficit or a decrease in the surplus.

**Basis of estimate:** For this estimate, CBO assumes that H.R. 2761 will be enacted before the end of calendar year 2007. We estimate that enacting H.R. 2761 would increase direct spending by \$10.4 billion and would increase governmental revenues by \$2.0 billion over the 2008–2017 period. While this estimate reflects CBO’s best judgment on the basis of available information, the cost of this federal program is a function of inherently unpredictable future terrorist attacks. As such, actual costs are likely to vary significantly from the estimated amounts. Such costs could be either higher or lower than the expected-value estimates provided for each year.

#### *Terrorism Risk Insurance Act under current law*

Enacted in 2002 and reauthorized in 2005, the Terrorism Risk Insurance Act provides financial assistance to commercial property and casualty insurers for losses above certain thresholds caused by terrorist attacks by individuals acting on behalf of foreign interests. For such assistance to be provided, the Secretary of the Treasury must certify that a terrorist attack has occurred in the United States or other specified locations. TRIA is currently set to expire on December 31, 2007.

TRIA does not require commercial property and casualty insurance policies to cover losses from terrorist attacks committed by a domestic interest or those involving nuclear, biological, chemical, or radioactive materials. If an insurer and a policyholder choose to include losses from terrorist attacks involving NBCR materials in a policy, TRIA would cover a portion of the losses resulting from those risks.

For the Secretary of the Treasury to certify a terrorist attack, insured damages resulting from the attack must exceed \$5 million. Financial assistance becomes available to insurers suffering losses from a certified attack once the industry’s aggregate insured losses from that attack exceed \$100 million (in 2007). Once that \$100 million threshold is exceeded, participating insurance companies that suffer losses are responsible for paying claims up to a deductible amount based on the premiums they collected for covered lines in the calendar year preceding a certified attack. In 2007, the deductible is 20 percent of such premiums.

After meeting their individual deductibles for damage claims, insurers and the federal government would each pay a portion of the loss above the deductible (the federal government would pay 85 percent of insured losses in 2007, individual insurers, 15 percent) up to total losses of \$100 billion. The law does not address about how losses above the \$100 billion cap would be handled.

The Secretary of the Treasury is authorized to recover payments made by the federal government through taxes in the form of surcharges paid by the insurance industry and purchasers of commercial property and casualty insurance. The Secretary is required to recoup federal payments to the extent that the total amount paid by the insurance industry including the deductible is less than the industry “retention amount” specified in law, which represents the total liability of the property and casualty insurance industry in the event of a certified attack. In 2007, that amount is \$27.5 billion.

*Modifications to TRIA under H.R. 2761*

H.R. 2761 would extend TRIA for 15 years, through December 31, 2022. The bill also would add group life insurance to the lines of insurance covered by the program and would eliminate the distinction between foreign and domestic terrorist attacks. TRIA would now cover attacks by either foreign or domestic interests. Further, both commercial property and casualty insurance policies and group life insurance policies would be required to offer coverage for losses from terrorist attacks involving NBCR materials. Currently, such coverage is typically excluded from property and casualty insurance policies, other than workers’ compensation policies, but is generally covered by group life insurance policies.

H.R. 2761 would lower the threshold for financial assistance from \$100 million in insured damages from a certified attack to \$50 million; further, if a certified attack caused insured damages to exceed \$1 billion, the threshold would be set at \$5 million in subsequent years.

As in current law, an insurer suffering losses as a result of an attack would pay claims up to a specified deductible. For losses incurred by property and casualty insurers, H.R. 2761 would set different deductible limits based on the cause of the loss (conventional vs. NBCR attack) based on the premiums collected by each insurer in the calendar year preceding an attack. For insurers providing group life coverage, deductibles under H.R. 2761 would be based on the insurer’s amount at risk—that is, the face value of life insurance policies not including any additional cash value—and also on the cause of the loss.

Likewise, H.R. 2761 would continue the payment-sharing process that exists under current law. Insurers and the federal government would each pay a portion of the loss over the deductible. For most types of attacks, the federal government’s portion would remain 85 percent of insured losses up to the \$100 billion limit for each year of the 15-year extension. In the case of losses caused by an attack using NBCR materials, however, the federal share would be based on the amount of total losses, starting at 85 percent and rising to as high as 95 percent, up to the \$100 billion limit. Table 2 shows a breakdown of the industry deductible and federal cost-sharing limits.

*Direct spending*

By extending financial assistance to certain commercial insurers for future acts of terrorism against insured private property, enacting H.R. 2761 would expose the federal government to potentially large liabilities for 15 more years (2008 through 2022). For any

particular year, the amount of insured damage caused by terrorists could range from zero to many billions of dollars. CBO's estimate of the cost of this program reflects how much, on average, the government could be expected to pay to insurers and recover from the industry over the 2008–2017 period.

The following sections describe our method for estimating the expected value of financial assistance under H.R. 2761 and explain how we convert that cost to annual estimates of spending.

TABLE 2.—DEDUCTIBLE AND FEDERAL SHARE LIMITS UNDER H.R. 2761

DEDUCTIBLE	
	Percent of Direct Earned Premiums
Property and Casualty Insurance:	
Attack Using Conventional Materials:	
Losses Less Than \$1 Billion .....	20.0
Losses in Excess of \$1 Billion <sup>1</sup> .....	5.0
Attack Using NBCR Materials <sup>1</sup> .....	3.5
	Percent of Amount at Risk
Group Life Insurance:	
Attack Using Conventional Materials .....	.03510
Attack Using NBCR Materials <sup>2</sup> .....	.00614
FEDERAL SHARE OF COVERED LOSSES OVER DEDUCTIBLE	
	Percent of Losses (Up to \$100 Billion)
Attack Using Conventional Materials .....	85.0
Attack Using NBCR Materials:	
Losses Less Than \$10 Billion .....	85.5
Losses Between \$10 Billion and \$20 Billion .....	87.5
Losses Between \$20 Billion and \$40 Billion .....	90.0
Losses Between \$40 Billion and \$60 Billion .....	92.5
Losses Between \$60 Billion and \$100 Billion .....	95.0

<sup>1</sup>Increasing by 0.5 percent per year.

<sup>2</sup>Increasing by .00088 percent each year.

Estimating the Expected Cost of Federal Assistance. For this estimate, CBO discussed the concepts involved in estimating insured losses with industry actuaries and reviewed models used by firms to set premiums for the terrorism component of property and casualty insurance and group life insurance that they offer. State insurance regulators generally require such premiums to be grounded in a widely accepted model of expected losses from covered events. After the terrorist attacks on September 11, 2001, the insurance industry began efforts to set premiums for insurance coverage for terrorist events using such models.

Although estimating losses associated with terrorist events is difficult because of the lack of meaningful historical data, the insurance industry has experience setting premiums for catastrophic events—namely, natural disasters. Setting premiums for hurricanes and earthquakes, for example, involves determining areas that could sustain damage, the value of the losses that could result from various types of events with different levels of severity, and the frequency of such events.

Similarly, estimating premiums for losses resulting from terrorist attacks involves judgments regarding potential targets and the frequency of such attacks. Because there is a very limited history of terrorist attacks in the United States, many of the parameters needed by the insurance industry to set premiums are based on expert opinion regarding terrorist activities and capabilities rather than on historical data.

*Estimating potential insured losses.* Based on discussions with insurers and information provided by the insurance industry, CBO estimates that the expected or average annual loss subject to TRIA coverage under H.R. 2761 would be about \$2.6 billion (in 2007 dollars). This estimate incorporates industry expectations of the probabilities of terrorist attacks, encompassing the possibility of attacks that result in enormous loss of life and property damage, as well as a significant likelihood that no such attacks would occur in any given year. This estimate also reflects our expectation that some portion of losses from terrorism would not be covered by TRIA because some policyholders would choose not to purchase insurance coverage for terrorism risks.

Our estimate of expected annual losses covered by TRIA under H.R. 2761 includes less than \$100 million for the inclusion of group life insurance policies and around \$200 million for the inclusion of coverage for domestic terrorism.

The estimate also includes about \$1 billion in additional expected losses resulting from a provision in the bill that would require insurance policies to include coverage for losses resulting from terrorist attacks involving NBCR materials. Under current law, insurers are not required to offer this coverage, although if an insurer and a policyholder voluntarily agree to include this coverage in a policy, TRIA would cover some of those losses.

Based on information provided by the industry, it appears that only a small amount of coverage is currently in place for losses resulting from terrorist attacks involving NBCR materials as compared to coverage for losses involving conventional weapons. Thus, under current law the government's exposure to losses resulting from terrorist attacks involving NBCR materials is relatively small, except in the workers' compensation line, where no exclusions are allowed.

Enacting the legislation could potentially expose firms offering NBCR coverage and the federal government to much higher losses than under current law. Our estimate of losses assumes that the coverage for terrorism losses caused by attacks using NBCR materials would increase three-fold over current coverage levels. However, we expect that coverage for such losses will remain far lower than coverage for losses resulting from more conventional methods.

CBO's estimate assumes that, in most years, losses from terrorist attacks covered by TRIA would cost less than \$2.6 billion. We expect that there is a significant chance that no terrorist attacks that would be covered by TRIA would occur in a given year. Since enactment of TRIA, no covered events have occurred; it is unclear whether no such attacks were planned or attempted, or whether some were prevented by law enforcement and other security measures. Although the risk of a terrorist attack with many lives lost and substantial property damage still remains, based on industry models, CBO assumes for this estimate that attacks causing losses similar in scale to those sustained on September 11, 2001, in New York City are likely to occur very rarely.<sup>1</sup>

*Determining the federal share of insured losses.* Federal payments under TRIA would be lower than expected losses from ter-

<sup>1</sup> Industry losses on September 11, 2001, are estimated to be about \$36 billion (in 2006 dollars), including about \$30 billion in losses in New York City that would have qualified for coverage under TRIA had the law been in effect on that date.

rorist attacks because TRIA places limits on eligibility for federal assistance and requires that insurers pay a share of covered losses. CBO took account of these requirements to calculate federal spending for any given amount of insured losses from future terrorist attacks.

First, because federal payments under TRIA would be capped at \$100 billion per event, we excluded costs for potential losses above that level. In addition, H.R. 2761 would set the minimum losses that would trigger federal payments under TRIA at \$50 million.

Second, we accounted for the share of losses that would be paid by affected insurers in the event of a covered attack. Before the federal government would make any payments under TRIA, an insurer incurring losses would first pay claims up to a deductible amount. The bill would set different deductible levels for property and casualty insurers and for group life insurers.

The total amount of claims paid by insurers below the deductible amount could range from a few million dollars to several billion dollars, depending on how many insurers provide coverage for losses resulting from a particular terrorist attack. In addition, the value of each individual insurer's deductibles would vary greatly across the industry. For this estimate, CBO considered a range of possibilities regarding the share of federal assistance, based on industry data regarding estimated insurers' deductibles under H.R. 2167. The range encompasses the possibility that an attack would affect only a few insurers with relatively small deductibles or several insurers with relatively large deductibles. CBO expects that insured losses below a few hundred million dollars would most likely be covered by insurers' deductibles and therefore would not result in a significant increase in federal spending.

Finally, once affected insurers have paid claims up to their deductibles, the federal government would share a portion of the losses above the deductible with each insurer.

Under H.R. 2761, for losses sustained by both property and casualty and group life insurers, the federal government's share of claims above the deductible would be at least 85 percent of total losses up to the \$100 billion limit covered by the program. In the case of losses resulting from an attack using NBCR materials, the federal government's share would increase, based on total losses, to as much as 95 percent of losses above the deductible.

After taking into account maximum limits, deductibles, and the insurers' share of payments above the deductible, CBO estimates that enacting H.R. 2761 would increase direct spending by about \$24 billion over the full life of the program before taking into account any revenues from surcharges on policyholders. Actual spending would be spread out over many years and most such costs would eventually be recovered through surcharges imposed on policyholders.

Taken another way, if the Secretary of the Treasury were authorized to collect premiums for the program, CBO estimates that the Secretary would need to charge, on average, about \$1.6 billion per year to fully compensate the government for the projected average annual loss due to terrorist attacks under H.R. 2761. The bill, however, would not authorize any charges prior to a certified attack. Similarly, the bill does not contain an explicit requirement for the

Secretary to recoup interest that would accrue on amounts outstanding.

Timing of Federal Spending. To estimate federal spending for this program on a cash basis, CBO used information from insurance experts on historical rates of payment for property and casualty claims following catastrophic events. Based on such information, CBO estimates that outlays under H.R. 2761 would total about \$3.7 billion over the 2008–2012 period, an additional \$6.7 billion over the 2013–2017 period, and about \$13.7 billion after 2017. 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 insurers would be paid over several years, with most of the spending occurring within the first five years following an insurable event.

#### *Revenues*

Enacting H.R. 2761 would affect federal receipts by authorizing the Secretary of the Treasury to impose taxes in the form of surcharges on policyholders to recover the amount of federal payments made under the program, with certain limitations. CBO estimates that this provision would increase revenues by about \$100 million over the 2008–2012 period and \$2.0 billion over the 2008–2017 period. Surcharges could continue for many years beyond 2017.

In addition, another provision of the bill would allow insurers to set aside a portion of premiums charged for terrorism coverage in a reserve fund set up in the Department of the Treasury. Amounts held in the reserve fund would be used by the Secretary of the Treasury, in the event of a certified attack, to pay certain deductible and copayment liabilities of the insurers incurring losses that had allocated premiums to the reserve fund.

Surcharges. If a terrorist attack were to require the government to provide financial assistance, H.R. 2761 would require the Secretary of the Treasury to recoup some or all of that cost through taxes paid by the insurance industry and purchasers of commercial property and casualty and group life insurance. The Secretary would be required to recover the difference between the total amount paid by the insurance industry for deductibles and the industry's share of payments over the deductible and the industry retention amount (the maximum aggregate loss to be paid by the insurance industry), which would be set at \$27.5 billion for property and casualty insurers and \$5 billion for group life insurers.

The Secretary would have discretion in determining whether to recover the full amount of financial assistance provided under the program. Should the Secretary determine that amounts above the industry retention amount cannot be recovered, the Congress would be notified as to the determination and provided with an analysis of the effect of that determination on taxpayers, the economy, and the burdens on small- and medium-sized businesses. For this estimate, CBO assumes that the Secretary would not seek to recover financial assistance provided above the industry retention amount and would not collect interest on outstanding amounts.

Under TRIA, the recoupment of financial assistance would be accomplished by assessing each insurer based on its portion of aggregate property and casualty premiums or the amount at risk for

group life insurance policies for the preceding calendar year. Surcharges would apply to insurance sold following a terrorist attack that necessitated federal assistance; each property and casualty insurance company's surcharge would be limited to 3 percent of its aggregate premiums, and each group life insurance company's surcharge would be limited to 0.0053 percent of its amount at risk. H.R. 2761 would direct the Secretary to impose surcharges for as long as necessary to recover the financial assistance provided by the federal government (at least up to the industry retention amount). Thus, the government could collect surcharges for many years, depending on the amount of financial assistance. CBO estimates that surcharges resulting from a 15-year extension of TRIA would total \$23.6 billion—but that recovery would extend well past 2017.

*Timing and Tax Offset.* The bill would allow the Secretary to reduce annual charges after considering the effect on taxpayers, the economy, or burdens on small- and medium-sized businesses. Therefore, if annual losses were very high, we expect that the Secretary would limit annual collections by spreading them over many years. CBO assumes that the Secretary would not impose surcharges until two years after federal assistance is provided and that it would take more than 10 years to recover the costs of any financial assistance provided under H.R. 2761. Thus, we estimate that surcharges would total \$2.6 billion over the next 10 years and that an additional \$21.0 billion would be collected after 2017.

Those gross collections would be partially offset by a loss of receipts from income and payroll taxes. Consistent with standard procedures for estimating the revenue impact of indirect business taxes, CBO reduced the gross revenue impact of the insurance surcharges by 25 percent to reflect offsetting effects on income and payroll tax receipts. On balance, CBO estimates that H.R. 2167 would increase revenues by a total of \$2.0 billion over the next 10 years and that an additional \$15.7 billion will be collected after 2017, net of income and payroll tax offsets.

*Terrorism Buy-Down Fund.* Section 4 of H.R. 2761 would establish a Terrorism Buy-Down Fund into which a property and casualty insurer could elect to contribute premiums it collects for terrorism insurance. The premiums deposited in the fund in the Treasury would be available to the Secretary of the Treasury, in the event of a certified terrorist attack, to satisfy the insurer's deductible amounts as well as the portion of the insurer's losses that exceed the deductible but are not included in the federal share.

Because the tax implications of the fund are unclear, the Joint Committee on Taxation has not yet prepared an estimate of its potential revenue impact.

*Intergovernmental and private-sector impact:* H.R. 2761 would extend and expand mandates contained in the Terrorism Risk Insurance Act. Those mandates would:

- Require that certain insurers offer terrorism insurance, including insurance for nuclear, biological, chemical, and radiological attacks;
- Require that certain insurers and their policyholders repay the federal government for the cost of assistance (in the form of assessments and surcharges); and
- Preempt state laws regulating insurance.

CBO estimates that the aggregate costs of complying with those mandates would not exceed the annual thresholds established by UMRA (\$66 million for intergovernmental mandates and \$131 million for private-sector mandates in 2007, adjusted annually for inflation).

#### REQUIREMENT TO OFFER INSURANCE

Current law requires that through calendar year 2007, certain insurance companies offer terrorism insurance as part of a property and casualty insurance policy. H.R. 2761 would extend that requirement to offer terrorism insurance through calendar year 2022. The bill also would add group life insurance to the lines of coverage included under the program and would require insurers to make coverage available to property, casualty, and group life insurance policyholders for losses resulting from domestic terrorism and, after January 1, 2009, terrorism involving NBCR materials. Also, in some cases, the bill would restrict insurers' ability to underwrite policies based on lawful international travel. According to industry representatives, the direct cost to continue making terrorism insurance available under property, casualty, and group life insurance policies would be minimal. Furthermore, the bill would require only that firms offer terrorism insurance, including NBCR terrorism insurance; they would set their own premium rates and policyholders could choose whether or not to purchase such insurance. In the event of a certified attack with costs that exceeded deductible requirements, insurers who offer such terrorism insurance would receive federal payments that would help finance claims payments.

#### REPAYMENT OF ASSISTANCE

The bill would require the Secretary of the Treasury 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, casualty and group life 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 state and local governments and private entities are providers and purchasers of insurance.

Specifically, the bill would require commercial property, casualty, and group life insurers, as well as self-insured risk pools, to pay back through assessments a portion of the financial assistance provided by the federal government. Taken individually, some insurers might benefit from the financial assistance while others might face only the cost of the assessment. CBO cannot predict how these costs and benefits would be distributed among private and public insurers. However, for that group 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, the bill would require purchasers of commercial property, casualty, and group life insurance to repay, in the form of a surcharge, federal assistance provided to certain insurers. CBO estimates that the expected value of the surcharges paid by policyholders would total about \$200 million over the next five years. The surcharge would be a mandate on both private-sector purchasers and state and local governments (in their capacity as pur-

chasers of insurance). For purchasers as a group, the cost of the surcharges would be no greater than the financial assistance received. However, some purchasers would receive a direct benefit under the bill that would at least partially offset those costs, while other purchasers would not.

#### PREEMPTION OF STATE LAW

The bill also would preempt some state laws that regulate insurance. Based on information from state insurance regulators, CBO estimates that the cost to states of extending these preemptions would be minimal.

Estimate prepared by: Federal Costs: Susan Willie; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

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

#### ADVISORY COMMITTEE STATEMENT

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

#### CONSTITUTIONAL AUTHORITY STATEMENT

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

#### APPLICABILITY TO LEGISLATIVE BRANCH

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

#### EARMARK IDENTIFICATION

H.R. 2761 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## EXCHANGE OF COMMITTEE CORRESPONDENCE

CONGRESS OF THE UNITED STATES, HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY,  
*Washington, DC, September 4, 2007.*

Hon. BARNEY FRANK,  
*Chairman, Committee on Financial Services,  
 House of Representatives, Washington, DC.*

DEAR CHAIRMAN FRANK: In recognition of the desire to expedite consideration of H.R. 2761, the "Terrorism Risk Insurance Revision Act of 2007," the Committee on the Judiciary agrees to waive consideration of the bill.

There are several provisions contained in H.R. 2761 that implicate the rule X jurisdiction of the Committee on the Judiciary. In addition to reauthorizing a number of provisions in the Terrorism Risk Insurance Act of 2002, the legislation also adds new litigation management and judicial review and venue provisions.

The Committee takes this action with the understanding that by foregoing consideration of H.R. 2761 at this time, the Committee on the Judiciary does not waive any jurisdiction over subject matter contained in this or similar legislation. The Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this legislation, and requests your support if such a request is made.

I would appreciate your including this letter in your Committee's report for H.R. 2761, or in the Congressional Record during consideration of the bill on the House floor.

Thank you for your attention to this matter.

Sincerely,

JOHN CONYERS, JR.,  
*Chairman.*

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HOUSE OF REPRESENTATIVES,  
 COMMITTEE ON FINANCIAL SERVICES,  
*Washington, DC, September 4, 2007.*

Hon. JOHN CONYERS,  
*Chairman, Committee on the Judiciary,  
 House of Representatives, Washington, DC.*

DEAR CHAIRMAN CONYERS: Thank you for your letter agreeing to waive consideration by the Committee on the Judiciary of H.R. 2761, the "Terrorism Risk Insurance Revision Act of 2007." The Committee on Financial Services has ordered this bill reported, and the House will be considering it shortly.

I want to confirm our mutual understanding with respect to the consideration of this bill. I acknowledge that portions of the bill as reported fall within the jurisdiction of the Committee on the Judiciary and I appreciate your cooperation in moving the bill to the House floor expeditiously. I further agree that your decision to not to proceed with a markup on this bill will not prejudice the Committee on the Judiciary with respect to its prerogatives on this or similar legislation. I would support your request for conferees on those provisions within your jurisdiction in the event of a House-Senate conference.

I will include this exchange of correspondence in the Committee report, or in the Congressional Record during consideration of the bill. Thank you again for your assistance.

BARNEY FRANK,  
*Chairman.*

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section establishes the short title of the bill as the “Terrorism Risk Insurance Revision and Extension Act of 2007” (TRIREA).

##### *Section 2. Termination of program*

This section extends the Terrorism Risk Insurance Act of 2002 (TRIA) until December 31, 2022.

##### *Section 3. Revision of Terrorism Insurance Program*

This section amends TRIA to extend and revise the Terrorism Insurance Program (the Program), replacing sections 101, 102, and 103.

##### *TRIA Section 101. Congressional findings and purpose*

This section amends the findings and purposes of TRIA to reflect the inclusion of group life insurance and enhanced coverage of NBCR terrorism risk in the Program and to clarify that the Program provides finite liability limits for insurers and the Federal government.

##### *TRIA Section 102. Definitions*

This section establishes definitions for the following terms: “act of terrorism,” “affiliate,” “amount at risk,” “control,” “covered lines,” “direct earned premium,” “excess insured loss,” “group life insurance,” “insured loss,” “insurer,” “insurer deductible,” “NAIC,” “NBCR terrorism,” “person,” “program,” “program years,” “property and casualty insurance,” “Secretary,” “State,” and “United States.”

In particular, TRIREA revises the definition of an “act of terrorism” to eliminate the requirement that such act be committed by individuals acting on behalf of foreign interests, thus covering acts of domestic terrorism. The definition of “control” is also revised to conform to the definition in the Bank Holding Company Act. Group life insurance is added as a covered line. Farm owners multiple peril insurance is no longer excluded from the definition of property and casualty insurance. A new definition is added for NBCR terrorism and the definition of “act of terrorism” is revised to include certification by the Secretary of Treasury (Secretary) of acts of NBCR terrorism. The concurrence of the Secretary of Homeland Security, in addition to the Secretary of State and the Attorney General, is required to certify an act of terrorism or an act of NBCR terrorism. However, nothing in this Act generally or in the Secretary’s certification authority specifically shall be interpreted to affect or change in any way an insurer’s contractual obligations to a policyholder under a lawful insurance contract. Certification of an act of terrorism as an act of NBCR terrorism does not mean that all insured losses are NBCR losses. Policyholders that do not

have NBCR coverage may still be covered under their insurance contracts in these instances.

The “insurer deductible” definition is amended to fix the deductible for acts of conventional terrorism at 20% of an insurer’s direct earned premiums for property and casualty insurance and at 0.0351% of an insurer’s amount at risk for group life insurance. For acts of NBCR terrorism, the insurer deductible starts at 3.5% in the second additional Program Year and increases by 50 basis points each succeeding Program Year for property and casualty insurance, and starts at 0.00614% in the second additional Program Year and increases by 0.088 basis point each succeeding Program Year for group life insurance.

For an act of terrorism resulting in aggregate industry insured losses exceeding \$1 billion, the deductible for property and casualty insurance that would apply to insurers affected by that particular \$1 billion or greater act of terrorism decreases to the following percentage: 5% if such act occurs in first additional Program Year, and increasing by 50 basis points each additional Program Year (i.e., 5.5% if such act occurs in the second additional Program Year and 6% if such act occurs in the third additional Program Year). However, such percentage will reset to 5% in the additional Program Year immediately following a \$1 billion or greater act of terrorism, and starts increasing again by 50 basis points each additional Program Year. The Secretary may combine multiple acts of terrorism in the same Program Year in the same geographic area for determining whether the \$1 billion threshold has been exceeded. For purposes of section 102(11)(J), regardless of the different deductibles that may apply to an insurer from multiple acts of terrorism in a given Program Year, an insurer’s total payment obligation with respect to its deductible in a given Program Year is not intended to exceed 20% of its direct earned premiums from the previous calendar year.

*TRIA Section 103. Terrorism Insurance Program*

This section continues the Program in the Treasury Department and makes a number of improvements to the terrorism backstop. Insurers are required to offer coverage for losses resulting from acts of terrorism that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, and offer coverage for losses resulting from acts of NBCR terrorism in a similar manner after a short transition period. This section further provides exceptions to pollution and nuclear hazard exclusions for losses from acts of NBCR terrorism if NBCR coverage is purchased. If a person elects not to purchase an insurance policy providing such coverage, an insurer may exclude coverage for all losses from acts of terrorism (including acts of NBCR terrorism), except for workers’ compensation and other compulsory insurance law prohibiting such exclusions, or may offer other options for coverage that differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. Section 103(c)(1)(B) extends the “make available” requirement for policyholders that have been provided coverage under subparagraph (A) to include the availability of exceptions to pollution and nuclear hazard exclusions that would negate those exclusions only as to

losses from acts of NBCR terrorism. Section 103(c)(1)(B) provides certainty to both parties to an insurance contract and is intended to require insurers that have policies of insurance with pollution and nuclear hazard exclusions to make available a clear exception to those exclusions for acts of NBCR terrorism upon the payment of an appropriate premium, and is intended to confirm to policyholders that do not purchase the available exceptions to those exclusions that the exclusions continue to apply as written to acts of NBCR terrorism and that the policies of insurance do not cover losses arising out of acts of NBCR terrorism unless the policyholder and insurer otherwise agree to cover such losses. The requirement to make available coverage for acts of NBCR terrorism applies beginning on January 1, 2009.

Insurers offering life insurance are required to offer coverage that neither considers past nor precludes future lawful foreign travel and are prohibited from declining such coverage based on past or future lawful foreign travel or charging a premium that is excessive and not based on a good faith actuarial analysis, except an insurer may decline or limit coverage based on plans to engage in future lawful foreign travel within 12 months under certain enumerated circumstances.

The Secretary, in consultation with the National Association of Insurance Commissioners (NAIC), may exempt insurers with less than \$50 million in direct earned premiums for TRIA-covered lines from complying with the requirement to make NBCR coverage available if such insurers demonstrate they would become insolvent in the event of certain acts of NBCR terrorism. The exemption would be for 2 years, and insurers may apply for additional 2-year extensions.

For acts of conventional terrorism, the total Federal share of insured loss compensation is 85% of the aggregate industry insured losses that exceed the applicable insurer deductibles but do not exceed \$100 billion during a Program Year, plus 100% of the aggregate industry insured losses that exceed \$100 billion, but only up to the \$100 billion cap on total Federal compensation. The Secretary will determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program.

For acts of NBCR terrorism, the total Federal share of insured loss compensation is 85% of the aggregate industry qualified NBCR losses of less than \$10 billion, 87.5% of the aggregate industry qualified NBCR losses between \$10 billion and \$20 billion, 90% of the aggregate industry qualified NBCR losses between \$20 billion and \$40 billion, 92.5% of the aggregate industry qualified NBCR losses between \$40 billion and \$60 billion, and 95% of the aggregate industry qualified NBCR losses above \$60 billion. The Federal share will be prorated per insurer based on each insurer's percentage of the aggregate industry qualified NBCR losses for each additional Program Year.

The minimum size of a terrorist event required to trigger any potential Federal assistance is set at \$50 million, except the trigger will decrease to \$5 million if a certified act of terrorism occurs for which resulting aggregate industry insured losses exceed \$1 billion. The Federal share of insured loss compensation for any single certificate holder under any group life insurance coverage may not exceed \$1 million.

The cap on the annual liability of the Federal government is set at \$100 billion; that is, the aggregate amount of the Federal share of compensation to be paid to all insurers will not exceed \$100 billion. In addition, an insurer that has met its insurer deductible will not be liable for the payment of any portion of the aggregate insured losses in a year that exceed \$100 billion.

If the Secretary determines that estimated or actual aggregate Federal compensation equals or exceeds \$80 billion, the Secretary must promptly provide notification to Congress and insurers. The Secretary must also give notice when estimated or actual aggregate Federal compensation equals or exceeds \$100 billion and within ten days of an act of terrorism that is likely to pierce the \$100 billion cap on Federal compensation. The Secretary will reimburse insurers for: (1) any payment for portions of aggregate insured losses that exceed \$100 billion made before the Secretary provides notice at \$80 billion in Federal compensation; and (2) any payment for portions of aggregate insured losses that exceed \$100 billion made after such notice, but only to the extent that such payment is ordered by a court, such payment does not include punitive damages or litigation or other costs, and the insurer made a good-faith effort to defend against any claims for such payment. The Secretary has the right to intervene in any legal proceedings related to such claims.

Federal courts will have original and exclusive jurisdiction over claims relating to or arising out of the limitation on an insurer's financial responsibility for insured losses from acts of terrorism set forth in paragraph 103(e)(3), if the Secretary certifies that the \$100 billion cap on Federal compensation has been or is likely to have been exceeded, and the insurer has paid, or is likely to pay, its deductible and pro rata share of insured losses. In the event of such certification, all pending State court actions relating to or arising out of such limitation on an insurer's financial responsibility set forth in paragraph 103(e)(3) will be removed to the Federal district court, or courts, chosen by the Judicial Panel on Multidistrict Litigation.

The insurance marketplace aggregate retention amount is set at the lesser of \$27.5 billion and the aggregate amount of property and casualty insured losses for property and casualty insurance, and the lesser of \$5 billion and the aggregate amount of group life insured losses for group life insurance. The Secretary is granted emergency rulemaking powers during the 90-day period beginning upon the certification of any act of terrorism. The Secretary will adjust each year, based on the percentage change in an appropriate index, certain enumerated dollar amounts in TRIA, including the trigger and the Program cap. It is intended that the dollar amounts be indexed to inflation.

Between the enactment of TRIREA and December 31, 2008, the rates and forms for coverage of acts of conventional terrorism will not be subject to prior approval or waiting period requirement under State law, except that a State may invalidate a rate as excessive, inadequate, or unfairly discriminatory and a State that had prior approval authority over forms may conduct subsequent review of such forms. Between the enactment of TRIREA and December 31, 2009, forms for coverage of acts of NBCR terrorism (to the extent of the addition of such coverage and where such cov-

erage was not previously required) will not be subject to prior approval or waiting period requirement under State law. Between the enactment of TRIREA and December 31, 2010, rates for coverage of acts of NBCR terrorism (to the extent of the addition of such coverage and where such coverage was not previously required) will not be subject to prior approval or waiting period requirement under State law, except a State may invalidate a rate as inadequate or unfairly discriminatory.

An insurer is not prohibited, restricted, or otherwise limited from entering into an arrangement with another insurer to make available coverage for any portion of insured losses to fulfill the mandatory make-available requirements under section 103(c). It is not intended, however, that an insurer could fulfill all of its requirements under section 103(c) solely by entering into an arrangement to have another insurer make available coverage that would otherwise only fulfill part of such requirements. For example, an insurer may not consider its requirement under section 103(c)(1)(B) (NBCR coverage) fulfilled by simply arranging to have another insurer make available coverage for acts of conventional terrorism pursuant to section 103(c)(1)(A).

#### *Section 4. Terrorism Buy-Down Fund*

This section directs the Secretary to establish a Terrorism Buy-Down Fund (the Fund) that allows insurers to voluntarily reserve with the Federal government for their insured losses. An insurer may purchase deductible, co-share, or pre-trigger buy-down coverage by making an advance election to treat some or all of the premiums it has disclosed under the Program as fee charges imposed by the Secretary and remitting such amounts to the Fund. Such buy-down coverage does not reduce the Federal co-share. However, an insurer may not purchase coverage in an amount greater than the lesser of (a) the program trigger or (b) the insurer's one-in-one-hundred-year risk exposure to acts of terrorism.

An insurer may sell its rights to buy-down coverage from the Fund to another insurer as part of or to avoid insolvency or as part of a sale, merger, or major reorganization. The Secretary may borrow funds from the Fund to offset the Federal share of compensation provided to all insurers under the Program. The Secretary shall establish voluntary risk-sharing mechanisms for insurers participating in the Fund to pool their reinsurance purchases and share terrorism risk. Upon termination of the Program, the Fund shall become a privately-operated mutual terrorism reinsurance company owned by the insurers that submitted buy-down coverage premiums.

#### *Section 5. Analysis and Study*

This section requires the Secretary, in consultation with the NAIC, representatives of the insurance industry, representatives of the securities industry, and representatives of policyholders, to analyze the long-term availability and affordability of private terrorism risk insurance. The Secretary will submit biennial reports to and, upon submission of each such report, testify before Congress. The Secretary will submit the first such report within two years of enactment of TRIREA.

This section also establishes a Commission on Terrorism Risk Insurance. The 21-member Commission will consist of the Secretary or the Secretary's designee; a State insurance commissioner designated by the NAIC; 15 members appointed by the President, including a representative of group life insurers, property and casualty insurers with direct earned premium of \$1 billion or less, property and casualty insurers with direct earned premium of more than \$1 billion, multi-line insurers, independent insurance agents, insurance brokers, policyholders, the survivors of the victims of the September 11, 2001 terrorist attacks, the reinsurance industry, workers' compensation insurers, the commercial mortgage-backed securities industry, a nationally recognized statistical rating organization, a real estate developer, workers' compensation insurers created by State legislatures, and the commercial real estate brokerage industry or the commercial property management industry; and four members who will serve as liaisons to Congress, two of whom shall be jointly selected by the Chairman and Ranking Member of the Committee and two jointly selected by the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate.

The Commission will make recommendations to encourage the private insurance industry to provide affordable terrorism insurance in the United States and significantly reduce the Federal role in covering losses resulting from acts of terrorism. The Commission will specifically evaluate the utility and viability of proposals aimed at improving the availability of terrorism insurance in the private marketplace. The Commission will submit two reports to Congress that evaluate and make recommendations regarding the need for a Federal terrorism risk insurance program and include the Commission's recommendations for encouraging the growth of private marketplace for terrorism insurance and reducing the Federal role. The Commission will submit the first report within five years of enactment of TRIREA and the second report within eight years of TRIREA enactment.

#### *Section 6. Applicability*

This section provides that the provisions of TRIA, as amended, will continue to apply through the end of December 31, 2007, and the amendments made by TRIREA will apply beginning on January 1, 2008.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### **TERRORISM RISK INSURANCE ACT OF 2002**

#### **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) \* \* \*

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

Sec. 1. Short title; table of contents.

TITLE I—TERRORISM INSURANCE PROGRAM

Sec. 101. Congressional findings and purpose.

\* \* \* \* \*

Sec. 106A. *Terrorism Buy-Down Fund.*

\* \* \* \* \*

Sec. 109. *Commission on Terrorism Risk Insurance.*

\* \* \* \* \*

**TITLE I—TERRORISM INSURANCE PROGRAM**

**[SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.**

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

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

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

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

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

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

**[(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to**

create a viable financial services market for private terrorism risk insurance.

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

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

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

**[SEC. 102. DEFINITIONS.**

[In this title, the following definitions shall apply:

[(1) ACT OF TERRORISM.—

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

[(i) to be an act of terrorism;

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

[(I) human life;

[(II) property; or

[(III) infrastructure;

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

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

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

[(iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

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

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

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

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

[(D) NONDELEGATION.—The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during

the effective period of the Program, an act of terrorism has occurred.

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

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

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

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

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

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

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

[(A) occurs within the United States; or

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

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

[(A) that is—

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

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

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

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

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

[(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage,

other than in the case of entities described in sections 103(d) and 103(f); and

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

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

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

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

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

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

[(E) for Program Year 4, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 4, multiplied by 17.5 percent;

[(F) for Program Year 5, the value of an insurer’s direct earned premiums over the calendar year immediately preceding Program Year 5, multiplied by 20 percent; and

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

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

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

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

[(11) PROGRAM YEARS.—

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

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

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

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

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

[(F) PROGRAM YEAR 5.—The term “Program Year 5” means the period beginning on January 1, 2007 and ending on December 31, 2007.

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

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

[(B) does not include—

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

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

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

[(iv) insurance for medical malpractice;

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

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

[(vii) reinsurance or retrocessional reinsurance;

[(viii) commercial automobile insurance;

[(ix) burglary and theft insurance;

[(x) surety insurance;

[(xi) professional liability insurance; or

[(xii) farm owners multiple peril insurance.

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

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

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

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

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

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

**[SEC. 103. TERRORISM INSURANCE PROGRAM.**

[(a) ESTABLISHMENT OF PROGRAM.—

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

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

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

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

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

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

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

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

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

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

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

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

[(B) written certification—

[(i) of the underlying claim; and

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

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

[(c) **MANDATORY AVAILABILITY.**—During each Program Year, each entity that meets the definition of an insurer under section 102—

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

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

[(d) **STATE RESIDUAL MARKET INSURANCE ENTITIES.**—

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

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

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

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

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

[(e) INSURED LOSS SHARED COMPENSATION.—

[(1) FEDERAL SHARE.—

[(A) IN GENERAL.—The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during the Transition Period and each Program Year through Program Year 4 shall be equal to 90 percent, and during Program Year 5 shall be equal to 85 percent, of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Transition Period or such Program Year.

[(B) PROGRAM TRIGGER.—In the case of a certified act of terrorism occurring after March 31, 2006, no compensation shall be paid by the Secretary under subsection (a), unless the aggregate industry insured losses resulting from such certified act of terrorism exceed—

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

[(ii) \$100,000,000, with respect to such insured losses occurring in Program Year 5.

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

[(2) CAP ON ANNUAL LIABILITY.—

[(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed \$100,000,000,000, during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during any of Program Years 2 through 5 (until such time as the Congress may act otherwise with respect to such losses)—

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

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

[(B) INSURER SHARE.—For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured

losses to be paid by each insurer that incurs insured losses under the Program.

[(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed \$100,000,000,000 during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during any of Program Years 2 through 5, and the Congress shall determine the procedures for and the source of any payments for such excess insured losses.

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

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

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

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

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

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

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

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

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

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

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

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

[(D) for Program Year 4, the lesser of—

[(i) \$25,000,000,000; and

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

[(E) for Program Year 5, the lesser of—

[(i) \$27,500,000,000; and

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

[(7) RECOUPMENT OF FEDERAL SHARE.—

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

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

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

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

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

[(B) NO MANDATORY RECOUPMENT IF UNCOMPENSATED LOSSES EXCEED INSURANCE MARKETPLACE RETENTION.—Notwithstanding subparagraph (A), if the aggregate amount of uncompensated insured losses referred to in clause (ii) of such subparagraph for any period referred to in any of subparagraphs (A) through (E) of paragraph (6) is greater than the insurance marketplace aggregate retention amount under paragraph (6) for such period, the mandatory recoupment amount shall be \$0.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(g) REINSURANCE TO COVER EXPOSURE.—

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

[(2) LIMITATION ON FINANCIAL ASSISTANCE.—The amount of financial assistance provided pursuant to this section shall not

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

[(h) GROUP LIFE INSURANCE STUDY.—

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

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

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

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

[(i) STUDY AND REPORT.—

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

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

**SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.**

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

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

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

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

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

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

(6) *the United States Government should coordinate with insurers to provide financial compensation to insured parties for losses from acts of terrorism, contributing to the stabilization of the United States economy in a time of national crisis, and periodically assess the ability of the financial services industry to develop the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance that will lessen the financial participation of the United States Government;*

(7) *in addition to a terrorist attack on the United States using conventional means or weapons, there is and continues to be a potential threat of a terrorist attack involving the use of unconventional means or weapons, such as nuclear, biological, chemical, or radiological agents;*

(8) *as nuclear, biological, chemical, or radiological acts of terrorism (known as NBCR terrorism) present a threat of loss of life, injury, disease, and property damage potentially unparalleled in scope and complexity by any prior event, natural or man-made, the Federal Government's responsibility in providing for and preserving national economic security calls for a strong Federal role in ensuring financial compensation and economic recovery in the event of such an attack;*

(9) *a report issued by the Government Accountability Office in September 2006 concluded that "any purely market-driven expansion of coverage" for NBCR terrorism risk is "highly unlikely in the foreseeable future", and the September 2006 report from the President's Working Group on Financial Markets concluded that reinsurance for NBCR terrorist events is virtually unavailable and that "[g]iven the general reluctance of insurance companies to provide coverage for these types of risks, there may be little potential for future market development";*

(10) *group life insurance companies are important financial institutions whose products make life insurance coverage affordable for millions of Americans and often serve as their only life insurance benefit;*

(11) *the group life insurance industry, in the event of a severe act of terrorism, is vulnerable to insolvency because high concentrations of covered employees work in the same locations, because primary group life insurers do not exclude conventional and NBCR terrorism risks while most catastrophic reinsurance does exclude such terrorism risks, and because a large-scale loss of life would fall outside of actuarial expectations of death; and*

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

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

(1) *protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance and group life insurance for all types of terrorism risk, including conventional terrorism risk and nuclear, biological, chemical, and radiological terrorism risk;*

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

(3) *provide finite liability limits for terrorism insurance losses for insurers and the United States Government.*

**SEC. 102. DEFINITIONS.**

*In this title, the following definitions shall apply:*

(1) **ACT OF TERRORISM.**—

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

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

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

*to—*

(I) *human life;*

(II) *property; or*

(III) *infrastructure;*

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

(I) *an air carrier or vessel described in paragraph (9)(B); or*

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

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

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

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

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

(C) *CERTIFICATION OF ACT OF NBCR TERRORISM.*—Upon certification of an act of terrorism, the Secretary, in concurrence with the Secretary of State, the Secretary of Homeland Security, and the Attorney General of the United States, shall determine whether the act of terrorism meets the definition of NBCR terrorism in this section. If such determination is that the act does meet such definition, the Secretary shall further certify such act of terrorism as an act of NBCR terrorism.

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

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

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

(3) *AMOUNT AT RISK.*—The term “amount at risk” means face amount less statutory policy reserves for group life insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraph (A) of paragraph (9).

(4) *CONTROL.*—An entity has “control” over another entity, if—

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

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

(C) the Secretary determines, after notice and opportunity for hearing, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity; except that for purposes of any proceeding under this subparagraph, there shall be a presumption that any entity which directly or indirectly owns, controls, or has power to vote less than 5 percent of any class of voting securities of another entity does not have control over that entity.

(5) *COVERED LINES.*—The term “covered lines” means property and casualty insurance and group life insurance, as defined in this section.

(6) *DIRECT EARNED PREMIUM.*—The term “direct earned premium” means a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraph (A) of paragraph (9).

(7) *EXCESS INSURED LOSS.*—The term “excess insured loss” means, with respect to a Program Year, any portion of the amount of insured losses during such Program Year that exceeds the cap on annual liability under section 103(e)(2)(A).

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

(9) *INSURED LOSS.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), the term “insured loss” means any loss resulting from an act of terrorism (including an act of war, in the case of workers’ compensation) that is covered by primary or excess property and casualty insurance, or group life insurance to the extent of the amount at risk, issued by an insurer, if such loss—

(i) occurs within the United States; or

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

(B) *LIMITATION FOR GROUP LIFE INSURANCE.*—Such term shall not include any losses of an insurer resulting from coverage of any single certificate holder under any group life insurance coverages of the insurer to the extent such losses are not compensated under the Program by reason of section 103(e)(1)(D).

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

(A) that is—

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

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

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

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

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

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

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

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

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

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

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

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

(E) for Program Year 4, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 4, multiplied by 17.5 percent;

(F) for Program Year 5, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 5, multiplied by 20 percent;

(G) for each additional Program Year—

(i) with respect to property and casualty insurance, the value of an insurer's direct earned premiums over the calendar year immediately preceding such Program Year, multiplied by 20 percent; and

(ii) with respect to group life insurance, the value of an insurer's amount at risk over the calendar year immediately preceding such Program Year, multiplied by 0.0351 percent;

(H) notwithstanding subparagraphs (A) through (G), for the Transition Period or any Program Year, if an insurer has not had a full year of operations during the calendar year immediately preceding such Period or Program Year, such portion of the direct earned premiums with respect to property and casualty insurance, and such portion of the amounts at risk with respect to group life insurance, of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums and amounts at risk;

*(I) notwithstanding subparagraphs (A) through (H) and (J), in the case of any act of NBCR terrorism, for any additional Program Year—*

*(i) with respect to property and casualty insurance, the value of an insurer's direct earned premiums over the calendar year immediately preceding such Program Year, multiplied by a percentage, which—*

*(I) for the second additional Program Year, shall be 3.5 percent; and*

*(II) for each succeeding Program Year thereafter, shall be 50 basis points greater than the percentage applicable to the preceding additional Program Year; and*

*(ii) with respect to group life insurance, the value of an insurer's amount at risk over the calendar year immediately preceding such Program Year, multiplied by a percentage, which—*

*(I) for the first additional Program Year, shall be 0.00614 percent; and*

*(II) for each succeeding Program Year thereafter, shall be 0.088 basis point greater than the percentage applicable to the preceding additional Program Year; and*

*(J) notwithstanding subparagraph (G)(i), if aggregate industry insured losses resulting from a certified act of terrorism exceed \$1,000,000,000, for any insurer that sustains insured losses resulting from such act of terrorism, the value of such insurer's direct earned premiums over the calendar year immediately preceding the Program Year, multiplied by a percentage, which—*

*(i) for the first additional Program Year shall be 5 percent;*

*(ii) for each additional Program Year thereafter, shall be 50 basis points greater than the percentage applicable to the preceding additional Program Year, except that if an act of terrorism occurs during any additional Program Year that results in aggregate industry insured losses exceeding \$1,000,000,000, the percentage for the succeeding additional Program Year shall be 5 percent and the increase under this clause shall apply to additional Program Years thereafter;*

*except that for purposes of determining under this subparagraph whether aggregate industry insured losses exceed \$1,000,000,000, the Secretary may combine insured losses resulting from two or more certified acts of terrorism occurring during such Program Year in the same geographic area (with such area determined by the Secretary), in which case such insurer shall be permitted to combine insured losses resulting from such acts of terrorism for purposes of satisfying its insurer deductible under this subparagraph; and except that the insurer deductible under this subparagraph shall apply only with respect to compensation of insured losses resulting from such certified act, or combined certified acts, and that for purposes of compensation of any other insured losses occurring in the same*

- Program Year, the insurer deductible determined under subparagraph (G)(i) or (I) shall apply.*
- (12) *NAIC.—The term “NAIC” means the National Association of Insurance Commissioners.*
- (13) *NBCR TERRORISM.—The term “NBCR terrorism” means an act of terrorism that involves nuclear, biological, chemical, or radiological reactions, releases, or contaminations, to the extent any insured losses result from any such reactions, releases, or contaminations.*
- (14) *PERSON.—The term “person” means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.*
- (15) *PROGRAM.—The term “Program” means the Terrorism Insurance Program established by this title.*
- (16) *PROGRAM YEARS.—*
- (A) *TRANSITION PERIOD.—The term “Transition Period” means the period beginning on the date of enactment of this Act and ending on December 31, 2002.*
- (B) *PROGRAM YEAR 1.—The term “Program Year 1” means the period beginning on January 1, 2003 and ending on December 31, 2003.*
- (C) *PROGRAM YEAR 2.—The term “Program Year 2” means the period beginning on January 1, 2004 and ending on December 31, 2004.*
- (D) *PROGRAM YEAR 3.—The term “Program Year 3” means the period beginning on January 1, 2005 and ending on December 31, 2005.*
- (E) *PROGRAM YEAR 4.—The term “Program Year 4” means the period beginning on January 1, 2006 and ending on December 31, 2006.*
- (F) *PROGRAM YEAR 5.—The term “Program Year 5” means the period beginning on January 1, 2007 and ending on December 31, 2007.*
- (G) *ADDITIONAL PROGRAM YEAR.—The term “additional Program Year” means any additional one-year period after Program Year 5 during which the Program is in effect, which period shall begin on January 1 and end on December 31 of the same calendar year.*
- (17) *PROPERTY AND CASUALTY INSURANCE.—The term “property and casualty insurance”—*
- (A) *means commercial lines of property and casualty insurance, including excess insurance, workers’ compensation insurance, and directors and officers liability insurance; and*
- (B) *does not include—*
- (i) *Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;*
- (ii) *private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance;*

- (iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;
- (iv) insurance for medical malpractice;
- (v) health or life insurance, including group life insurance;
- (vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.);
- (vii) reinsurance or retrocessional reinsurance;
- (viii) commercial automobile insurance;
- (ix) burglary and theft insurance;
- (x) surety insurance; or
- (xi) professional liability insurance.

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

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

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

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

- (A) to begin at 12:01 a.m. on that date; and
- (B) to end at midnight on that date.

### **SEC. 103. TERRORISM INSURANCE PROGRAM.**

(a) **ESTABLISHMENT OF PROGRAM.**—

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

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

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

(4) **NBCR EXEMPTION FOR CERTAIN INSURERS.**—Notwithstanding the requirements of paragraph (3):

(A) **ELIGIBILITY.**—Upon request, the Secretary may provide an exemption from the requirements of subparagraph (B) of subsection (c)(1) in the Program to an entity that otherwise meets the definition of an insurer under this title if—

- (i) such insurer’s direct earned premium is less than \$50,000,000 in the calendar year immediately preceding the current additional Program Year; and
- (ii) the Secretary makes the determination set forth in subparagraph (D).

(B) **INSURER GROUP.**—For purposes of subparagraph (A)(i), the direct earned premium of any insurer shall include the direct earned premiums of every affiliate of that insurer.

(C) *INFORMATION AND CONSULTATION.*—Any insurer requesting an exemption pursuant to this paragraph shall provide any information the Secretary may require to establish its eligibility for the exemption. In developing standards for evaluating eligibility for the exemption under this paragraph, the Secretary shall consult with the NAIC.

(D) *DETERMINATION.*—In making any determination regarding eligibility for exemption under this paragraph, the Secretary shall consult with the insurance commissioner of the State or other appropriate State regulatory authority where the insurer is domiciled and determine whether the insurer has demonstrated that it would become insolvent if it were required, in the event of an act of NBCR terrorism, to satisfy—

(i) its deductible and maximum applicable share above the deductible pursuant to sections 102(11)(I) and 103(e)(1)(B), respectively, for such act of NBCR terrorism resulting in aggregate industry insured losses above the trigger established in section 103(e)(1)(C); or

(ii) its maximum payment obligations for insured losses for such act of NBCR terrorism resulting in aggregate industry insured losses below the trigger established in section 103(e)(1)(C).

(E) *WORKERS' COMPENSATION AND OTHER COMPULSORY INSURANCE LAW.*—In granting an exemption under this paragraph, the Secretary shall not approve any request for exemption with regard to State workers' compensation insurance or other compulsory insurance law requiring coverage of the risks described in subparagraph (B) of subsection (c)(1).

(F) *EXEMPTION PERIOD.*—

(i) *IN GENERAL.*—Any exemption granted to an insurer by the Secretary under this paragraph shall have a duration of not longer than 2 years.

(ii) *EXTENSION.*—Notwithstanding clause (i), the Secretary may, upon application by an insurer granted an exemption under this paragraph, extend such exemption for additional periods of not longer than 2 years.

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

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

(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program (including the additional premium, if any, charged for the coverage for insured losses resulting from acts of NBCR terrorism as made available pursuant to subsection (c)(1)(B)) and the Federal share of compensation for insured losses under the Program—

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

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

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

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

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

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

(B) written certification—

(i) of the underlying claim; and

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

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

(c) MANDATORY AVAILABILITY.—

(1) AVAILABILITY OF COVERAGE FOR INSURED LOSSES.—Subject to paragraph (3), during each Program Year, each entity that meets the definition of an insurer under section 102 shall make available—

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

(B) in insurance policies for covered lines for which the coverage described in subparagraph (A) is provided, exceptions to the pollution and nuclear hazard exclusions of such policies that render such exclusions inapplicable only as to insured losses arising from acts of NBCR terrorism.

(2) ALLOWABLE EXCLUSIONS IN OTHER COVERAGE.—Subject to paragraph (3) and notwithstanding any other provision of Federal or State law, including any State workers' compensation and other compulsory insurance law, if a person elects not to purchase an insurance policy with the coverage described in paragraph (1)—

(A) an insurer may exclude coverage for all losses from acts of terrorism including acts of NBCR terrorism, except for State workers' compensation and other compulsory insurance law requiring coverage of the risks described in subsection (c)(1) (unless permitted by State law); or

(B) an insurer may offer other options for coverage that differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism;

except that nothing in this paragraph shall affect paragraph (4).

(3) APPLICABILITY FOR NBCR TERRORISM.—Notwithstanding any other provision of this Act, paragraphs (1)(B) and (2) shall apply, beginning upon January 1, 2009, with respect to cov-

erage for acts of NBCR terrorism, that is purchased or renewed on or after such date.

(4) *AVAILABILITY OF LIFE INSURANCE WITHOUT REGARD TO LAWFUL FOREIGN TRAVEL.*—During each Program Year, each entity that meets the definition of an insurer under section 102 shall make available, in all of its life insurance policies issued after the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007 under which the insured person is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, coverage that neither considers past, nor precludes future, lawful foreign travel by the person insured, and shall not decline such coverage based on past or future, lawful foreign travel by the person insured or charge a premium for such coverage that is excessive and not based on a good faith actuarial analysis, except that an insurer may decline or, upon inception or renewal of a policy, limit the amount of coverage provided under any life insurance policy based on plans to engage in future lawful foreign travel to occur within 12 months of such inception or renewal of the policy but only if, at time of application—

(A) such declination is based on, or such limitation applies only with respect to, travel to a foreign destination—

(i) for which the Director of the Centers for Disease Control and Prevention of the Department of Health and Human Services has issued a highest level alert or warning, including a recommendation against non-essential travel, due to a serious health-related condition;

(ii) in which there is an ongoing military conflict involving the armed forces of a sovereign nation other than the nation to which the insured person is traveling; or

(iii)(I) that the insurer has specifically designated in the terms of the life insurance policy at the inception of the policy or at renewal, as applicable; and

(II) with respect to which the insurer has made a good-faith determination that—

(aa) a serious unlawful situation exists which is ongoing; and

(bb) the credibility of information by which the insurer can verify the death of the insured person is compromised; and

(B) in the case of any limitation of coverage, such limitation is specifically stated in the terms of the life insurance policy at the inception of the policy or at renewal, as applicable.

(d) *STATE RESIDUAL MARKET INSURANCE ENTITIES.*—

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

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

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

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

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

(e) INSURED LOSS SHARED COMPENSATION.—

(1) FEDERAL SHARE.—

(A) CONVENTIONAL TERRORISM.—Except as provided in subparagraph (B), the Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during any additional Program Year shall be equal to the sum of—

(i) 85 percent of that portion of the amount of such insured losses that—

(I) exceeds the applicable insurer deductible required to be paid during such Program Year; and

(II) based upon pro rata determinations pursuant to paragraph (2)(B), does not result in aggregate industry insured losses during such Program Year exceeding \$100,000,000,000; and

(ii) 100 percent of the insured losses of the insurer that, based upon pro rata determinations pursuant to paragraph (2)(B), result in aggregate industry insured losses during such Program Year exceeding \$100,000,000,000, up to the limit under paragraph (2)(A).

(B) NBCR TERRORISM.—

(i) AMOUNT OF COMPENSATION.—The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer resulting from NBCR terrorism during any additional Program Year shall be equal to the sum of—

(I) the amount of qualified NBCR losses (as such term is defined in clause (ii)) of the insurer, multiplied by a percentage based on the aggregate industry qualified NBCR losses for the Program Year, which percentage shall be—

(aa) 85 percent of such aggregate industry qualified NBCR losses of less than \$10,000,000,000;

(bb) 87.5 percent of such aggregate industry qualified NBCR losses between \$10,000,000,000 and \$20,000,000,000;

(cc) 90 percent of such aggregate industry qualified NBCR losses between \$20,000,000,000 and \$40,000,000,000;

(dd) 92.5 percent of such aggregate industry qualified NBCR losses of between \$40,000,000,000 and \$60,000,000,000; and

(ee) 95 percent of such aggregate industry qualified NBCR losses of more than \$60,000,000,000;

and shall be prorated per insurer based on each insurer's percentage of the aggregate industry qualified NBCR losses for such additional Program Year; and

(II) 100 percent of the insured losses of the insurer resulting from NBCR terrorism that, based upon pro rata determinations pursuant to paragraph (2)(B), result in aggregate industry insured losses during such Program Year exceeding \$100,000,000,000, up to the limit under paragraph (2)(A).

(ii) **QUALIFIED NBCR LOSSES.**—For purposes of this subparagraph, the term “qualified NBCR losses” means, with respect to insured losses of an insurer resulting from NBCR terrorism during an additional Program Year, that portion of the amount of such insured losses that—

(I) exceeds the applicable insurer deductible required to be paid during such Program Year; and

(II) based upon pro rata determinations pursuant to paragraph (2)(B), does not result in aggregate industry insured losses during such Program Year exceeding \$100,000,000,000.

(C) **PROGRAM TRIGGER.**—In the case of a certified act of terrorism occurring after March 31, 2006, no compensation shall be paid by the Secretary under subsection (a), unless the aggregate industry insured losses resulting from such certified act of terrorism exceed \$50,000,000, except that if a certified act of terrorism occurs for which resulting aggregate industry insured losses exceed \$1,000,000,000, the applicable amount for any subsequent certified act of terrorism shall be the amount specified in section 102(1)(B)(ii).

(D) **LIMITATION ON COMPENSATION FOR GROUP LIFE INSURANCE.**—Notwithstanding any other provision of this Act, the Federal share of compensation under the Program paid by the Secretary for insured losses of an insurer resulting from coverage of any single certificate holder under any group life insurance coverages of the insurer may not during any additional Program Year exceed \$1,000,000.

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

(2) **CAP ON ANNUAL LIABILITY.**—

(A) **IN GENERAL.**—Notwithstanding paragraph (1) or any other provision of Federal or State law, including any State workers' compensation or other compulsory insurance law, if the aggregate amount of the Federal share of compensation to be paid to all insurers pursuant to paragraph (1) exceeds \$100,000,000,000, during any additional Program

Year (until such time as the Congress may act otherwise with respect to such losses)—

(i) the Secretary shall not make any payment under this title for any portion of the amount of the aggregate insured losses during such Program Year for which the Federal share exceeds \$100,000,000,000; and

(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of the aggregate insured losses during such Program Year that exceeds \$100,000,000,000.

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

(C) *CLAIMS ALLOCATIONS*.—The Secretary shall, by regulation, provide for insurers to allocate claims payments for insured losses under applicable insurance policies in any case described in subparagraph (A). Such regulations shall include provisions for payment, for the purpose of addressing emergency needs of applicable individuals affected by an act of terrorism, of a portion of claims for insured losses promptly upon filing of such claims.

(3) *LIMITATION ON INSURER FINANCIAL RESPONSIBILITY*.—

(A) *LIMITATION*.—Notwithstanding any other provision of Federal or State law, including any State workers' compensation or other compulsory insurance law, an insurer's financial responsibility for insured losses from acts of terrorism shall be limited to its applicable insurer deductible and its applicable share of insured losses that exceed its applicable insurer deductible, subject to the requirements of paragraph (2).

(B) *FEDERAL REIMBURSEMENT*.—Notwithstanding any other provision of Federal or State law, the Secretary shall—

(i) reimburse insurers for any payment of excess insured losses made prior to publication of any notification pursuant to paragraph (4)(A);

(ii) reimburse insurers for any payment of excess insured losses occurring on or after the date of any notification pursuant to paragraph (4)(A), but only to the extent that—

(I) such payment is ordered by a court pursuant to subparagraph (C) of this paragraph or is directed by State law, notwithstanding this paragraph, or by Federal law;

(II) such payment is limited to compensating insurers for their payment of excess insured losses and does not include punitive damages, or litigation or other costs; and

(III) the insurer has made a good-faith effort to defend against any claims for such payment; and  
(iii) have the right to intervene in any legal proceedings relating to such claims specified in clause (ii)(III).

(C) *FEDERAL COURT JURISDICTION*.—

(i) *CONDITIONS.*—All claims relating to or arising out of an insurer's financial responsibility for insured losses from acts of terrorism under this paragraph shall be within the original and exclusive jurisdiction of the district courts of the United States, in accordance with the procedures established in subparagraph (D), if the Secretary certifies that the following conditions have been met, or that there is a reasonable likelihood that the following conditions may be met:

(I) The aggregate amount of the Federal share of compensation to be paid to all insurers pursuant to paragraph (1) exceeds \$100,000,000,000, pursuant to paragraph (2); and

(II) the insurer has paid its applicable insurer deductible and its pro rata share of insured losses determined pursuant to paragraph (2)(B).

(ii) *REMOVAL OF STATE COURT ACTIONS.*—If the Secretary certifies that conditions set forth in subclauses (I) and (II) of clause (i) have been met, all pending State court actions that relate to or arise out of an insurer's financial responsibility for insured losses from acts of terrorism under this paragraph shall be removed to a district court of the United States in accordance with subparagraph (D).

(D) *VENUE.*—For each certification made by the Secretary pursuant to subparagraph (C)(i), not later than 90 days after the Secretary's determination the Judicial Panel on Multidistrict Litigation shall designate one district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim relating to or arising out of an insurer's financial responsibility for insured losses from acts of terrorism under this paragraph.

(4) *NOTICES REGARDING LOSSES AND ANNUAL LIABILITY CAP.*—

(A) *APPROACHING CAP.*—If the Secretary determines estimated or actual aggregate Federal compensation to be paid pursuant to paragraph (1) equals or exceeds \$80,000,000,000 during any Program Year, the Secretary shall promptly provide notification in accordance with subparagraph (D)—

(i) of such estimated or actual aggregate Federal compensation to be paid;

(ii) of the likelihood that such aggregate Federal compensation to be paid for such Program Year will equal or exceed \$100,000,000,000; and

(iii) that, pursuant to paragraph (2)(A)(ii), insurers are not required to make payments of excess insured losses.

(B) *EVENT LIKELY TO CAUSE LOSSES TO EXCEED CAP.*—If any act of terrorism occurs that the Secretary determines is likely to cause estimated or actual aggregate Federal compensation to be paid pursuant to paragraph (1) to exceed \$100,000,000,000 during any Program Year, the Secretary shall, not later than 10 days after such act, provide notification in accordance with subparagraph (D)—

(i) of such estimated or actual aggregate Federal compensation to be paid; and

(ii) that, pursuant to paragraph (2)(A)(ii), insurers are not required to make payments for excess insured losses.

(C) *EXCEEDING CAP.*—If the Secretary determines estimated or actual aggregate Federal compensation to be paid pursuant to paragraph (1) equals or exceeds \$100,000,000,000 during any Program Year—

(i) the Secretary shall promptly provide notification in accordance with subparagraph (D)—

(I) of such estimated or actual aggregate Federal compensation to be paid; and

(II) that, pursuant to paragraph (2)(A)(ii), insurers are not required to make payments for excess insured losses unless the Congress provides for payments for excess insured losses pursuant to clause (ii) of this subparagraph; and

(ii) the Congress shall determine the procedures for and the source of any payments for such excess insured losses.

(D) *PARTIES NOTIFIED.*—Notification is provided in accordance with this subparagraph only if notification is provided—

(i) to the Congress, in writing; and

(ii) to insurers, by causing such notice to be published in the Federal Register.

(E) *DETERMINATIONS.*—The Secretary shall make determinations regarding estimated and actual aggregate Federal compensation to be paid promptly after any act of terrorism as may be necessary to comply with this paragraph.

(F) *MANDATORY DISCLOSURE FOR INSURANCE CONTRACTS.*—All policies for property and casualty insurance and group life insurance shall be deemed to contain a provision to the effect that no insurer that has met its applicable insurer deductible and its applicable share of insured losses that exceed its applicable insurer deductible but are not compensated pursuant to paragraph (1), shall be obligated to pay for any portion of excess insured loss. Notwithstanding the preceding sentence, insurers shall include a disclosure in their policies detailing the maximum level of Government assistance and the applicable insurer share.

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

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

(7) *INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.*—For purposes of paragraph (8), the insurance marketplace aggregate retention amount shall be—

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

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

- (ii) the aggregate amount, for all insurers, of insured losses during such period;
  - (B) for Program Year 2, the lesser of—
    - (i) \$12,500,000,000; and
    - (ii) the aggregate amount, for all insurers, of insured losses during such Program Year;
  - (C) for Program Year 3, the lesser of—
    - (i) \$15,000,000,000; and
    - (ii) the aggregate amount, for all insurers, of insured losses during such Program Year;
  - (D) for Program Year 4, the lesser of—
    - (i) \$25,000,000,000; and
    - (ii) the aggregate amount, for all insurers, of insured losses during such Program Year;
  - (E) for Program Year 5, the lesser of—
    - (i) \$27,500,000,000; and
    - (ii) the aggregate amount, for all insurers, of insured losses during such Program Year; and
  - (F) for each additional Program Year—
    - (i) for property and casualty insurance, the lesser of—
      - (I) \$27,500,000,000; and
      - (II) the aggregate amount, for all such insurance, of insured losses during such Program Year; and
    - (ii) for group life insurance, the lesser of—
      - (I) \$5,000,000,000; and
      - (II) the aggregate amount, for all such insurance, of insured losses during such Program Year.
- (8) RECOUPMENT OF FEDERAL SHARE.—
- (A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount for each of the Program Years referred to in subparagraphs (A) through (F) of paragraph (7) shall be the difference between—
- (i) the applicable insurance marketplace aggregate retention amount under paragraph (7) for such Program Year; and
  - (ii) the aggregate amount, for all applicable insurers (pursuant to subparagraph (E)), of insured losses during such Program Year that are not compensated by the Federal Government because such losses—
    - (I) are within the insurer deductible for the insurer subject to the losses; or
    - (II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).
- (B) NO MANDATORY RECOUPMENT IF UNCOMPENSATED LOSSES EXCEED APPLICABLE INSURANCE MARKETPLACE RETENTION.—Notwithstanding subparagraph (A), if the aggregate amount of uncompensated insured losses referred to in clause (ii) of such subparagraph for any Program Year referred to in any of subparagraphs (A) through (F) of paragraph (7) is greater than the applicable insurance marketplace aggregate retention amount under paragraph (7) for

such Program Year, the mandatory recoupment amount shall be \$0.

(C) *MANDATORY ESTABLISHMENT OF SURCHARGES TO RECOUP MANDATORY RECOUPMENT AMOUNT.*—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers' compensation) occurring during any of the Program Years referred to in any of subparagraphs (A) through (F) of paragraph (7), terrorism loss risk-spreading premiums in an amount equal to any mandatory recoupment amount for such Program Year.

(D) *DISCRETIONARY RECOUPMENT OF REMAINDER OF FINANCIAL ASSISTANCE.*—To the extent that the amount of Federal financial assistance provided exceeds any mandatory recoupment amount, the Secretary may—

(i) recoup, through terrorism loss risk-spreading premiums, such additional amounts; or

(ii) submit a report to the Congress identifying such amounts that the Secretary believes cannot be recouped, based on—

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

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

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

(IV) such other factors as the Secretary considers appropriate.

(E) *SEPARATE RECOUPMENT.*—“The Secretary shall provide that—

(i) any recoupment under this paragraph of amounts paid for Federal financial assistance for insured losses for property and casualty insurance shall be applied to property and casualty insurance policies; and

(ii) any recoupment under this paragraph of amounts paid for Federal financial assistance for insured losses for group life insurance shall be applied to group life insurance policies.

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

(A) *POLICYHOLDER PREMIUM.*—Subject to paragraph (8)(E), any amount established by the Secretary as a terrorism loss risk-spreading premium shall—

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

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

(iii) be based on—

(I) a percentage of the premium amount charged for property and casualty insurance coverage under the policy; and

(II) a percentage of the amount at risk for group life insurance coverage under the policy.

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

(C) *PERCENTAGE LIMITATION.*—A terrorism loss risk-spreading premium may not exceed, on an annual basis—

(i) with respect to property and casualty insurance, the amount equal to 3 percent of the premium charged under the policy; and

(ii) with respect to group life insurance, the amount equal to 0.0053 percent of the amount at risk under the policy.

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

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

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

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

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

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

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

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

*in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.*

**(g) REINSURANCE TO COVER EXPOSURE.—**

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

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

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

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

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

**[and]**

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

(3) *during the 90-day period beginning upon the certification of any act of terrorism, to issue such regulations as the Secretary considers necessary to carry out this Act without regard to the notice and comment provisions of section 553 of title 5, United States Code.*

\* \* \* \* \*

**(h) ANNUAL ADJUSTMENT.—**

*(1) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary shall adjust, for the second additional Program Year and for each additional Program Year thereafter, based upon the percentage change in an appropriate index during the 12-month period preceding such Program Year, each of the following amounts (as such amount may have been previously adjusted):*

*(A) The dollar amount in section 102(1)(B)(ii) (relating to act of terrorism).*

*(B) The dollar amount in section 102(11)(J) (relating to aggregate industry insured losses in a previously impacted area).*

*(C) The dollar amounts in subparagraphs (A) and (B) of section 103(e)(1) (relating to limitation on Federal share).*

*(D) The dollar amounts in section 103(e)(1)(C) (relating to Program trigger).*

(E) *The dollar amount in section 103(e)(1)(D) (relating to limitation on group life insurance compensation).*

(F) *The dollar amounts in section 103(e)(2) (relating to cap on annual liability).*

(G) *The dollar amounts in section 103(e)(3)(C) (relating to limitation on insurer financial liability).*

(H) *The dollar amounts in section 103(e)(4) (relating to notices regarding losses and annual liability cap).*

(I) *The dollar amounts in section 103(e)(7) (relating to insurance marketplace aggregate retention amount).*

(J) *The dollar amounts in section 109(b)(1)(C) (relating to membership of Commission on Terrorism Insurance Risk).*

(2) *PUBLICATION.—The Secretary shall make the dollar amounts for each additional Program Year, as adjusted pursuant to this subsection, publicly available in a timely manner.*

\* \* \* \* \*

#### **SEC. 106. PRESERVATION PROVISIONS.**

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

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

(2) except that—

(A) \* \* \*

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

(C) *during the period beginning on the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007 and ending on December 31, 2008, rates and forms for property and casualty insurance, and group life insurance, required by this title and providing coverage except for NBCR terrorism that are filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory, and, with respect to forms, where a State has prior approval authority, it shall apply to allow subsequent review of such forms;*

(D) *during the period beginning on the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007, and ending on December 31, 2009, forms for property and casualty insurance, and group life insurance, covered by this title and providing coverage for NBCR*

terrorism that are filed with any State, to the extent of the addition of such coverage for NBCR terrorism and where such coverage was not previously required, shall not be subject to prior approval or waiting period under any law of a State that would otherwise be applicable;

(E) during the period beginning on the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007, and ending on December 31, 2010, rates for property and casualty insurance, and group life insurance, covered by this title and providing coverage for NBCR terrorism that are filed with any State, to the extent of the addition of such coverage for NBCR terrorism and where such coverage was not previously required, shall not be subject to prior approval or waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as inadequate or unfairly discriminatory; and

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

\* \* \* \* \*

(c) **RULE OF CONSTRUCTION REGARDING INSURER COORDINATION.**—Nothing in this Act shall be construed to prohibit, restrict, or otherwise limit an insurer from entering into an arrangement with another insurer to make available coverage for any portion of insured losses to fulfill the requirements of section 103(c). The Secretary shall develop, in consultation with the NAIC, minimum financial solvency standards and other standards the Secretary determines appropriate with respect to such arrangements. Nothing in this subsection shall be construed to establish any legal partnership.

**SEC. 106A. TERRORISM BUY-DOWN FUND.**

(a) **ESTABLISHMENT.**—The Secretary shall establish a Terrorism Buy-Down Fund (in this section referred to as the “Fund”) that shall make available additional terrorism coverage for the insured losses of insurers, which shall be available for purchase by insurers on a voluntary basis.

(b) **PURCHASE OF DEDUCTIBLE, CO-SHARE, AND TRIGGER BUY-DOWN COVERAGE.**—

(1) **IN GENERAL.**—An insurer may purchase deductible, co-share, and pre-trigger buy-down coverage (in this section referred to as “buy-down coverage”) through the Fund by making an election, in advance, to treat some or all of the premiums it has disclosed pursuant to section 103(b)(2) as fee charges for the Program imposed by the Secretary and remitting such amounts to the Fund.

(2) **LIMITS.**—An insurer may not purchase buy-down coverage in an amount greater than the lesser of—

(A) the highest amount specified in section 103(e)(1)(C);  
and

- (B) *the insurer's one-in-one-hundred-year risk exposure to acts of terrorism.*
- (c) *BUY-DOWN COVERAGE.—The Fund shall provide the buy-down coverage to an insurer for losses for acts of terrorism, without application of the insurer deductible and in addition to any otherwise payable Federal share of compensation pursuant to section 103(e).*
- (d) *BUILD-UP.—The buy-down coverage that shall be payable to an insurer for qualifying losses shall be the aggregate of the insurer's buy-down coverage premiums plus interest accrued on such amounts.*
- (e) *USE BY INSURERS.—*
- (1) *QUALIFYING LOSSES.—For the purpose of this section, qualifying losses are insured losses by an insurer that are not excess losses and that do not include amounts for which Federal financial assistance pursuant to section 103(e) is received, notwithstanding any limits otherwise applicable regarding section 103(e)(1)(C) (regarding program triggers) or section 102(11) (regarding insurer deductibles).*
- (2) *USE OF BUY-DOWN COVERAGE.—An insurer may use any buy-down coverage payments received under subsection (f) to satisfy—*
- (A) *the applicable insurer deductibles for the insurer;*
- (B) *the portion of the insurer's losses that exceed the insurer deductible but are not compensated by the Federal share; and*
- (C) *the insurer's obligations to pay for insured losses if the Program trigger under section 103(e)(1)(C) is not satisfied.*
- (3) *BUY-DOWN COVERAGE DOES NOT REDUCE FEDERAL CO-SHARE.—The receipt by an insurer of buy-down coverage under this section for insured losses shall not be considered with respect to calculating the insurer's insured losses with respect to the insurer's deductible and eligibility for Federal financial assistance pursuant to section 103(e).*
- (4) *INSOLVENCY.—An insurer may sell its rights to buy-down coverage from the Fund to another insurer as part of or to avoid an insolvency or as part of a merger, sale, or major reorganization.*
- (f) *PAYMENT OF BUY-DOWN COVERAGE.—The Fund shall pay the qualifying losses of an insurer purchasing buy-down coverage up to the amount described in subsection (d).*
- (g) *GOVERNMENT BORROWING.—The Secretary may borrow the funds from the Fund to offset, in whole or in part, the Federal share of compensation provided to all insurers under the Program, except that—*
- (1) *the Fund shall always immediately provide any buy-down coverage payments required under subsection (f); and*
- (2) *any such amounts borrowed must be replenished with appropriate interest.*
- (h) *RISK-SHARING MECHANISMS.—The Secretary shall establish voluntary risk-sharing mechanisms for insurers purchasing buy-down coverage from the Fund to pool their reinsurance purchases and otherwise share terrorism risk.*
- (i) *TERMINATION.—Upon termination of the Program under section 108, and subject to the Secretary's continuing authority under*

*section 108(b) to adjust claims in satisfaction under the Program, the Secretary shall provide that the Fund shall become a privately-operated mutual terrorism reinsurance company owned by the insurers that have submitted buy-down coverage premiums in proportion to such premiums minus any buy-down coverage payments received.*

\* \* \* \* \*

**SEC. 108. TERMINATION OF PROGRAM.**

(a) **TERMINATION OF PROGRAM.**—The Program shall terminate on **December 31, 2007** *December 31, 2022*.

\* \* \* \* \*

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

(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (b) of this section, **paragraph (4), (5), (6), (7), or (8)** *paragraph (5), (6), (7), (8), or (9)* of section 103(e), or subsection (a)(1), (c), (d), or (e) of section 104, as in effect on the day before the date of such repeal, or applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (b) of this section is in effect; or

\* \* \* \* \*

**[(e) ANALYSIS OF MARKET CONDITIONS FOR TERRORISM RISK INSURANCE.**—

**[(1) IN GENERAL.**—The President’s Working Group on Financial Markets, in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders, shall perform an analysis regarding the long-term availability and affordability of insurance for terrorism risk, including—

**[(A)** group life coverage; and

**[(B)** coverage for chemical, nuclear, biological, and radiological events.

**[(2) REPORT.**—Not later than September 30, 2006, the President’s Working Group on Financial Markets shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its findings pursuant to the analysis conducted under subsection (a).**]**

**(e) ANALYSIS OF MARKET CONDITIONS FOR TERRORISM RISK INSURANCE.**—

*(1) IN GENERAL.*—The Secretary, in consultation with the NAIC, representatives of the insurance industry, representatives of the securities industry, and representatives of policyholders, shall perform an analysis regarding the long-term availability and affordability of insurance for terrorism risk in the private marketplace, including coverage for—

*(A) property and casualty insurance;*

*(B) group life insurance;*

*(C) workers’ compensation;*

(D) nuclear, biological, chemical, and radiological events;  
and

(E) commercial real estate.

(2) **BIENNIAL REPORTS.**—The Secretary shall submit biennial reports to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, on its findings pursuant to the analysis conducted under paragraph (1). The first such report shall be submitted not later than the expiration of the 24-month period beginning on the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007.

(3) **TESTIMONY.**—Upon submission of each biennial report under paragraph (2), the Secretary shall provide oral testimony to the Committee on Financial Services of the House of Representatives and Committee on Banking, Housing, and Urban Affairs of the United States Senate regarding the report and the analysis under this subsection for which the report is submitted.

**SEC. 109. COMMISSION ON TERRORISM RISK INSURANCE.**

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

(b) **MEMBERSHIP.**—

(1) The Commission shall consist of 21 members, as follows:

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

(B) One member who is a State insurance commissioner, designated by the NAIC.

(C) 15 members, who shall be appointed by the President, who shall include—

(i) a representative of group life insurers;

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

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

(iv) a representative of multiline insurers;

(v) a representative of independent insurance agents;

(vi) a representative of insurance brokers;

(vii) a policyholder representative;

(viii) a representative of the survivors of the victims of the attacks of September 11, 2001;

(ix) a representative of the reinsurance industry;

(x) a representative of workers’ compensation insurers;

(xi) a representative from the commercial mortgage-backed securities industry;

(xii) a representative from a nationally recognized statistical rating organization;

(xiii) a real estate developer;

(xiv) a representative of workers’ compensation insurers created by State legislatures, selected in consultation with the American Association of State Compensation Insurance Funds from among its members; and

(xv) a representative from the commercial real estate brokerage industry or the commercial property management industry.

(D) Four members, who shall serve as liaisons to the Congress, who shall include two members jointly selected by the Chairman and Ranking Member of the Committee on Financial Services of the House of Representatives and two members jointly selected by the Chairman and Ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate.

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

(c) DUTIES.—

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

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

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

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

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

(C) possible actions to significantly reduce the Federal role in covering losses resulting from acts of terrorism.

(2) EVALUATIONS.—In identifying and making the recommendations required under paragraph (1), the Commission shall specifically evaluate the utility and viability of proposals aimed at improving the availability of insurance against terrorism risk in the private marketplace.

(3) INITIAL MEETING.—The Commission shall hold its first meeting during the 3-month period that begins 15 months after the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007.

(4) REPORTS.—

(A) CONTENTS.—The Commission shall submit two reports to the Congress that—

(i) evaluate and make recommendations regarding whether there is a need for a Federal terrorism risk insurance program;

(ii) if so, include a specific, detailed recommendation for the replacement of the Program under this title; and

(iii) include the identifications, evaluations, and recommendations required under paragraphs (1) and (2).

*(B) TIMING.—The first report required under subparagraph (A) shall be submitted before the expiration of the 60-month period beginning on the date of the enactment of the Terrorism Risk Insurance Revision and Extension Act of 2007. The second such report shall be submitted before the expiration of the 96-month period beginning upon such date of enactment.*

\* \* \* \* \*

## ADDITIONAL REPUBLICAN VIEWS

Enacted after the September 11, 2001 terrorist attacks, the Terrorism Risk Insurance Act (TRIA) was intended to be “a temporary Federal program . . . to allow for a transitional period for the private market to stabilize, resume pricing of [terrorism] insurance, and build capacity.” Subsequently, Congress recognized the need for a short-term extension of this new program to curb uncertainty and maintain market stability. To ensure that the taxpayers’ liability under TRIA would not become permanent, several mechanisms were included to phase out the Federal subsidy over time, including: increasing the insurer deductibles from 7 to 20 percent, increasing the program trigger from \$5 million to \$100 million, increasing the insurer co-share from 10 to 15 percent, increasing industry retention from \$10 billion to \$27.5 billion, and narrowing lines of coverage.

TRIA has successfully fulfilled its mandate. According to a report by the President’s Working Group on Financial Markets, as the Federal subsidies for terrorism insurance have been slowly phased out, take-up rates have risen, prices have declined, reinsurance has expanded, and the private marketplace has been successfully diversifying and absorbing additional risk exposure. Unfortunately, H.R. 2761 radically revises TRIA, changing it from a temporary hand-up into a permanent hand-out. Instead of continuing to expand the private sector role in the marketplace, H.R. 2761 turns the program on its head, shifting the responsibility from a majority-private sector program to a more government-run program with taxpayers on the hook for massive increased potential liabilities.

While Republicans authored the original TRIA proposals and continue to strongly support extending it for a reasonable period of time, H.R. 2761 goes in the wrong direction with respect to the proper balance between private and public sector participation. The 15 year program extension is too long for such an enormous taxpayer liability—particularly with the terrorist threat continuing to rapidly evolve. The phase-out of the Federal role and narrowing of scope under current law would be largely reversed, the program trigger halved, and required deductibles and co-shares would be dramatically reduced for insurance companies. While deductibles would continue to slightly increase annually, they are reset below Year 1 levels, with the rate of increase not bringing the deductibles even close to current levels until long after the 15 year extension.

Despite H.R. 2761’s vast expansion of TRIA’s federal subsidies, Committee Republicans and Democrats worked together in a number of critical areas to provide more protection from terrorist threats in the marketplace. For example, many of the provisions of H.R. 2761 protecting policyholders from domestic threats and nuclear, biological, chemical, and radiological (NBCR) risks were initially developed in TRIA extension legislation that passed the

House last Congress. Republicans were also successful in getting several important amendments adopted to add more market reforms to TRIA, encourage the long-term build-up of dedicated terrorism surplus, protect taxpayers, increase private sector responsibility, and better implement the NBCR mandates.

For example, the manager's amendment to H.R. 2761 offered by Chairman Frank at the Committee markup contained several key Republican provisions to create a transition period for implementation of the new NBCR requirements, better balance the application of insurance company deductibles, and allow insurers to accumulate and pool dedicated long-term terrorism reserves for their deductibles and co-shares. State forms requirements for NBCR terrorism coverage not previously required will be exempt from state review for the first two years as the NBCR marketplace adjusts and evolves. State price controls will be partly preempted for three years to allow insurers to charge appropriate rates for NBCR coverage as they adjust their risk portfolios during this transition period, although states will still be permitted to invalidate a rate as inadequate or unfairly discriminatory. Insurers are allowed to voluntarily participate in a terrorism buy-down fund, to lower their liability for deductibles and co-shares after an event by contributing premiums to a fund that would accumulate interest over time. The funds can be pooled to help create additional capacity over time, particularly to help insurers absorb the increasing deductibles or increases in the Program trigger. These reforms are based on amendments offered by Rep. Richard Baker at the Capital Markets, Insurance, and Government Sponsored Enterprises Subcommittee markup of H.R. 2761, and will especially benefit smaller insurers, who may find it difficult to initially price and set aside reserves for NBCR coverage.

In addition to the Manager's Amendment, the Committee approved two Republican amendments that improve the ability of insurers to comply with the NBCR make-available mandate. Rep. Kenny Marchant offered a measure clarifying that an insurer may partner with another insurer with a comparable credit rating to provide NBCR coverage. This will allow insurers that may find it more difficult to offer NBCR coverage without risking insolvency or a ratings downgrade to continue offering commercial property and casualty insurance in high-risk areas. Rep. Donald Manzullo had an amendment accepted to allow exemptions to the NBCR make-available mandate for small insurers that demonstrate a likelihood of insolvency in the case of nuclear, biological, chemical, or radiological terrorism. This amendment allows small insurers to continue offering their underlying coverage to policyholders even though the NBCR mandate would otherwise magnify their risk exposure and force a significant coverage contraction. These reforms will ease the implementation of the NBCR mandates for covered lines under the TRIA program. It should be noted that TRIA does not provide a backstop for homeowners' insurance or other personal lines, and NBCR risks are expected to continue to be excluded from most homeowners' policies. Past Committee reports have suggested that NBCR is a relatively uninsurable risk absent some form of government backstop.

Republican amendments were also accepted to better protect taxpayers from bearing the brunt of an expanded TRIA program. Rep. Michele Bachmann offered an amendment directing Treasury to either require full taxpayer recoupment of any Federal payouts to cover terrorism losses, or to report to Congress on why full recoupment is not appropriate, based on such factors as cost to taxpayers, the economic environment, and insurance affordability for small- and medium-sized companies. Full recoupment is a vital component of any TRIA extension. While mandatory 100% payback of the taxpayers has been included in every previous Committee-passed TRIA bill, requiring Treasury to either recoup such amounts or report to Congress why and to what extent such full recoupment cannot be made is an improvement over the introduced language of H.R. 2761. The Committee also adopted an amendment offered by Rep. Scott Garrett increasing the TRIA deductible each year for events over \$1 billion by one-half a percentage point each year (50 basis points), with a reset mechanism to bring the deductibles back down if another major terrorist event occurred. Deductibles have increased by at least 2.5% each year since the creation of TRIA. Though the new increase is much more modest, adding at least some increase to H.R. 2761 ensures that private sector responsibility will continue to grow and the Federal subsidy decline over time. Rep. Ginny Brown-Waite also offered a fiscal responsibility amendment designed to reduce taxpayer exposure to terrorism losses. Under this amendment, Treasury is directed to index the TRIA program—including the trigger and cap—to adjust each year for inflation. This will ensure that the dollar amounts do not decline in actual value each year, protecting the government and taxpayers from having to intervene in relatively small events that do not threaten the functioning or solvency of the marketplace.

The vast majority of Republicans remain strongly committed to TRIA and its extension for a reasonable length of time. H.R. 2761 includes a number of important reforms that have been developed as the result of bipartisan efforts over several years. It is my hope that H.R. 2761 can be rebalanced, either on the House Floor or in conference with the Senate, to better reflect its intended temporary and private sector focused nature. TRIA is working extremely well today. Its Federal subsidies should not be increased, but rather slowly decreased to encourage private sector solutions and innovation. If this goal can be achieved, final passage of TRIA will have overwhelming bipartisan support.

SPENCER BACHUS, *Ranking Member.*

## DISSENTING VIEWS OF RON PAUL ON H.R. 2761

Six years ago, when the Congress considered the bill creating the terrorism insurance program, I urged my colleagues to reject it. One of the reasons I opposed the bill was my concern that, contrary to the claims of the bill's supporters, terrorism insurance would not be allowed to sunset. As I said then:

The drafters of H.R. 3210 claim that this creates a "temporary" government program. However, Mr. Speaker, what happens in three years if industry lobbyists come to Capitol Hill to explain that there is still a need for this program because of the continuing threat of terrorist attacks. Does anyone seriously believe that Congress will refuse to reauthorize this "temporary" insurance program or provide some other form of taxpayer help to the insurance industry? I would like to remind my colleagues that the federal budget is full of expenditures for long-lasting programs that were originally intended to be "temporary."

I am disappointed to be proven correct. I am also skeptical that, having renewed the program twice, this time for fifteen years, Congress will ever allow it to expire.

As Congress considers extending this program, I renew my opposition to it for substantially the same reasons I stated six years ago. However, I do have a suggestion on how to improve the program. Since one claimed problem with allowing the private market to provide terrorism insurance is the difficulty of quantifying the risk of an attack, the taxpayers' liability under the terrorism reinsurance program should be reduced for an attack occurring when the country is under orange or red alert. After all, because the point of the alert system is to let Americans know when there is an increased likelihood of an attack it is reasonable to expect insurance companies to demand that their clients take extra precautionary measures during periods of high alert. Reducing taxpayer subsidies will provide an incentive to ensure private parties take every possible precaution to minimize the potential damage from possible terrorists attack.

Since my fundamental objections to the program remain the same as six years ago, I am attaching my statement regarding H.R. 3210, which created the terrorist insurance program in the 107th Congress:

Mr. Speaker, no one doubts that the government has a role to play in compensating American citizens who are victimized by terrorist attacks. However, Congress should not lose sight of fundamental economic and constitutional principles when considering how best to provide the victims of terrorist attacks just compensation. I am afraid that H.R. 3210, the Terrorism Risk Protection Act, violates several of those principles and therefore passage of this bill is not in the best interests of the American people.

Under H.R. 3210, taxpayers are responsible for paying 90% of the costs of a terrorist incident when the total cost of that incident exceeds a certain threshold. While insurance companies technically are responsible under the bill for paying back monies received from the Treasury, the administrator of this program may defer repayment of the majority of the subsidy in order to “avoid the likely insolvency of the commercial insurer,” or avoid “unreasonable economic disruption and market instability.” This language may cause administrators to defer indefinitely the repayment of the loans, thus causing taxpayers to permanently bear the loss. This scenario is especially likely when one considers that “avoid . . . likely insolvency, unreasonable economic disruption, and market instability” are highly subjective standards, and that any administrator who attempts to enforce a strict repayment schedule likely will come under heavy political pressure to be more “flexible” in collecting debts owed to the taxpayers.

The drafters of H.R. 3210 claim that this creates a “temporary” government program. However, Mr. Speaker, what happens in three years if industry lobbyists come to Capitol Hill to explain that there is still a need for this program because of the continuing threat of terrorist attacks. Does anyone seriously believe that Congress will refuse to reauthorize this “temporary” insurance program or provide some other form of taxpayer help to the insurance industry? I would like to remind my colleagues that the federal budget is full of expenditures for long-lasting programs that were originally intended to be “temporary.”

H.R. 3210 compounds the danger to taxpayers because of what economists call the “moral hazard” problem. A moral hazard is created when individuals have the costs incurred from a risky action subsidized by a third party. In such a case individuals may engage in unnecessary risks or fail to take steps to minimize their risks. After all, if a third party will bear the costs of negative consequences of risky behavior, why should individuals invest their resources in avoiding or minimizing risk?

While no one can plan for terrorist attacks, individuals and businesses can take steps to enhance security. For example, I think we would all agree that industrial plants in the United States enjoy reasonably good security. They are protected not by the local police, but by owners putting up barbed wire fences, hiring guards with guns, and requiring identification cards to enter. One reason private firms put these security measures in place is because insurance companies provide them with incentives, in the form of lower premiums, to adopt security measures. H.R. 3210 contains no incentives for this private activity. The bill does not even recognize the important role insurance plays in providing incentives to minimize risks. By removing an incentive for private parties to avoid or at least mitigate the damage from a future terrorist attack, the government inadvertently increases the damage that will be inflicted by future attacks!

Instead of forcing taxpayers to subsidize the costs of terrorism insurance, Congress should consider creating a tax credit or deduction for premiums paid for terrorism insurance, as well as a deduction for claims and other costs borne by the insurance industry connected with offering terrorism insurance. A tax credit approach re-

duces government's control over the insurance market. Furthermore, since a tax credit approach encourages people to devote more of their own resources to terrorism insurance, the moral hazard problems associated with federally funded insurance is avoided.

The version of H.R. 3210 passed by the Financial Services committee took a good first step in this direction by repealing the tax penalty which prevents insurance companies from properly reserving funds for human-created catastrophes. I am disappointed that this sensible provision was removed from the final bill. Instead, H.R. 3210 instructs the Treasury Department to study the benefits of allowing insurers to establish tax-free reserves to cover losses from terrorist events. The perceived need to study the wisdom of cutting taxes while expanding the federal government without hesitation demonstrates much that is wrong with Washington.

In conclusion, Mr. Speaker, H.R. 3210 may reduce the risk to insurance companies from future losses, but it increases the costs incurred by an American taxpayer. More significantly, by ignoring the moral hazard problem this bill may have the unintended consequence of increasing the losses suffered in any future terrorist attacks. Therefore, passage of this bill is not in the long-term interests of the American people.

RON PAUL.

