(2) publish the name and phone number of the point of contact for the agency in the Federal Register.

(c) General rule

Subject to subsections (d) and (e), no agency shall impose any civil money penalty on a small business concern for a first-time violation.

(d) Standards for waiver

An agency shall provide a waiver of civil money penalties for a first-time violation, provided that a small business concern demonstrates, and the agency determines, that—

(1) the small business concern previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure;

(2) a first-time violation occurred as a result of the Y2K failure of the small business concern or other entity, which significantly affected the small business concern's ability to comply with a Federal rule or regulation;

(3) the first-time violation was unavoidable in the face of a Y2K failure or occurred as a result of efforts to prevent the disruption of critical functions or services that could result in harm to life or property;

(4) upon identification of a first-time violation, the small business concern initiated reasonable and prompt measures to correct the violation; and

(5) the small business concern submitted notice to the appropriate agency of the first-time violation within a reasonable time not to exceed 5 business days from the time that the small business concern became aware that the first-time violation had occurred.

(e) Exceptions

An agency may impose civil money penalties authorized under Federal law on a small business concern for a first-time violation if—

(1) the small business concern's failure to comply with Federal rules or regulations resulted in actual harm, or constitutes or creates an imminent threat to public health, safety, or the environment; or

(2) the small business concern fails to correct the violation not later than 1 month after initial notification to the agency.

(f) Expiration

This section shall not apply to first-time violations caused by a Y2K failure occurring after December 31, 2000.

(Pub. L. 106–37, §18, July 20, 1999, 113 Stat. 202.)

CHAPTER 93—INSURANCE

§ 6701. Operation of State law

(a) State regulation of the business of insurance

The Act entitled ''An Act to express the intent of Congress with reference to the regulation of the business of insurance'' and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the ''McCarran-Ferguson Act'') remains the law of the United States.

(b) Mandatory insurance licensing requirements

No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to subsections (c), (d), and (e).

(c) Affiliations

(1) In general

Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution, or an affiliate thereof, from being affiliated directly or indirectly or associated with any person, as authorized or permitted by this Act or any other provision of Federal law.

(2) Insurance

With respect to affiliations between depository institutions, or any affiliate thereof, and any insurer, paragraph (1) does not prohibit—

(A) any State from—

(i) collecting, reviewing, and taking actions (including approval and disapproval) on applications and other documents or reports concerning any proposed acquisition

of, or a change or continuation of control of, an insurer domiciled in that State; and

(ii) exercising authority granted under applicable State law to collect information concerning any proposed acquisition of, or a change or continuation of control of, an insurer engaged in the business of insurance in, and regulated as an insurer by, such State;

during the 60-day period preceding the effective date of the acquisition or change or continuation of control, so long as the collecting, reviewing, taking actions, or exercising authority by the State does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution;

(B) any State from requiring any person that is acquiring control of an insurer domiciled in that State to maintain or restore the capital requirements of that insurer to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the insurer, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A); or

(C) any State from restricting a change in the ownership of stock in an insurer, or a company formed for the purpose of controlling such insurer, after the conversion of the insurer from mutual to stock form so long as such restriction does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution.

(d) Activities

(1) In general

Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution or an affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with an affiliate, or any other person, in any activity authorized or permitted under this Act and the amendments made by this Act.

(2) Insurance sales

(A) In general

In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.

(B) Certain State laws preserved

Notwithstanding subparagraph (A), a State may impose any of the following restrictions, or restrictions that are substantially the same as but no more burdensome or restrictive than those in each of the following clauses:

(i) Restrictions prohibiting the rejection of an insurance policy by a depository institution or an affiliate of a depository institution, solely because the policy has been issued or underwritten by any person who is not associated with such depository institution or affiliate when the insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product by a depository institution, or any affiliate of a depository institution, unless such charge would be required when the depository institution or affiliate is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by a depository institution or any affiliate of a depository institution that would cause a reasonable person to believe mistakenly that—

(I) the Federal Government or a State is responsible for the insurance sales activities of, or stands behind the credit of, the institution or affiliate; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution or affiliate;

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term ''services as an insurance agent or broker'' does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a per-

son that sells or provides opinions or advice on such product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the depository institution or an affiliate thereof) to any person other than an officer, director, employee, agent, or affiliate of a depository institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—

(I) a transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on existing insureds of the depository institution or an affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurer; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer, agent, or broker, other than a prohibition that would prevent any such depository institution or affiliate—

(I) from engaging in any activity described in this clause that would not violate section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.], as interpreted by the Board of Governors of the Federal Reserve System; or

(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the depository institution or an affiliate of the depository institution.

(ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from a depository institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the depository institution or any affiliate thereof, that a written disclosure be provided to the consumer or prospective customer indicating that the customer's choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy—

(I) is not a deposit;

(II) is not insured by the Federal Deposit Insurance Corporation;

(III) is not guaranteed by any depository institution or, if appropriate, an affiliate of any such institution or any person soliciting the purchase of or selling insurance on the premises thereof; and

(IV) where appropriate, involves investment risk, including potential loss of principal.

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution, or any affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution or an affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) Limitations

(i) OCC deference

Section 6714(e) of this title does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(ii) Nondiscrimination

Subsection (e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted,

or enacted before September 3, 1998, and that is not described in subparagraph (B).

(iii) Construction

Nothing in this paragraph shall be construed—

(I) to limit the applicability of the decision of the Supreme Court in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B); or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.

(3) Insurance activities other than sales

State statutes, regulations, interpretations, orders, and other actions shall not be preempted under paragraph (1) to the extent that they—

(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act entitled ''An Act to express the intent of Congress with reference to the regulation of the business of insurance'' and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the ''McCarran-Ferguson Act'');

(B) apply only to persons that are not depository institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);

(C) do not relate to or directly or indirectly regulate insurance sales, solicitations, or cross marketing activities; and

(D) are not prohibited under subsection (e).

(4) Financial activities other than insurance

No State statute, regulation, order, interpretation, or other action shall be preempted under paragraph (1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (f); and

(D) it—

(i) does not distinguish by its terms between depository institutions, and affiliates thereof, engaged in the activity at issue and other persons engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such depository institution or affiliate engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, or affiliates thereof, engaged in the activity at issue, or any person who has an association with any such depository institution or affiliate, that is substantially more adverse than its impact on other persons engaged in the same activity that are not depository institutions or affiliates thereof, or persons who do not have an association with any such depository institution or affiliate;

(iii) does not effectively prevent a depository institution or affiliate thereof from engaging in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

(e) Nondiscrimination

Except as provided in any restrictions described in subsection (d)(2)(B), no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of a depository institution, or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(1) distinguishes by its terms between depository institutions, or affiliates thereof, and other persons engaged in such activities, in a manner that is in any way adverse to any such depository institution, or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions, or affiliates thereof, that is substantially more adverse than its impact on other persons providing the same products or services or engaged in the same activities that are not depository institutions, or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution, or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between depository institutions, or affiliates thereof, and persons engaged in the business of insurance.

(f) Limitation

Subsections (c) and (d) shall not be construed to affect—

(1) the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State—

(A) to investigate and bring enforcement actions, consistent with section 77r(c) of this title, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions; or

(B) to require the registration of securities or the licensure or registration of brokers, dealers, or investment advisers (consistent with section 80b–3a of this title), or the asso-

ciated persons of a broker, dealer, or investment adviser (consistent with such section 80b–3a of this title); or

(2) State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies, or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws if such laws, regulations, orders, interpretations, or other actions are not inconsistent with the purposes of this Act to authorize or permit certain affiliations and to remove barriers to such affiliations.

(g) Definitions

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

(1) Affiliate

The term ''affiliate'' means any company that controls, is controlled by, or is under common control with another company.

(2) Antitrust laws

The term ''antitrust laws'' has the meaning given the term in subsection (a) of section 12 of this title, and includes section 45 of this title (to the extent that such section 45 relates to unfair methods of competition).

(3) Depository institution

The term ''depository institution''—

(A) has the meaning given the term in section 1813 of title 12; and

(B) includes any foreign bank that maintains a branch, agency, or commercial lending company in the United States.

(4) Insurer

The term ''insurer'' means any person engaged in the business of insurance.

(5) State

The term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Pub. L. 106–102, title I, §104, Nov. 12, 1999, 113 Stat. 1352.)

Editorial Notes

REFERENCES IN TEXT

The McCarran-Ferguson Act, referred to in subsecs. (a) and (d)(3)(A), is act Mar. 9, 1945, ch. 20, 59 Stat. 33, which is classified generally to chapter 20 (§1011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1011 of this title and Tables.

This Act, referred to in subsecs. (c)(1), (d)(1), (4)(D)(iii), (iv), (e), and (f)(2), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

Section 106 of the Bank Holding Company Act Amendments of 1970, referred to in subsec. (d)(2)(B)(viii)(I), is Pub. L. 91–607, title I, §106, Dec. 31, 1970, 84 Stat. 1766, which is classified generally to chapter 22 (§1971 et seq.) of Title 12, Banks and Banking.

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 2019 AMENDMENT

Pub. L. 116–94, div. I, title V, §501, Dec. 20, 2019, 133 Stat. 3026, provided that: ''This title [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Program Reauthorization Act of 2019'.''

SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–1, §1(a), Jan. 12, 2015, 129 Stat. 3, provided that: ''This Act [enacting subchapter III of this chapter, amending section 78*o*–10 of this title, section 6s of Title 7, Agriculture, and section 241 of Title 12, Banks and Banking, enacting provisions set out as notes under this section, sections 1 and 6s of Title 7, and section 241 of Title 12, and amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Program Reauthorization Act of 2015'.''

Pub. L. 114–1, title II, §201, Jan. 12, 2015, 129 Stat. 12, provided that: ''This title [enacting subchapter III of this chapter] may be cited as the 'National Association of Registered Agents and Brokers Reform Act of 2015'.''

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–160, §1(a), Dec. 26, 2007, 121 Stat. 1839, provided that: ''This Act [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Program Reauthorization Act of 2007'.''

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–144, §1, Dec. 22, 2005, 119 Stat. 2660, provided that: ''This Act [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Extension Act of 2005'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–297, §1(a), Nov. 26, 2002, 116 Stat. 2322, provided that: ''This Act [amending section 248 of Title 12, Banks and Banking, and sections 1606 and 1610 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as notes under this section and section 1610 of Title 28, and amending provisions set out as a note under section 1610 of Title 28] may be cited as the 'Terrorism Risk Insurance Act of 2002'.''

ADVISORY COMMITTEE ON RISK-SHARING MECHANISMS

Pub. L. 114–1, title I, §110, Jan. 12, 2015, 129 Stat. 9, provided that:

''(a) FINDING; RULE OF CONSTRUCTION.—

''(1) FINDING.—Congress finds that it is desirable to encourage the growth of nongovernmental, private market reinsurance capacity for protection against losses arising from acts of terrorism.

''(2) RULE OF CONSTRUCTION.—Nothing in this Act [see section 1(a) of Pub. L. 114–1, set out as a Short Title of 2015 Amendment note above], any amendment made by this Act, or the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) [see Short Title of 2002 Amendment note above] shall prohibit insurers from developing risk-sharing mechanisms to voluntarily reinsure terrorism losses between and among themselves.

''(b) ADVISORY COMMITTEE ON RISK-SHARING MECHANISMS.—

''(1) ESTABLISHMENT.—The Secretary of the Treasury shall establish and appoint an advisory committee to be known as the 'Advisory Committee on Risk-Sharing Mechanisms' (referred to in this subsection as the 'Advisory Committee').

''(2) DUTIES.—The Advisory Committee shall provide advice, recommendations, and encouragement

with respect to the creation and development of the nongovernmental risk-sharing mechanisms described under subsection (a).

''(3) MEMBERSHIP.—The Advisory Committee shall be composed of 9 members who are directors, officers, or other employees of insurers, reinsurers, or capital market participants that are participating or that desire to participate in the nongovernmental risk-sharing mechanisms described under subsection (a), and who are representative of the affected sectors of the insurance industry, including commercial property insurance, commercial casualty insurance, reinsurance, and alternative risk transfer industries.''

TERRORISM INSURANCE PROGRAM

Pub. L. 107–297, title I, Nov. 26, 2002, 116 Stat. 2322, as amended by Pub. L. 109–144, §§ 2–8, Dec. 22, 2005, 119 Stat. 2660–2662; Pub. L. 110–160, §§ 2–5, Dec. 26, 2007, 121 Stat. 1839–1841, Pub. L. 114–1, title I, §§ 101–106, 107(e), 111, 112, Jan. 12, 2015, 129 Stat. 3–5, 8, 10, 12; Pub. L. 116–94, div. I, title V, § 502(a)–(c), Dec. 20, 2019, 133 Stat. 3026, 3027, provided that:

''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 consultation with 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 (5)(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 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) TIMING OF CERTIFICATION.—Not later than 9 months after the report required under section 107 of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [see section 107 of Pub. L. 114–1; 129 Stat. 7] is submitted to the appropriate committees of Congress, the Secretary shall issue final rules governing the certification process, including establishing a timeline for which an act is eligible for certification by the Secretary on whether an act is an act of terrorism under this paragraph.

''(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 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.—

''(A) IN GENERAL.—An entity has 'control' over another entity, if—

''(i) 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;

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

''(iii) 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.

''(B) RULE OF CONSTRUCTION.—An entity, including any affiliate thereof, does not have 'control' over another entity, if, as of the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [Jan. 12, 2015], the entity is acting as an attorney-in-fact, as defined by the Secretary, for the other entity and such other entity is a reciprocal insurer, provided that the entity is not, for reasons other than the attorney-in-fact relationship, defined as having 'control' under subparagraph (A).

''(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) the value of an insurer's direct earned premiums during the immediately preceding calendar year, multiplied by 20 percent; and

''(B) notwithstanding subparagraph (A), for any calendar year, if an insurer has not had a full year of operations during the calendar year immediately preceding such calendar 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) 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.

''(12) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(13) 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.

''(14) 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).

''(15) 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 [Nov. 26, 2002], 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 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 and renewal of the policy;

''(3) in the case of any policy that is issued after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the insurer provides clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under subsection (e)(2), at the time of offer, purchase, and renewal of the policy;

''(4) 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

''(5) 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 calendar 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 [Nov. 26, 2002], 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 each calendar year shall be equal to 85 percent and beginning on January 1, 2016, shall decrease by 1 percentage point per calendar year until equal to 80 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such calendar year.

''(B) PROGRAM TRIGGER.—In the case of certified acts 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 acts of terrorism exceed—

''(i) $100,000,000, with respect to such insured losses occurring in calendar year 2015;

''(ii) $120,000,000, with respect to such insured losses occurring in calendar year 2016;

''(iii) $140,000,000, with respect to such insured losses occurring in calendar year 2017;

''(iv) $160,000,000, with respect to such insured losses occurring in calendar year 2018;

''(v) $180,000,000, with respect to such insured losses occurring in calendar year 2019; and

''(vi) $200,000,000, with respect to such insured losses occurring in calendar year 2020 and any calendar year thereafter.

''(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 a calendar year—

''(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 the amount of such losses that exceeds $100,000,000,000.

''(B) INSURER SHARE.—

''(i) IN GENERAL.—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, except that, notwithstanding paragraph (1) or any other provision of Federal or State law, no insurer may be required to make any payment for insured losses in excess of its deductible under section 102(7) combined with its share of insured losses under paragraph (1)(A) of this subsection.

''(ii) REGULATIONS.—Not later than 240 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Secretary shall issue final regulations for determining the pro rata share of insured losses under the Program when insured losses exceed $100,000,000,000, in accordance with clause (i).

''(iii) REPORT TO CONGRESS.—Not later than 120 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007, the Secretary shall provide 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 describing the process to be used by the Secretary for determining the allocation of pro rata payments for insured losses under the Program when such losses exceed $100,000,000,000.

''(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during any calendar year. The Secretary shall provide an initial notice to Congress not later than 15 days after the date of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100,000,000,000.

''(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.—

''(A) IN GENERAL.—For purposes of paragraph (7), the insurance marketplace aggregate retention amount shall be the lesser of—

''(i) $27,500,000,000, as such amount is revised pursuant to this paragraph; and

''(ii) the aggregate amount, for all insurers, of insured losses during such calendar year.

''(B) REVISION OF INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.—

''(i) PHASE-IN.—Beginning in the calendar year of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [2015], the amount set forth under subparagraph (A)(i) shall increase by $2,000,000,000 per calendar year until equal to $37,500,000,000.

''(ii) FURTHER REVISION.—Beginning in the calendar year that follows the calendar year in which the amount set forth under subparagraph (A)(i) is equal to $37,500,000,000, the amount under subparagraph (A)(i) shall be revised to be the amount equal to the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior 3 calendar years, as such sum is determined by the Secretary under subparagraph (C).

''(C) RULEMAKING.—Not later than 3 years after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [Jan. 12, 2015], the Secretary shall—

''(i) issue final rules for determining the amount of the sum described under subparagraph (B)(ii); and

''(ii) provide a timeline for public notification of such determination.

''(7) RECOUPMENT OF FEDERAL SHARE.—

''(A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount shall be the difference between—

''(i) the insurance marketplace aggregate retention amount under paragraph (6); 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) [Reserved.]

''(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), terrorism loss risk-spreading premiums in an amount equal to 140 percent of any mandatory recoupment amount as calculated under subparagraph (A) 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.

''(E) TIMING OF MANDATORY RECOUPMENT.—

''(i) IN GENERAL.—If the Secretary is required to collect terrorism loss risk-spreading premiums under subparagraph (C)—

''(I) for any act of terrorism that occurs on or before December 31, 2022, the Secretary shall collect all required premiums by September 30, 2024;

''(II) for any act of terrorism that occurs between January 1 and December 31, 2023, the Secretary shall collect 35 percent of any required premiums by September 30, 2024, and the remainder by September 30, 2029; and

''(III) for any act of terrorism that occurs on or after January 1, 2024, the Secretary shall collect all required premiums by September 30, 2029.

''(ii) REGULATIONS REQUIRED.—Not later than 180 days after the date of enactment of this subparagraph [Dec. 26, 2007], the Secretary shall issue regulations describing the procedures to be used for collecting the required premiums in the time periods referred to in clause (i).

''(F) NOTICE OF ESTIMATED LOSSES.—Not later than 90 days after the date of an act of terrorism, the Secretary shall publish an estimate of aggregate insured losses, which shall be used as the basis for determining whether mandatory recoupment will be required under this paragraph. Such estimate shall be updated as appropriate, and at least annually.

''(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 collected 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, in accordance with the timing requirements of paragraph (7)(E).

''(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 calendar year provided pursuant to this section, may not exceed the aggregate amount of the insurer's insured losses for the calendar year. If such recoveries and financial assistance for the calendar year exceed such aggregate amount of insured losses for the calendar year 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 [Nov. 26, 2002], the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

''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.

''(b) INTERIM RULES AND PROCEDURES.—The Secretary may issue interim final rules or procedures specifying the manner in which—

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

''(2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;

''(3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and

''(4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

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

''(d) CONTRACTS FOR SERVICES.—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

''(e) CIVIL PENALTIES.—

''(1) IN GENERAL.—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any insurer that the Secretary determines, on the record after opportunity for a hearing—

''(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

''(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

''(C) submits to the Secretary fraudulent claims under the Program for insured losses;

''(D) has failed to provide the disclosures required under subsection (f); or

''(E) has otherwise failed to comply with the provisions of, or the regulations issued under, this title.

''(2) AMOUNT.—The amount under this paragraph is the greater of $1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

''(3) RECOVERY OF AMOUNT IN DISPUTE.—A penalty under this subsection for any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations under this title shall be in addition to any such amounts recovered by the Secretary.

''(f) SUBMISSION OF PREMIUM INFORMATION.—

''(1) IN GENERAL.—The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year.

''(2) ACCESS TO INFORMATION.—To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

''(3) AVAILABILITY TO CONGRESS.—The Secretary shall make information compiled under this subsection available to the Congress, upon request.

''(g) FUNDING.—

''(1) FEDERAL PAYMENTS.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program.

''(2) ADMINISTRATIVE EXPENSES.—There are hereby appropriated, out of funds in the Treasury not other-

wise appropriated, such sums as may be necessary to pay reasonable costs of administering the Program.

''(h) REPORTING OF TERRORISM INSURANCE DATA.—

''(1) AUTHORITY.—During the calendar year beginning on January 1, 2016, and in each calendar year thereafter, the Secretary shall require insurers participating in the Program to submit to the Secretary such information regarding insurance coverage for terrorism losses of such insurers as the Secretary considers appropriate to analyze the effectiveness of the Program, which shall include information regarding—

''(A) lines of insurance with exposure to such losses;

''(B) premiums earned on such coverage;

''(C) geographical location of exposures;

''(D) pricing of such coverage;

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

''(F) the amount of private reinsurance for acts of terrorism purchased; and

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

''(2) REPORTS.—Not later than June 30, 2016, and every other June 30 thereafter, the Secretary shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that includes—

''(A) an analysis of the overall effectiveness of the Program;

''(B) an evaluation of the availability and affordability of terrorism risk insurance, which shall include an analysis of such availability and affordability specifically for places of worship;

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

''(D) an evaluation of whether any aspects of the Program have the effect of discouraging or impeding insurers from providing commercial property casualty insurance coverage or coverage for acts of terrorism;

''(E) an evaluation of the impact of the Program on workers' compensation insurers; and

''(F) in the case of the data reported in paragraph (1)(B), an updated estimate of the total amount earned since January 1, 2003.

''(3) PROTECTION OF DATA.—To the extent possible, the Secretary shall contract with an insurance statistical aggregator to collect the information described in paragraph (1), which shall keep any nonpublic information confidential and provide it to the Secretary in an aggregate form or in such other form or manner that does not permit identification of the insurer submitting such information.

''(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (1) from an insurer, or affiliate of an insurer, the Secretary shall coordinate with the appropriate State insurance regulatory authorities and any relevant government agency or publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, individually or collectively, such entities. If the Secretary determines that such data or information is available, and may be obtained in a timely matter, from such entities, the Secretary shall obtain the data or information from such entities. If the Secretary determines that such data or information is not so available, the Secretary may collect such data or information from an insurer and affiliates.

''(5) CONFIDENTIALITY.—

''(A) RETENTION OF PRIVILEGE.—The submission of any non-publicly available data and information to the Secretary and the sharing of any non-publicly available data with or by the Secretary among other Federal agencies, the State insurance regulatory authorities, or any other entities under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

''(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Secretary, regarding the privacy or confidentiality of any data or information in the possession of the source to the Secretary, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection.

''(C) INFORMATION-SHARING AGREEMENT.—Any data or information obtained by the Secretary under this subsection may be made available to State insurance regulatory authorities, individually or collectively through an information-sharing agreement that—

''(i) shall comply with applicable Federal law; and

''(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including any privilege referred to in subparagraph (A) and the rules of any Federal or State court) to which the data or information is otherwise subject.

''(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, including any exceptions thereunder, shall apply to any data or information submitted under this subsection to the Secretary by an insurer or affiliate of an insurer.

''SEC. 105. PREEMPTION AND NULLIFICATION OF PRE-EXISTING TERRORISM EXCLUSIONS.

''(a) GENERAL NULLIFICATION.—Any terrorism exclusion in a contract for property and casualty insurance that is in force on the date of enactment of this Act [Nov. 26, 2002] shall be void to the extent that it excludes losses that would otherwise be insured losses.

''(b) GENERAL PREEMPTION.—Any State approval of any terrorism exclusion from a contract for property and casualty insurance that is in force on the date of enactment of this Act, shall be void to the extent that it excludes losses that would otherwise be insured losses.

''(c) REINSTATEMENT OF TERRORISM EXCLUSIONS.—Notwithstanding subsections (a) and (b) or any provision of State law, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that is in force on the date of enactment of this Act [Nov. 26, 2002] and that excludes coverage for an act of terrorism only—

''(1) if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

''(2) if—

''(A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage; and

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

''(i) the increased premium for such terrorism coverage; and

''(ii) the rights of the insured with respect to such coverage, including any date upon which the exclusion would be reinstated if no payment is received.

''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) the definition of the term 'act of terrorism' in section 102 shall be the exclusive definition of that term for purposes of compensation for insured

losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title;

''(B) during the period beginning on the date of enactment of this Act [Nov. 26, 2002] 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 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.

''(b) EXISTING REINSURANCE AGREEMENTS.—Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act [Nov. 26, 2002]. The terms and conditions of such an agreement shall be determined by the language of that agreement.

''SEC. 107. LITIGATION MANAGEMENT.

''(a) PROCEDURES AND DAMAGES.—

''(1) IN GENERAL.—If the Secretary makes a determination pursuant to section 102 that an act of terrorism has occurred, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in subsection (b).

''(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are hereby preempted, except as provided in subsection (b).

''(3) SUBSTANTIVE LAW.—The substantive law for decision in any such action described in paragraph (1) shall be derived from the law, including choice of law principles, of the State in which such act of terrorism occurred, unless such law is otherwise inconsistent with or preempted by Federal law.

''(4) JURISDICTION.—For each determination described in paragraph (1), not later than 90 days after the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate 1 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 (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism subject to this section. The Judicial Panel on Multidistrict Litigation shall select and assign the district court or courts based on the convenience of the parties and the just and efficient conduct of the proceedings. For purposes of personal jurisdiction, the district court or courts designated by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

''(5) PUNITIVE DAMAGES.—Any amounts awarded in an action under paragraph (1) that are attributable to punitive damages shall not count as insured losses for purposes of this title.

''(6) AUTHORITY OF THE SECRETARY.—Procedures and requirements established by the Secretary under section 50.82 of part 50 of title 31 of the Code of Federal Regulations (as in effect on the date of issuance of that section in final form) shall apply to any cause of action described in paragraph (1) of this subsection.

''(b) EXCLUSION.—Nothing in this section shall in any way limit the liability of any government, an organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism with respect to which a determination described in subsection (a)(1) was made.

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

''(d) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to affect—

''(1) any party's contractual right to arbitrate a dispute; or

''(2) any provision of the Air Transportation Safety and System Stabilization Act (Public Law 107–42; 49 U.S.C. 40101 note.).

''(e) EFFECTIVE PERIOD.—This section shall apply only to actions described in subsection (a)(1) that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program.

''SEC. 108. TERMINATION OF PROGRAM.

''(a) TERMINATION OF PROGRAM.—The Program shall terminate on December 31, 2027.

''(b) CONTINUING AUTHORITY TO PAY OR ADJUST COMPENSATION.—Following the termination of the Program, the Secretary may take such actions as may be necessary to ensure payment, recoupment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this title, in accordance with the provisions of section 103 and regulations promulgated thereunder.

''(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) 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

''(2) to prevent the availability of funding under section 104(g) during any period in which the authority of the Secretary under subsection (b) of this section is in effect.

''(d) STUDY AND REPORT ON THE PROGRAM.—

''(1) STUDY.—The Secretary, in consultation with the NAIC, representatives of the insurance industry and of policy holders, other experts in the insurance field, and other experts as needed, shall assess the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program, and the availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit.

''(2) REPORT.—The Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than June 30, 2005.

''(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 ongoing analysis regarding the long-term availability and affordability of insurance for terrorism risk.

''(2) REPORT.—Not later than September 30, 2006, and thereafter in 2010 and 2013, the President's Work-

ing 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 paragraph (1).

''(f) INSURANCE FOR NUCLEAR, BIOLOGICAL, CHEMICAL, AND RADIOLOGICAL TERRORIST EVENTS.—

''(1) STUDY.—The Comptroller General of the United States shall examine—

''(A) the availability and affordability of insurance coverage for losses caused by terrorist attacks involving nuclear, biological, chemical, or radiological materials;

''(B) the outlook for such coverage in the future; and

''(C) the capacity of private insurers and State workers compensation funds to manage risk associated with nuclear, biological, chemical, and radiological terrorist events.

''(2) REPORT.—Not later than 1 year after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report containing a detailed statement of the findings under paragraph (1), and recommendations for any legislative, regulatory, administrative, or other actions at the Federal, State, or local levels that the Comptroller General considers appropriate to expand the availability and affordability of insurance for nuclear, biological, chemical, or radiological terrorist events.

''(g) AVAILABILITY AND AFFORDABILITY OF TERRORISM INSURANCE IN SPECIFIC MARKETS.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine whether there are specific markets in the United States where there are unique capacity constraints on the amount of terrorism risk insurance available.

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

''(A) an analysis of both insurance and reinsurance capacity in specific markets, including pricing and coverage limits in existing policies;

''(B) an assessment of the factors contributing to any capacity constraints that are identified; and

''(C) recommendations for addressing those capacity constraints.

''(3) REPORT.—Not later than 180 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Comptroller General shall submit a report on the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

''(h) STUDY OF SMALL INSURER MARKET COMPETITIVENESS.—

''(1) IN GENERAL.—Not later than June 30, 2017, and every other June 30 thereafter, the Secretary shall conduct a study of small insurers (as such term is defined by regulation by the Secretary) participating in the Program, and identify any competitive challenges small insurers face in the terrorism risk insurance marketplace, including—

''(A) changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers;

''(B) how the property and casualty insurance market for terrorism risk differs between small and large insurers, and whether such a difference exists within other perils;

''(C) the impact of the Program's mandatory availability requirement under section 103(c) on small insurers;

''(D) the effect of increasing the trigger amount for the Program under section 103(e)(1)(B) on small insurers;

''(E) the availability and cost of private reinsurance for small insurers; and

''(F) the impact that State workers compensation laws have on small insurers and workers compensation carriers in the terrorism risk insurance marketplace.

''(2) REPORT.—The Secretary shall submit a report to the Congress setting forth the findings and conclusions of each study required under paragraph (1).''

[Pub. L. 114–1, title I, §§ 103, 105, 111, 112, Jan. 12, 2015, 129 Stat. 4, 5, 10, 12, which directed amendment of ''subparagraph (B) of section 103(e)(1)'', ''paragraph (1)(A) of section 102'', ''section 104'', and ''section 108'', respectively, without specifying the name of the Act being amended, were executed to those sections of the Terrorism Risk Insurance Act of 2002 (title I of Pub. L. 107–297, set out above), to reflect the probable intent of Congress.]

[Pub. L. 110–160, § 4(b)(2), Dec. 26, 2007, 121 Stat. 1840, which directed amendment of section 103(e)(3) of Pub. L. 107–297, set out above, by substituting period for ''‘and the Congress shall' and all that follows through the end of the paragraph'', was executed by substituting period for ''and the Congress shall'' and all that followed through end of first sentence, to reflect the probable intent of Congress, in light of insertion of last sentence of par. (3) by Pub. L. 110–160, § 4(b)(1).]

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER I—STATE REGULATION OF INSURANCE

§ 6711. Functional regulation of insurance

The insurance activities of any person (including a national bank exercising its power to act as agent under section 92 of title 12) shall be functionally regulated by the States, subject to section 6701 of this title.

(Pub. L. 106–102, title III, § 301, Nov. 12, 1999, 113 Stat. 1407.)

§ 6712. Insurance underwriting in national banks

(a) In general

Except as provided in section 6713 of this title, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) Authorized products

For the purposes of this section, a product is authorized if—

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of title 26.

(c) Definition

For purposes of this section, the term ''insurance'' means—