

110TH CONGRESS  
1ST SESSION

# H. R. 2761

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## AN ACT

To extend the Terrorism Insurance Program of the Department of the Treasury, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Terrorism Risk Insur-  
3 ance Revision and Extension Act of 2007”.

4 **SEC. 2. TERMINATION OF PROGRAM.**

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

9 **SEC. 3. REVISION OF TERRORISM INSURANCE PROGRAM.**

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

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

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

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

16 “(1) the ability of businesses and individuals to  
17 obtain property and casualty insurance at reasonable  
18 and predictable prices, in order to spread the risk of  
19 both routine and catastrophic loss, is critical to eco-  
20 nomic growth, urban development, and the construc-  
21 tion and maintenance of public and private housing,  
22 as well as to the promotion of United States exports  
23 and foreign trade in an increasingly interconnected  
24 world;

25 “(2) property and casualty insurance firms are  
26 important financial institutions, the products of

1 which allow mutualization of risk and the efficient  
2 use of financial resources and enhance the ability of  
3 the economy to maintain stability, while responding  
4 to a variety of economic, political, environmental,  
5 and other risks with a minimum of disruption;

6 “(3) the ability of the insurance industry to  
7 cover the unprecedented financial risks presented by  
8 potential acts of terrorism in the United States can  
9 be a major factor in the recovery from terrorist at-  
10 tacks, while maintaining the stability of the econ-  
11 omy;

12 “(4) widespread financial market uncertainties  
13 have arisen following the terrorist attacks of Sep-  
14 tember 11, 2001, including the absence of informa-  
15 tion from which financial institutions can make sta-  
16 tistically valid estimates of the probability and cost  
17 of future terrorist events, and therefore the size,  
18 funding, and allocation of the risk of loss caused by  
19 such acts of terrorism;

20 “(5) a decision by property and casualty insur-  
21 ers to deal with such uncertainties, either by termi-  
22 nating property and casualty coverage for losses  
23 arising from terrorist events, or by radically esca-  
24 lating premium coverage to compensate for risks of  
25 loss that are not readily predictable, could seriously

1 hamper ongoing and planned construction, property  
2 acquisition, and other business projects, generate a  
3 dramatic increase in rents, and otherwise suppress  
4 economic activity;

5 “(6) the United States Government should co-  
6 ordinate with insurers to provide financial com-  
7 pensation to insured parties for losses from acts of  
8 terrorism, contributing to the stabilization of the  
9 United States economy in a time of national crisis,  
10 and periodically assess the ability of the financial  
11 services industry to develop the systems, mecha-  
12 nisms, products, and programs necessary to create a  
13 viable financial services market for private terrorism  
14 risk insurance that will lessen the financial partici-  
15 pation of the United States Government;

16 “(7) in addition to a terrorist attack on the  
17 United States using conventional means or weapons,  
18 there is and continues to be a potential threat of a  
19 terrorist attack involving the use of unconventional  
20 means or weapons, such as nuclear, biological, chem-  
21 ical, or radiological agents;

22 “(8) as nuclear, biological, chemical, or radio-  
23 logical acts of terrorism (known as NBCR terrorism)  
24 present a threat of loss of life, injury, disease, and  
25 property damage potentially unparalleled in scope

1 and complexity by any prior event, natural or man-  
2 made, the Federal Government’s responsibility in  
3 providing for and preserving national economic secu-  
4 rity calls for a strong Federal role in ensuring finan-  
5 cial compensation and economic recovery in the  
6 event of such an attack;

7 “(9) a report issued by the Government Ac-  
8 countability Office in September 2006 concluded  
9 that ‘any purely market-driven expansion of cov-  
10 erage’ for NBCR terrorism risk is ‘highly unlikely in  
11 the foreseeable future’, and the September 2006 re-  
12 port from the President’s Working Group on Finan-  
13 cial Markets concluded that reinsurance for NBCR  
14 terrorist events is virtually unavailable and that  
15 ‘[g]iven the general reluctance of insurance compa-  
16 nies to provide coverage for these types of risks,  
17 there may be little potential for future market devel-  
18 opment’;

19 “(10) group life insurance companies are im-  
20 portant financial institutions whose products make  
21 life insurance coverage affordable for millions of  
22 Americans and often serve as their only life insur-  
23 ance benefit;

24 “(11) the group life insurance industry, in the  
25 event of a severe act of terrorism, is vulnerable to

1 insolvency because high concentrations of covered  
2 employees work in the same locations, because pri-  
3 mary group life insurers do not exclude conventional  
4 and NBCR terrorism risks while most catastrophic  
5 reinsurance does exclude such terrorism risks, and  
6 because a large-scale loss of life would fall outside  
7 of actuarial expectations of death; and

8 “(12) the United States Government should  
9 provide temporary financial compensation to insured  
10 parties, contributing to the stabilization of the  
11 United States economy in a time of national crisis,  
12 while the financial services industry develops the sys-  
13 tems, mechanisms, products, and programs nec-  
14 essary to create a viable financial services market for  
15 private terrorism risk insurance.

16 “(b) PURPOSE.—The purpose of this title is to estab-  
17 lish a temporary Federal program that provides for a  
18 transparent system of shared public and private com-  
19 pensation for insured losses resulting from acts of ter-  
20 rorism, in order to—

21 “(1) protect consumers by addressing market  
22 disruptions and ensure the continued widespread  
23 availability and affordability of property and cas-  
24 uality insurance and group life insurance for all types  
25 of terrorism risk, including conventional terrorism

1 risk and nuclear, biological, chemical, and radio-  
2 logical terrorism risk;

3 “(2) allow for a transitional period for the pri-  
4 vate markets to stabilize, resume pricing of such in-  
5 surance, and build capacity to absorb any future  
6 losses, while preserving State insurance regulation  
7 and consumer protections (unless otherwise pre-  
8 empted by this Act); and

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

12 **“SEC. 102. DEFINITIONS.**

13 “In this title, the following definitions shall apply:

14 “(1) ACT OF TERRORISM.—

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

20 “(i) to be an act of terrorism;

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

23 “(I) human life;

24 “(II) property; or

25 “(III) infrastructure;

1 “(iii) to have resulted in damage with-  
2 in the United States, or outside of the  
3 United States in the case of—

4 “(I) an air carrier or vessel de-  
5 scribed in paragraph (9)(B); or

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

8 “(iv) to have been committed by an  
9 individual or individuals as part of an ef-  
10 fort to coerce the civilian population of the  
11 United States or to influence the policy or  
12 affect the conduct of the United States  
13 Government by coercion.

14 “(B) LIMITATION.—No act shall be cer-  
15 tified by the Secretary as an act of terrorism  
16 if—

17 “(i) the act is committed as part of  
18 the course of a war declared by the Con-  
19 gress, except that this clause shall not  
20 apply with respect to any coverage for  
21 workers’ compensation; or

22 “(ii) property and casualty insurance  
23 and group life insurance losses resulting  
24 from the act, in the aggregate, do not ex-  
25 ceed \$5,000,000.



1           “(C) CERTIFICATION OF ACT OF NBCR  
2           TERRORISM.—Where a certified act of terrorism  
3           is carried out by means of a nuclear, biological,  
4           chemical, or radiological weapon or similar in-  
5           strumentality, the Secretary shall further cer-  
6           tify such act of terrorism as an act of NBCR  
7           terrorism. If a certified act of terrorism involves  
8           any other weapon or instrumentality, the Sec-  
9           retary, in concurrence with the Secretary of  
10          State, the Secretary of Homeland Security, and  
11          the Attorney General of the United States, shall  
12          determine whether the act of terrorism meets  
13          the definition of NBCR terrorism in this sec-  
14          tion. If such determination is that the act does  
15          meet such definition, the Secretary shall further  
16          certify that such act as an act of NBCR ter-  
17          rorism. Nothing in this subparagraph shall pro-  
18          hibit the Secretary from determining that a sin-  
19          gle act of terrorism resulted in both NBCR and  
20          non-NBCR insured losses.

21          “(D) DETERMINATIONS FINAL.—Any cer-  
22          tification of, or determination not to certify, an  
23          act as an act of terrorism or as an act of  
24          NBCR terrorism under this paragraph shall be  
25          final, and shall not be subject to judicial review.

1           “(E) NONDELEGATION.—The Secretary  
2           may not delegate or designate to any other offi-  
3           cer, employee, or person, any determination  
4           under this paragraph of whether, during the ef-  
5           fective period of the Program, an act of ter-  
6           rorism, including an act of NBCR terrorism,  
7           has occurred.

8           “(F) COMPENSATION SUBJECT TO FUR-  
9           THER CONGRESSIONAL ACTION.—Notwith-  
10          standing any certification of an act under this  
11          paragraph as an act of terrorism or an act of  
12          NBCR terrorism, Federal compensation under  
13          the Program shall be subject to the provisions  
14          of section 103(h).

15          “(G) SUBMISSION OF CERTIFICATION  
16          UNDER THIS PARAGRAPH.—Upon any certifi-  
17          cation under subparagraph (A), the Secretary  
18          shall submit such certification to the Congress.

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

23          “(3) AMOUNT AT RISK.—The term ‘amount at  
24          risk’ means face amount less statutory policy re-  
25          serves for group life insurance issued by any insurer

1 for insurance against losses occurring at the loca-  
2 tions described in subparagraph (A) of paragraph  
3 (9).

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

6 “(A) the entity directly or indirectly or act-  
7 ing through 1 or more other persons owns, con-  
8 trols, or has power to vote 25 percent or more  
9 of any class of voting securities of the other en-  
10 tity;

11 “(B) the entity controls in any manner the  
12 election of a majority of the directors or trust-  
13 ees of the other entity; or

14 “(C) the Secretary determines, after notice  
15 and opportunity for hearing, that the entity di-  
16 rectly or indirectly exercises a controlling influ-  
17 ence over the management or policies of the  
18 other entity; except that for purposes of any  
19 proceeding under this subparagraph, there shall  
20 be a presumption that any entity which directly  
21 or indirectly owns, controls, or has power to  
22 vote less than 5 percent of any class of voting  
23 securities of another entity does not have con-  
24 trol over that entity.

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

4           “(6) DIRECT EARNED PREMIUM.—The term ‘di-  
5 rect earned premium’ means a direct earned pre-  
6 mium for property and casualty insurance issued by  
7 any insurer for insurance against losses occurring at  
8 the locations described in subparagraph (A) of para-  
9 graph (9).

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

15           “(8) GROUP LIFE INSURANCE.—The term  
16 ‘group life insurance’ means an insurance contract  
17 that provides life insurance coverage, including term  
18 life insurance coverage, universal life insurance cov-  
19 erage, variable universal life insurance coverage, and  
20 accidental death coverage, or a combination thereof,  
21 for a number of individuals under a single contract,  
22 on the basis of a group selection of risks, but does  
23 not include ‘Corporate Owned Life Insurance’ or  
24 ‘Business Owned Life Insurance,’ each as defined  
25 under the Internal Revenue Code of 1986, or any

1 similar product, or group life reinsurance or  
2 retrocessional reinsurance.

3 “(9) INSURED LOSS.—

4 “(A) IN GENERAL.—Except as provided in  
5 subparagraph (B), the term ‘insured loss’  
6 means any loss resulting from an act of ter-  
7 rorism (including an act of war, in the case of  
8 workers’ compensation) that is covered by pri-  
9 mary or excess property and casualty insurance,  
10 or group life insurance to the extent of the  
11 amount at risk, issued by an insurer, if such  
12 loss—

13 “(i) occurs within the United States;

14 or

15 “(ii) occurs to an air carrier (as de-  
16 fined in section 40102 of title 49, United  
17 States Code), to a United States flag ves-  
18 sel (or a vessel based principally in the  
19 United States, on which United States in-  
20 come tax is paid and whose insurance cov-  
21 erage is subject to regulation in the United  
22 States), regardless of where the loss oc-  
23 curs, or at the premises of any United  
24 States mission.

1           “(B) LIMITATION FOR GROUP LIFE INSUR-  
2 ANCE.—Such term shall not include any losses  
3 of an insurer resulting from coverage of any  
4 single certificate holder under any group life in-  
5 surance coverages of the insurer to the extent  
6 such losses are not compensated under the Pro-  
7 gram by reason of section 103(e)(1)(D).

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

10           “(A) that is—

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

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

20           “(iii) approved for the purpose of of-  
21 fering property and casualty insurance by  
22 a Federal agency in connection with mari-  
23 time, energy, or aviation activity;

1           “(iv) a State residual market insur-  
2           ance entity or State workers’ compensation  
3           fund; or

4           “(v) any other entity described in sec-  
5           tion 103(f), to the extent provided in the  
6           rules of the Secretary issued under section  
7           103(f);

8           “(B) that receives direct earned premiums  
9           for any type of commercial property and cas-  
10          ualty insurance coverage, or, in the case of  
11          group life insurance, that receives direct pre-  
12          miums, other than in the case of entities de-  
13          scribed in sections 103(d) and 103(f); and

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

16          “(11) INSURER DEDUCTIBLE.—The term ‘in-  
17          surer deductible’ means—

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

22               “(B) for Program Year 1, the value of an  
23               insurer’s direct earned premiums over the cal-  
24               endar year immediately preceding Program  
25               Year 1, multiplied by 7 percent;

1           “(C) for Program Year 2, the value of an  
2 insurer’s direct earned premiums over the cal-  
3 endar year immediately preceding Program  
4 Year 2, multiplied by 10 percent;

5           “(D) for Program Year 3, the value of an  
6 insurer’s direct earned premiums over the cal-  
7 endar year immediately preceding Program  
8 Year 3, multiplied by 15 percent;

9           “(E) for Program Year 4, the value of an  
10 insurer’s direct earned premiums over the cal-  
11 endar year immediately preceding Program  
12 Year 4, multiplied by 17.5 percent;

13           “(F) for Program Year 5, the value of an  
14 insurer’s direct earned premiums over the cal-  
15 endar year immediately preceding Program  
16 Year 5, multiplied by 20 percent;

17           “(G) for each additional Program Year—

18           “(i) with respect to property and cas-  
19 ualty insurance, the value of an insurer’s  
20 direct earned premiums over the calendar  
21 year immediately preceding such Program  
22 Year, multiplied by 20 percent; and

23           “(ii) with respect to group life insur-  
24 ance, the value of an insurer’s amount at  
25 risk over the calendar year immediately



1 preceding such Program Year, multiplied  
2 by 0.0351 percent;

3 “(H) notwithstanding subparagraphs (A)  
4 through (G), for the Transition Period or any  
5 Program Year, if an insurer has not had a full  
6 year of operations during the calendar year im-  
7 mediately preceding such Period or Program  
8 Year, such portion of the direct earned pre-  
9 miums with respect to property and casualty in-  
10 surance, and such portion of the amounts at  
11 risk with respect to group life insurance, of the  
12 insurer as the Secretary determines appro-  
13 priate, subject to appropriate methodologies es-  
14 tablished by the Secretary for measuring such  
15 direct earned premiums and amounts at risk;

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

20 “(i) with respect to property and cas-  
21 ualty insurance, the value of an insurer’s  
22 direct earned premiums over the calendar  
23 year immediately preceding such Program  
24 Year, multiplied by a percentage, which—

1           “(I) for the second additional  
2           Program Year, shall be 3.5 percent;  
3           and

4           “(II) for each succeeding Pro-  
5           gram Year thereafter, shall be 50  
6           basis points greater than the percent-  
7           age applicable to the preceding addi-  
8           tional Program Year; and

9           “(ii) with respect to group life insur-  
10          ance, the value of an insurer’s amount at  
11          risk over the calendar year immediately  
12          preceding such Program Year, multiplied  
13          by a percentage, which—

14           “(I) for the first additional Pro-  
15          gram Year, shall be 0.00614 percent;  
16          and

17           “(II) for each succeeding Pro-  
18          gram Year thereafter, shall be 0.088  
19          basis point greater than the percent-  
20          age applicable to the preceding addi-  
21          tional Program Year;

22           “(J) notwithstanding subparagraph (G)(i),  
23          if aggregate industry insured losses resulting  
24          from a certified act of terrorism exceed  
25          \$1,000,000,000, for any insurer that sustains

1 insured losses resulting from such act of ter-  
2 rorism, the value of such insurer's direct earned  
3 premiums over the calendar year immediately  
4 preceding the Program Year, multiplied by a  
5 percentage, which—

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

8 “(ii) for each additional Program  
9 Year thereafter, shall be 50 basis points  
10 greater than the percentage applicable to  
11 the preceding additional Program Year, ex-  
12 cept that if an act of terrorism occurs dur-  
13 ing any additional Program Year that re-  
14 sults in aggregate industry insured losses  
15 exceeding \$1,000,000,000, the percentage  
16 for the succeeding additional Program  
17 Year shall be 5 percent and the increase  
18 under this clause shall apply to additional  
19 Program Years thereafter;

20 except that for purposes of determining under  
21 this subparagraph whether aggregate industry  
22 insured losses exceed \$1,000,000,000, the Sec-  
23 retary may combine insured losses resulting  
24 from two or more certified acts of terrorism oc-  
25 ccurring during such Program Year in the same

1 geographic area (with such area determined by  
2 the Secretary), in which case such insurer shall  
3 be permitted to combine insured losses resulting  
4 from such acts of terrorism for purposes of sat-  
5 isfying its insurer deductible under this sub-  
6 paragraph; and except that the insurer deduct-  
7 ible under this subparagraph shall apply only  
8 with respect to compensation of insured losses  
9 resulting from such certified act, or combined  
10 certified acts, and that for purposes of com-  
11 pensation of any other insured losses occurring  
12 in the same Program Year, the insurer deduct-  
13 ible determined under subparagraph (G)(i) or  
14 (I) shall apply; and

15 “(K) for the fifth additional Program Year  
16 and any Additional Program year thereafter,  
17 notwithstanding subparagraph (I)(i), if aggre-  
18 gate industry insured losses resulting from a  
19 certified act of NBCR terrorism exceed  
20 \$1,000,000,000, for any insurer that sustains  
21 insured losses resulting from such act of NBCR  
22 terrorism, the value of such insurer’s direct  
23 earned premiums over the calendar year imme-  
24 diately preceding the Program Year, multiplied  
25 by a percentage, which—

1                   “(i) for the fifth additional Program  
2                   Year shall be 5 percent; and

3                   “(ii) for each additional Program  
4                   Year thereafter, shall be 50 basis points  
5                   greater than the percentage applicable to  
6                   the preceding additional Program Year, ex-  
7                   cept that if an act of NBCR terrorism oc-  
8                   curs during the fifth additional Program  
9                   Year or any additional Program Year  
10                  thereafter that results in aggregate indus-  
11                  try insured losses exceeding  
12                  \$1,000,000,000, the percentage for the  
13                  succeeding additional Program Year shall  
14                  be 5 percent and the increase under this  
15                  clause shall apply to additional Program  
16                  Years thereafter;

17                  except that for purposes of determining under  
18                  this subparagraph whether aggregate industry  
19                  insured losses exceed \$1,000,000,000, the Sec-  
20                  retary may combine insured losses resulting  
21                  from two or more certified acts of NBCR ter-  
22                  rorism occurring during such Program Year in  
23                  the same geographic area (with such area deter-  
24                  mined by the Secretary), in which case such in-  
25                  surer shall be permitted to combine insured

1 losses resulting from such acts of NBCR ter-  
2 rorism for purposes of satisfying its insurer de-  
3 ductible under this subparagraph; and except  
4 that the insurer deductible under this subpara-  
5 graph shall apply only with respect to com-  
6 pensation of insured losses resulting from such  
7 certified act, or combined certified acts, and  
8 that for purposes of compensation of any other  
9 insured losses occurring in the same Program  
10 Year, the insurer deductible determined under  
11 subparagraph (I)(i) shall apply.

12 “(12) NAIC.—The term ‘NAIC’ means the Na-  
13 tional Association of Insurance Commissioners.

14 “(13) NBCR TERRORISM.—The term ‘NBCR  
15 terrorism’ means an act of terrorism that involves or  
16 triggers nuclear, biological, chemical, or radiological  
17 reactions, releases, or contaminations, but only if  
18 any aggregate industry insured losses that result  
19 from such reactions, releases, or contaminations ex-  
20 ceed the amount set forth in paragraph (1)(B)(ii).

21 “(14) PERSON.—The term ‘person’ means any  
22 individual, business or nonprofit entity (including  
23 those organized in the form of a partnership, limited  
24 liability company, corporation, or association), trust

1 or estate, or a State or political subdivision of a  
2 State or other governmental unit.

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

6 “(16) PROGRAM YEARS.—

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

11 “(B) PROGRAM YEAR 1.—The term ‘Pro-  
12 gram Year 1’ means the period beginning on  
13 January 1, 2003 and ending on December 31,  
14 2003.

15 “(C) PROGRAM YEAR 2.—The term ‘Pro-  
16 gram Year 2’ means the period beginning on  
17 January 1, 2004 and ending on December 31,  
18 2004.

19 “(D) PROGRAM YEAR 3.—The term ‘Pro-  
20 gram Year 3’ means the period beginning on  
21 January 1, 2005 and ending on December 31,  
22 2005.

23 “(E) PROGRAM YEAR 4.—The term ‘Pro-  
24 gram Year 4’ means the period beginning on

1 January 1, 2006 and ending on December 31,  
2 2006.

3 “(F) PROGRAM YEAR 5.—The term ‘Pro-  
4 gram Year 5’ means the period beginning on  
5 January 1, 2007 and ending on December 31,  
6 2007.

7 “(G) ADDITIONAL PROGRAM YEAR.—The  
8 term ‘additional Program Year’ means any ad-  
9 ditional one-year period after Program Year 5  
10 during which the Program is in effect, which  
11 period shall begin on January 1 and end on De-  
12 cember 31 of the same calendar year.

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

15 “(A) means commercial lines of property  
16 and casualty insurance, including excess insur-  
17 ance, workers’ compensation insurance, and di-  
18 rectors and officers liability insurance; and

19 “(B) does not include—

20 “(i) Federal crop insurance issued or  
21 reinsured under the Federal Crop Insur-  
22 ance Act (7 U.S.C. 1501 et seq.), or any  
23 other type of crop or livestock insurance  
24 that is privately issued or reinsured;



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

5           “(iii) financial guaranty insurance  
6           issued by monoline financial guaranty in-  
7           surance corporations;

8           “(iv) insurance for medical mal-  
9           practice;

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

12          “(vi) flood insurance provided under  
13          the National Flood Insurance Act of 1968  
14          (42 U.S.C. 4001 et seq.);

15          “(vii) reinsurance or retrocessional re-  
16          insurance;

17          “(viii) commercial automobile insur-  
18          ance;

19          “(ix) burglary and theft insurance;

20          “(x) surety insurance; or

21          “(xi) professional liability insurance.

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

24          “(19) STATE.—The term ‘State’ means any  
25          State of the United States, the District of Columbia,

1 the Commonwealth of Puerto Rico, the Common-  
2 wealth of the Northern Mariana Islands, American  
3 Samoa, Guam, each of the United States Virgin Is-  
4 lands, and any territory or possession of the United  
5 States.

6 “(20) UNITED STATES.—The term ‘United  
7 States’ means the several States, and includes the  
8 territorial sea and the continental shelf of the  
9 United States, as those terms are defined in the Vio-  
10 lent Crime Control and Law Enforcement Act of  
11 1994 (18 U.S.C. 2280, 2281).

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

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

16 and

17 “(B) to end at midnight on that date.

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

19 “(a) ESTABLISHMENT OF PROGRAM.—

20 “(1) IN GENERAL.—There is established in the  
21 Department of the Treasury the Terrorism Insur-  
22 ance Program.

23 “(2) AUTHORITY OF THE SECRETARY.—Not-  
24 withstanding any other provision of State or Federal  
25 law, the Secretary shall administer the Program,

1 and, subject only to subsection (h)(1), shall pay the  
2 Federal share of compensation for insured losses in  
3 accordance with subsection (e).

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

7 “(4) NBCR EXEMPTION FOR CERTAIN INSUR-  
8 ERS.—Notwithstanding the requirements of para-  
9 graph (3):

10 “(A) ELIGIBILITY.—Upon request, the  
11 Secretary may provide an exemption from the  
12 requirements of subparagraph (B) of subsection  
13 (c)(1) in the Program to an entity that other-  
14 wise meets the definition of an insurer under  
15 this title if—

16 “(i) such insurer’s direct earned pre-  
17 mium is less than \$50,000,000 in the cal-  
18 endar year immediately preceding the cur-  
19 rent additional Program Year; and

20 “(ii) the Secretary makes the deter-  
21 mination set forth in subparagraph (D).

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

1           “(C) INFORMATION AND CONSULTATION.—  
2           Any insurer requesting an exemption pursuant  
3           to this paragraph shall provide any information  
4           the Secretary may require to establish its eligi-  
5           bility for the exemption. In developing stand-  
6           ards for evaluating eligibility for the exemption  
7           under this paragraph, the Secretary shall con-  
8           sult with the NAIC.

9           “(D) DETERMINATION.—In making any  
10          determination regarding eligibility for exemp-  
11          tion under this paragraph, the Secretary shall  
12          consult with the insurance commissioner of the  
13          State or other appropriate State regulatory au-  
14          thority where the insurer is domiciled and de-  
15          termine whether the insurer has demonstrated  
16          that it would become insolvent if it were re-  
17          quired, in the event of an act of NBCR ter-  
18          rorism, to satisfy—

19                 “(i) its deductible and maximum ap-  
20                 plicable share above the deductible pursu-  
21                 ant to sections 102(11)(I) and  
22                 103(e)(1)(B), respectively, for such act of  
23                 NBCR terrorism resulting in aggregate in-  
24                 dustry insured losses above the trigger es-  
25                 tablished in section 103(e)(1)(C); or

1           “(ii) its maximum payment obliga-  
2           tions for insured losses for such act of  
3           NBCR terrorism resulting in aggregate in-  
4           dustry insured losses below the trigger es-  
5           tablished in section 103(e)(1)(C).

6           “(E) WORKERS’ COMPENSATION AND  
7           OTHER COMPULSORY INSURANCE LAW.—In  
8           granting an exemption under this paragraph,  
9           the Secretary shall not approve any request for  
10          exemption with regard to State workers’ com-  
11          pensation insurance or other compulsory insur-  
12          ance law requiring coverage of the risks de-  
13          scribed in subparagraph (B) of subsection  
14          (c)(1).

15          “(F) EXEMPTION PERIOD.—

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

20               “(ii) EXTENSION.—Notwithstanding  
21               clause (i), the Secretary may, upon appli-  
22               cation by an insurer granted an exemption  
23               under this paragraph, extend such exemp-  
24               tion for additional periods of not longer  
25               than 2 years.

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

5           “(1) there is enacted a joint resolution for pay-  
6 ment of Federal compensation with respect to the  
7 act of terrorism that resulted in the insured loss;

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

11          “(3) the insurer provides clear and conspicuous  
12 disclosure to the policyholder of the premium  
13 charged for insured losses covered by the Program  
14 (including the additional premium, if any, charged  
15 for the coverage for insured losses resulting from  
16 acts of NBCR terrorism as made available pursuant  
17 to subsection (c)(1)(B)) and the Federal share of  
18 compensation for insured losses under the Pro-  
19 gram—

20           “(A) in the case of any policy that is  
21 issued before the date of enactment of this Act,  
22 not later than 90 days after that date of enact-  
23 ment;

24           “(B) in the case of any policy that is  
25 issued within 90 days of the date of enactment

1 of this Act, at the time of offer, purchase, and  
2 renewal of the policy; and

3 “(C) in the case of any policy that is  
4 issued more than 90 days after the date of en-  
5 actment of this Act, on a separate line item in  
6 the policy, at the time of offer, purchase, and  
7 renewal of the policy;

8 “(4) the insurer processes the claim for the in-  
9 sured loss in accordance with appropriate business  
10 practices, and any reasonable procedures that the  
11 Secretary may prescribe; and

12 “(5) the insurer submits to the Secretary, in ac-  
13 cordance with such reasonable procedures as the  
14 Secretary may establish—

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

18 “(B) written certification—

19 “(i) of the underlying claim; and

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

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

24 “(c) MANDATORY AVAILABILITY.—

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

6                   “(A) in all of its insurance policies for cov-  
7                   ered lines, coverage for insured losses that does  
8                   not differ materially from the terms, amounts,  
9                   and other coverage limitations applicable to  
10                  losses arising from events other than acts of  
11                  terrorism; and

12                  “(B) in insurance policies for covered lines  
13                  for which the coverage described in subpara-  
14                  graph (A) is provided, exceptions to the pollu-  
15                  tion and nuclear hazard exclusions of such poli-  
16                  cies that render such exclusions inapplicable  
17                  only as to insured losses arising from acts of  
18                  NBCR terrorism.

19           “(2) ALLOWABLE EXCLUSIONS IN OTHER COV-  
20           ERAGE.—Subject to paragraph (3) and notwith-  
21           standing any other provision of Federal or State  
22           law, including any State workers’ compensation and  
23           other compulsory insurance law, if a person elects  
24           not to purchase an insurance policy with the cov-  
25           erage described in paragraph (1)—



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

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

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

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

21          “(4) AVAILABILITY OF LIFE INSURANCE WITH-  
22          OUT REGARD TO LAWFUL FOREIGN TRAVEL.—Dur-  
23          ing each Program Year, each entity that meets the  
24          definition of an insurer under section 102 shall  
25          make available, in all of its life insurance policies

1 issued after the date of the enactment of the Ter-  
2 rorism Risk Insurance Revision and Extension Act  
3 of 2007 under which the insured person is a citizen  
4 of the United States or an alien lawfully admitted  
5 for permanent residence in the United States, cov-  
6 erage that neither considers past, nor precludes fu-  
7 ture, lawful foreign travel by the person insured, and  
8 shall not decline such coverage based on past or fu-  
9 ture, lawful foreign travel by the person insured or  
10 charge a premium for such coverage that is excessive  
11 and not based on a good faith actuarial analysis, ex-  
12 cept that an insurer may decline or, upon inception  
13 or renewal of a policy, limit the amount of coverage  
14 provided under any life insurance policy based on  
15 plans to engage in future lawful foreign travel to  
16 occur within 12 months of such inception or renewal  
17 of the policy but only if, at time of application—

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

21 “(i) for which the Director of the Cen-  
22 ters for Disease Control and Prevention of  
23 the Department of Health and Human  
24 Services has issued a highest level alert or  
25 warning, including a recommendation

1           against non-essential travel, due to a seri-  
2           ous health-related condition;

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

7           “(iii)(I) that the insurer has specifi-  
8           cally designated in the terms of the life in-  
9           surance policy at the inception of the pol-  
10          icy or at renewal, as applicable; and

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

14                 “(aa) a serious fraudulent situa-  
15                 tion exists which is ongoing; and

16                 “(bb) the credibility of informa-  
17                 tion by which the insurer can verify  
18                 the death of the insured person is  
19                 substantially compromised; and

20          “(B) in the case of any limitation of cov-  
21          erage, such limitation is specifically stated in  
22          the terms of the life insurance policy at the in-  
23          ception of the policy or at renewal, as applica-  
24          ble.

1       “(d) STATE RESIDUAL MARKET INSURANCE ENTI-  
2 TIES.—

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

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

11           “(A) a State residual market insurance en-  
12 tity that does not share its profits and losses  
13 with private sector insurers shall be treated as  
14 a separate insurer; and

15           “(B) a State residual market insurance en-  
16 tity that shares its profits and losses with pri-  
17 vate sector insurers shall not be treated as a  
18 separate insurer, and shall report to each pri-  
19 vate sector insurance participant its share of  
20 the insured losses of the entity, which shall be  
21 included in each private sector insurer’s insured  
22 losses.

23           “(3) TREATMENT OF PARTICIPATION IN CER-  
24 TAIN ENTITIES.—Any insurer that participates in  
25 sharing profits and losses of a State residual market

1 insurance entity shall include in its calculations of  
2 premiums any premiums distributed to the insurer  
3 by the State residual market insurance entity.

4 “(e) INSURED LOSS SHARED COMPENSATION.—

5 “(1) FEDERAL SHARE.—

6 “(A) CONVENTIONAL TERRORISM.—Except  
7 as provided in subparagraph (B), the Federal  
8 share of compensation under the Program to be  
9 paid by the Secretary, subject to subsection  
10 (h)(1), for insured losses of an insurer during  
11 any additional Program Year shall be equal to  
12 the sum of—

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

15 “(I) exceed the applicable insurer  
16 deductible required to be paid during  
17 such Program Year; and

18 “(II) based upon pro rata deter-  
19 minations pursuant to paragraph  
20 (2)(B), does not result in aggregate  
21 industry insured losses during such  
22 Program Year exceeding  
23 \$100,000,000,000; and

24 “(ii) 100 percent of the insured losses  
25 of the insurer that, based upon pro rata

1 determinations pursuant to paragraph  
2 (2)(B), result in aggregate industry in-  
3 sured losses during such Program Year ex-  
4 ceeding \$100,000,000,000, up to the limit  
5 under paragraph (2)(A).

6 “(B) NBCR TERRORISM.—

7 “(i) AMOUNT OF COMPENSATION.—

8 The Federal share of compensation under  
9 the Program to be paid by the Secretary,  
10 subject to subsection (h)(1), for insured  
11 losses of an insurer resulting from NBCR  
12 terrorism during any additional Program  
13 Year shall be equal to the sum of—

14 “(I) the amount of qualified  
15 NBCR losses (as such term is defined  
16 in clause (ii)) of the insurer, multi-  
17 plied by a percentage based on the ag-  
18 gregate industry qualified NBCR  
19 losses for the Program Year, which  
20 percentage shall be—

21 “(aa) 85 percent of such ag-  
22 gregate industry qualified NBCR  
23 losses of less than  
24 \$10,000,000,000;

1                   “(bb) 87.5 percent of such  
2                   aggregate industry qualified  
3                   NBCR losses between  
4                   \$10,000,000,000                   and  
5                   \$20,000,000,000;

6                   “(cc) 90 percent of such ag-  
7                   gregate industry qualified NBCR  
8                   losses between \$20,000,000,000  
9                   and \$40,000,000,000;

10                   “(dd) 92.5 percent of such  
11                   aggregate industry qualified  
12                   NBCR losses of between  
13                   \$40,000,000,000                   and  
14                   \$60,000,000,000; and

15                   “(ee) 95 percent of such ag-  
16                   gregate industry qualified NBCR  
17                   losses of more than  
18                   \$60,000,000,000;

19                   and shall be prorated per insurer  
20                   based on each insurer’s percentage of  
21                   the aggregate industry qualified  
22                   NBCR losses for such additional Pro-  
23                   gram Year; and

24                   “(II) 100 percent of the insured  
25                   losses of the insurer resulting from

1 NBCR terrorism that, based upon pro  
2 rata determinations pursuant to para-  
3 graph (2)(B), result in aggregate in-  
4 dustry insured losses during such Pro-  
5 gram Year exceeding  
6 \$100,000,000,000, up to the limit  
7 under paragraph (2)(A).

8 “(ii) QUALIFIED NBCR LOSSES.—For  
9 purposes of this subparagraph, the term  
10 ‘qualified NBCR losses’ means, with re-  
11 spect to insured losses of an insurer result-  
12 ing from NBCR terrorism during an addi-  
13 tional Program Year, that portion of the  
14 amount of such insured losses that result  
15 from any such reactions, releases, or con-  
16 taminations and that—

17 “(I) exceed the applicable insurer  
18 deductible required to be paid during  
19 such Program Year; and

20 “(II) based upon pro rata deter-  
21 minations pursuant to paragraph  
22 (2)(B), does not result in aggregate  
23 industry insured losses during such  
24 Program Year exceeding  
25 \$100,000,000,000.



1           “(C) PROGRAM TRIGGER.—In the case of a  
2 certified act of terrorism occurring after March  
3 31, 2006, no compensation shall be paid, pursu-  
4 ant to subsection (h)(1), by the Secretary under  
5 subsection (a), unless the aggregate industry in-  
6 sured losses resulting from such certified act of  
7 terrorism exceed \$50,000,000, except that if a  
8 certified act of terrorism occurs for which re-  
9 sulting aggregate industry insured losses exceed  
10 \$1,000,000,000, the applicable amount for any  
11 subsequent certified act of terrorism shall be  
12 the amount specified in section 102(1)(B)(ii).

13           “(D) LIMITATION ON COMPENSATION FOR  
14 GROUP LIFE INSURANCE.—Notwithstanding any  
15 other provision of this Act, the Federal share of  
16 compensation under the Program paid, pursu-  
17 ant to subsection (h)(1), by the Secretary for  
18 insured losses of an insurer resulting from cov-  
19 erage of any single certificate holder under any  
20 group life insurance coverages of the insurer  
21 may not during any additional Program Year  
22 exceed \$1,000,000.

23           “(E) PROHIBITION ON DUPLICATIVE COM-  
24 PENSATION.—The Federal share of compensa-  
25 tion for insured losses under the Program shall

1 be reduced by the amount of compensation pro-  
2 vided by the Federal Government to any person  
3 under any other Federal program for those in-  
4 sured losses.

5 “(2) CAP ON ANNUAL LIABILITY.—

6 “(A) IN GENERAL.—Notwithstanding para-  
7 graph (1) or any other provision of Federal or  
8 State law, including any State workers’ com-  
9 pensation or other compulsory insurance law, if  
10 the aggregate amount of the Federal share of  
11 compensation to be paid to all insurers pursu-  
12 ant to paragraph (1) exceeds  
13 \$100,000,000,000, during any additional Pro-  
14 gram Year (until such time as the Congress  
15 may act otherwise with respect to such  
16 losses)—

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

23 “(ii) no insurer that has met its in-  
24 surer deductible shall be liable for the pay-  
25 ment of any portion of the aggregate in-

1           sured losses during such Program Year  
2           that exceeds \$100,000,000,000.

3           “(B) INSURER SHARE.—For purposes of  
4           subparagraph (A), the Secretary shall deter-  
5           mine the pro rata share of insured losses to be  
6           paid by each insurer that incurs insured losses  
7           under the Program.

8           “(C) CLAIMS ALLOCATIONS.—The Sec-  
9           retary shall, by regulation, provide for insurers  
10          to allocate claims payments for insured losses  
11          under applicable insurance policies in any case  
12          described in subparagraph (A). Such regula-  
13          tions shall include provisions for payment, for  
14          the purpose of addressing emergency needs of  
15          applicable individuals affected by an act of ter-  
16          rorism, of a portion of claims for insured losses  
17          promptly upon filing of such claims.

18          “(3) LIMITATION ON INSURER FINANCIAL RE-  
19          SPONSIBILITY.—

20                 “(A) LIMITATION.—Notwithstanding any  
21                 other provision of Federal or State law, includ-  
22                 ing any State workers’ compensation or other  
23                 compulsory insurance law, an insurer’s financial  
24                 responsibility for insured losses from acts of  
25                 terrorism shall be limited as follows:

1           “(i) FEDERAL COMPENSATION NOT  
2           PROVIDED.—In any case of an act of ter-  
3           rorism with respect to which there has not  
4           been enacted a joint resolution for pay-  
5           ment of Federal compensation described in  
6           subsection (h)(2), an insurer’s financial re-  
7           sponsibility for insured losses from such  
8           act of terrorism shall be limited to its ap-  
9           plicable insurer deductible.

10           “(ii) FEDERAL COMPENSATION PRO-  
11           VIDED.— In any case of an act of ter-  
12           rorism with respect to which there has  
13           been enacted a joint resolution for pay-  
14           ment of Federal compensation described in  
15           subsection (h)(2), an insurer’s financial re-  
16           sponsibility for insured losses from such  
17           act of terrorism shall be limited to—

18                   “(I) its applicable insurer deduct-  
19                   ible; and

20                   “(II) its applicable share of in-  
21                   sured losses that exceed its applicable  
22                   insurer deductible, subject to the re-  
23                   quirements of paragraph (2).

24           “(B) FEDERAL REIMBURSEMENT.—In the  
25           case of any act of terrorism with respect to

1           which there has been enacted a joint resolution  
2           for payment of Federal compensation described  
3           in subsection (h)(2) and notwithstanding any  
4           other provision of Federal or State law, the  
5           Secretary shall—

6                   “(i) reimburse insurers for any pay-  
7                   ment of excess insured losses made prior to  
8                   publication of any notification pursuant to  
9                   paragraph (4)(A);

10                   “(ii) reimburse insurers for any pay-  
11                   ment of excess insured losses occurring on  
12                   or after the date of any notification pursu-  
13                   ant to paragraph (4)(A), but only to the  
14                   extent that—

15                           “(I) such payment is ordered by  
16                           a court pursuant to subparagraph (C)  
17                           of this paragraph or is directed by  
18                           State law, notwithstanding this para-  
19                           graph, or by Federal law;

20                           “(II) such payment is limited to  
21                           compensating insurers for their pay-  
22                           ment of excess insured losses and does  
23                           not include punitive damages, or liti-  
24                           gation or other costs; and

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

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

7                   “(C) FEDERAL COURT JURISDICTION.—

8                   “(i) CONDITIONS.—All claims relating  
9                   to or arising out of an insurer’s financial  
10                  responsibility for insured losses from acts  
11                  of terrorism under this paragraph shall be  
12                  within the original and exclusive jurisdic-  
13                  tion of the district courts of the United  
14                  States, in accordance with the procedures  
15                  established in subparagraph (D), if the  
16                  Secretary certifies that the following condi-  
17                  tions have been met, or that there is a rea-  
18                  sonable likelihood that the following condi-  
19                  tions may be met:

20                  “(I) The aggregate amount of  
21                  the Federal share of compensation to  
22                  be paid to all insurers pursuant to  
23                  paragraph           (1)           exceeds  
24                  \$100,000,000,000, pursuant to para-  
25                  graph (2); and

1                   “(II) the insurer has paid its ap-  
2                   plicable insurer deductible and its pro  
3                   rata share of insured losses deter-  
4                   mined pursuant to paragraph (2)(B).

5                   “(ii) REMOVAL OF STATE COURT AC-  
6                   TIONS.—If the Secretary certifies that con-  
7                   ditions set forth in subclauses (I) and (II)  
8                   of clause (i) have been met, all pending  
9                   State court actions that relate to or arise  
10                  out of an insurer’s financial responsibility  
11                  for insured losses from acts of terrorism  
12                  under this paragraph shall be removed to  
13                  a district court of the United States in ac-  
14                  cordance with subparagraph (D).

15                  “(D) VENUE.—For each certification made  
16                  by the Secretary pursuant to subparagraph  
17                  (C)(i), not later than 90 days after the Sec-  
18                  retary’s determination the Judicial Panel on  
19                  Multidistrict Litigation shall designate one dis-  
20                  trict court or, if necessary, multiple district  
21                  courts of the United States that shall have  
22                  original and exclusive jurisdiction over all ac-  
23                  tions for any claim relating to or arising out of  
24                  an insurer’s financial responsibility for insured

1 losses from acts of terrorism under this para-  
2 graph.

3 “(E) FEDERAL COURT JURISDICTION AND  
4 VENUE IN CASES OF NO FEDERAL COMPENSA-  
5 TION.—In the case of any act of terrorism with  
6 respect to which there has not been enacted a  
7 joint resolution for payment of Federal com-  
8 pensation described in subsection (h)(2)—

9 “(i) all claims relating to or arising  
10 out of an insurer’s financial responsibility  
11 for insured losses from such act of ter-  
12 rorism shall be within the original and ex-  
13 clusive jurisdiction of the district courts of  
14 the United States, in accordance with the  
15 procedures established in clause (iii);

16 “(ii) all pending State court actions  
17 that relate to or arise out of an insurer’s  
18 financial responsibility for insured losses  
19 from such act of terrorism shall be re-  
20 moved to a district court of the United  
21 States in accordance with clause (iii); and

22 “(iii) not later than 90 days after the  
23 Secretary’s certification of such act of ter-  
24 rorism, the Judicial Panel on Multidistrict  
25 Litigation shall designate one district court



1 or, if necessary, multiple district courts of  
2 the United States that shall have original  
3 and exclusive jurisdiction over all actions  
4 for any claim relating to or arising out of  
5 an insurer's financial responsibility for in-  
6 sured losses from such act of terrorism.

7 “(4) NOTICES REGARDING LOSSES AND AN-  
8 NUAL LIABILITY CAP.—

9 “(A) APPROACHING CAP.—If the Secretary  
10 determines estimated or actual aggregate Fed-  
11 eral compensation to be paid pursuant to para-  
12 graph (1) equals or exceeds \$80,000,000,000  
13 during any Program Year, the Secretary shall  
14 promptly provide notification in accordance with  
15 subparagraph (D)—

16 “(i) of such estimated or actual aggre-  
17 gate Federal compensation to be paid;

18 “(ii) of the likelihood that such aggre-  
19 gate Federal compensation to be paid for  
20 such Program Year will equal or exceed  
21 \$100,000,000,000; and

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

1           “(B) EVENT LIKELY TO CAUSE LOSSES TO  
2           EXCEED CAP.—If any act of terrorism occurs  
3           that the Secretary determines is likely to cause  
4           estimated or actual aggregate Federal com-  
5           pensation to be paid pursuant to paragraph (1)  
6           to exceed \$100,000,000,000 during any Pro-  
7           gram Year, the Secretary shall, not later than  
8           10 days after such act, provide notification in  
9           accordance with subparagraph (D)—

10                   “(i) of such estimated or actual aggre-  
11                   gate Federal compensation to be paid; and

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

15           “(C) EXCEEDING CAP.—If the Secretary  
16           determines estimated or actual aggregate Fed-  
17           eral compensation to be paid pursuant to para-  
18           graph (1) equals or exceeds \$100,000,000,000  
19           during any Program Year—

20                   “(i) the Secretary shall promptly pro-  
21                   vide notification in accordance with sub-  
22                   paragraph (D)—

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

1                   “(II) that, pursuant to paragraph  
2                   (2)(A)(ii), insurers are not required to  
3                   make payments for excess insured  
4                   losses unless the Congress provides  
5                   for payments for excess insured losses  
6                   pursuant to clause (ii) of this sub-  
7                   paragraph; and

8                   “(ii) the Congress shall determine the  
9                   procedures for and the source of any pay-  
10                  ments for such excess insured losses.

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

14                         “(i) to the Congress, in writing; and

15                         “(ii) to insurers, by causing such no-  
16                         tice to be published in the Federal Reg-  
17                         ister.

18                  “(E) DETERMINATIONS.—The Secretary  
19                  shall make determinations regarding estimated  
20                  and actual aggregate Federal compensation to  
21                  be paid promptly after any act of terrorism as  
22                  may be necessary to comply with this para-  
23                  graph.

24                  “(F) MANDATORY DISCLOSURE FOR IN-  
25                  SURANCE CONTRACTS.—All policies for property

1 and casualty insurance and group life insurance  
2 shall be deemed to contain a provision to the ef-  
3 fect that, in the case of any act of terrorism  
4 with respect to which there has been enacted a  
5 joint resolution for payment of Federal com-  
6 pensation described in subsection (h)(2), no in-  
7 surer that has met its applicable insurer de-  
8 ductible and its applicable share of insured  
9 losses that exceed its applicable insurer deduct-  
10 ible but are not compensated pursuant to para-  
11 graph (1), shall be obligated to pay for any por-  
12 tion of excess insured loss. Notwithstanding the  
13 preceding sentence, insurers shall include a dis-  
14 closure in their policies detailing the maximum  
15 level of Government assistance and the applica-  
16 ble insurer share. All policies for property and  
17 casualty insurance and group life insurance  
18 shall be deemed to contain, and insurers shall  
19 be permitted to include in their policies, a pro-  
20 vision to the effect that, in the case of insured  
21 losses resulting from any act of terrorism with  
22 respect to which there has not been enacted a  
23 joint resolution for payment of Federal com-  
24 pensation described in subsection (h)(2), no in-  
25 surer shall be obligated to pay for any portion

1           of any such insured losses that exceeds its ap-  
2           plicable insurer deductible.

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

7           “(6) DETERMINATIONS FINAL.—Any deter-  
8           mination of the Secretary under this subsection shall  
9           be final, unless expressly provided, and shall not be  
10          subject to judicial review.

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

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

18                         “(i) \$10,000,000,000; and

19                         “(ii) the aggregate amount, for all in-  
20                         surers, of insured losses during such pe-  
21                         riod;

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

23                         “(i) \$12,500,000,000; and

1           “(ii) the aggregate amount, for all in-  
2           surers, of insured losses during such Pro-  
3           gram Year;

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

5                 “(i) \$15,000,000,000; and

6                 “(ii) the aggregate amount, for all in-  
7           surers, of insured losses during such Pro-  
8           gram Year;

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

10                “(i) \$25,000,000,000; and

11                “(ii) the aggregate amount, for all in-  
12           surers, of insured losses during such Pro-  
13           gram Year;

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

15                “(i) \$27,500,000,000; and

16                “(ii) the aggregate amount, for all in-  
17           surers, of insured losses during such Pro-  
18           gram Year; and

19           “(F) for each additional Program Year—

20                “(i) for property and casualty insur-  
21           ance, the lesser of—

22                   “(I) \$27,500,000,000; and

23                   “(II) the aggregate amount, for  
24           all such insurance, of insured losses  
25           during such Program Year; and

1                   “(ii) for group life insurance, the less-  
2                   er of—

3                                 “(I) \$5,000,000,000; and

4                                 “(II) the aggregate amount, for  
5                   all such insurance, of insured losses  
6                   during such Program Year.

7                   “(8) RECOUPMENT OF FEDERAL SHARE.—

8                                 “(A)           MANDATORY           RECOUPMENT  
9                   AMOUNT.—For purposes of this paragraph, the  
10                  mandatory recoupment amount for each of the  
11                  Program Years referred to in subparagraphs  
12                  (A) through (F) of paragraph (7) shall be the  
13                  difference between—

14                               “(i) the applicable insurance market-  
15                  place aggregate retention amount under  
16                  paragraph (7) for such Program Year; and

17                               “(ii) the aggregate amount, for all ap-  
18                  plicable insurers (pursuant to subpara-  
19                  graph (E)), of insured losses during such  
20                  Program Year that are not compensated  
21                  by the Federal Government because such  
22                  losses—

23                               “(I) are within the insurer de-  
24                  ductible for the insurer subject to the  
25                  losses; or

1                   “(II) are within the portion of  
2                   losses of the insurer that exceed the  
3                   insurer deductible, but are not com-  
4                   pensated pursuant to paragraph (1).

5                   “(B) NO MANDATORY RECOUPMENT IF UN-  
6                   COMPENSATED LOSSES EXCEED APPLICABLE  
7                   INSURANCE MARKETPLACE RETENTION.—Not-  
8                   withstanding subparagraph (A), if the aggre-  
9                   gate amount of uncompensated insured losses  
10                  referred to in clause (ii) of such subparagraph  
11                  for any Program Year referred to in any of sub-  
12                  paragraphs (A) through (F) of paragraph (7) is  
13                  greater than the applicable insurance market-  
14                  place aggregate retention amount under para-  
15                  graph (7) for such Program Year, the manda-  
16                  tory recoupment amount shall be \$0.

17                  “(C) MANDATORY ESTABLISHMENT OF  
18                  SURCHARGES TO RECOUP MANDATORY  
19                  RECOUPMENT AMOUNT.—The Secretary shall  
20                  collect, for repayment of the Federal financial  
21                  assistance provided in connection with all acts  
22                  of terrorism (or acts of war, in the case of  
23                  workers’ compensation) occurring during any of  
24                  the Program Years referred to in any of sub-  
25                  paragraphs (A) through (F) of paragraph (7),



1 terrorism loss risk-spreading premiums in an  
2 amount equal to any mandatory recoupment  
3 amount for such Program Year.

4 “(D) DISCRETIONARY RECOUPMENT OF  
5 REMAINDER OF FINANCIAL ASSISTANCE.—To  
6 the extent that the amount of Federal financial  
7 assistance provided exceeds any mandatory  
8 recoupment amount, the Secretary may—

9 “(i) recoup, through terrorism loss  
10 risk-spreading premiums, such additional  
11 amounts; or

12 “(ii) submit a report to the Congress  
13 identifying such amounts that the Sec-  
14 retary believes cannot be recouped, based  
15 on—

16 “(I) the ultimate costs to tax-  
17 payers of no additional recoupment;

18 “(II) the economic conditions in  
19 the commercial marketplace, including  
20 the capitalization, profitability, and  
21 investment returns of the insurance  
22 industry and the current cycle of the  
23 insurance markets;

1                   “(III) the affordability of com-  
2                   mercial insurance for small- and me-  
3                   dium-sized businesses; and

4                   “(IV) such other factors as the  
5                   Secretary considers appropriate.

6                   “(E) SEPARATE RECOUPMENT.—“The Sec-  
7                   retary shall provide that—

8                   “(i) any recoupment under this para-  
9                   graph of amounts paid for Federal finan-  
10                  cial assistance for insured losses for prop-  
11                  erty and casualty insurance shall be ap-  
12                  plied to property and casualty insurance  
13                  policies; and

14                  “(ii) any recoupment under this para-  
15                  graph of amounts paid for Federal finan-  
16                  cial assistance for insured losses for group  
17                  life insurance shall be applied to group life  
18                  insurance policies.

19                  “(9) POLICY SURCHARGE FOR TERRORISM LOSS  
20                  RISK-SPREADING PREMIUMS.—

21                  “(A) POLICYHOLDER PREMIUM.—Subject  
22                  to paragraph (8)(E), any amount established by  
23                  the Secretary as a terrorism loss risk-spreading  
24                  premium shall—

1 “(i) be imposed as a policyholder pre-  
2 mium surcharge on property and casualty  
3 insurance policies and group life insurance  
4 policies in force after the date of such es-  
5 tablishment;

6 “(ii) begin with such period of cov-  
7 erage during the year as the Secretary de-  
8 termines appropriate; and

9 “(iii) be based on—

10 “(I) a percentage of the premium  
11 amount charged for property and cas-  
12 ualty insurance coverage under the  
13 policy; and

14 “(II) a percentage of the amount  
15 at risk for group life insurance cov-  
16 erage under the policy.

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

21 “(C) PERCENTAGE LIMITATION.—A ter-  
22 rorism loss risk-spreading premium may not ex-  
23 ceed, on an annual basis—

24 “(i) with respect to property and cas-  
25 ualty insurance, the amount equal to 3

1 percent of the premium charged under the  
2 policy; and

3 “(ii) with respect to group life insur-  
4 ance, the amount equal to 0.0053 percent  
5 of the amount at risk under the policy.

6 “(D) ADJUSTMENT FOR URBAN AND  
7 SMALLER COMMERCIAL AND RURAL AREAS AND  
8 DIFFERENT LINES OF INSURANCE.—

9 “(i) ADJUSTMENTS.—In determining  
10 the method and manner of imposing ter-  
11 rorism loss risk-spreading premiums, in-  
12 cluding the amount of such premiums, the  
13 Secretary shall take into consideration—

14 “(I) the economic impact on com-  
15 mercial centers of urban areas, includ-  
16 ing the effect on commercial rents and  
17 commercial insurance premiums, par-  
18 ticularly rents and premiums charged  
19 to small businesses, and the avail-  
20 ability of lease space and commercial  
21 insurance within urban areas;

22 “(II) the risk factors related to  
23 rural areas and smaller commercial  
24 centers, including the potential expo-  
25 sure to loss and the likely magnitude

1 of such loss, as well as any resulting  
2 cross-subsidization that might result;  
3 and

4 “(III) the various exposures to  
5 terrorism risk for different lines of in-  
6 surance.

7 “(ii) RECOUPMENT OF ADJUST-  
8 MENTS.—Any mandatory recoupment  
9 amounts not collected by the Secretary be-  
10 cause of adjustments under this subpara-  
11 graph shall be recouped through additional  
12 terrorism loss risk-spreading premiums.

13 “(E) TIMING OF PREMIUMS.—The Sec-  
14 retary may adjust the timing of terrorism loss  
15 risk-spreading premiums to provide for equiva-  
16 lent application of the provisions of this title to  
17 policies that are not based on a calendar year,  
18 or to apply such provisions on a daily, monthly,  
19 or quarterly basis, as appropriate.

20 “(f) CAPTIVE INSURERS AND OTHER SELF-INSUR-  
21 ANCE ARRANGEMENTS.—The Secretary may, in consulta-  
22 tion with the NAIC or the appropriate State regulatory  
23 authority, apply the provisions of this title, as appropriate,  
24 to other classes or types of captive insurers and other self-  
25 insurance arrangements by municipalities and other enti-

1 ties (such as workers' compensation self-insurance pro-  
2 grams and State workers' compensation reinsurance  
3 pools), but only if such application is determined before  
4 the occurrence of an act of terrorism in which such an  
5 entity incurs an insured loss and all of the provisions of  
6 this title are applied comparably to such entities.

7 “(g) REINSURANCE TO COVER EXPOSURE.—

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

15 “(2) LIMITATION ON FINANCIAL ASSISTANCE.—

16 The amount of financial assistance provided pursu-  
17 ant to this section shall not be reduced by reinsur-  
18 ance paid or payable to an insurer from other  
19 sources, except that recoveries from such other  
20 sources, taken together with financial assistance for  
21 the Transition Period or a Program Year provided  
22 pursuant to this section, may not exceed the aggre-  
23 gate amount of the insurer's insured losses for such  
24 period. If such recoveries and financial assistance for  
25 the Transition Period or a Program Year exceed

1 such aggregate amount of insured losses for that pe-  
2 riod and there is no agreement between the insurer  
3 and any reinsurer to the contrary, an amount in ex-  
4 cess of such aggregate insured losses shall be re-  
5 turned to the Secretary.

6 “(h) PRIVILEGED PROCEDURE FOR JOINT RESOLU-  
7 TION FOR PAYMENT OF FEDERAL COMPENSATION.—

8 “(1) IN GENERAL.—The Secretary shall pay the  
9 Federal share of compensation under the Program  
10 for insured losses resulting from an act of terrorism  
11 only if there is enacted a joint resolution for pay-  
12 ment of Federal compensation with respect to such  
13 act of terrorism.

14 “(2) JOINT RESOLUTION.—For purposes of this  
15 subsection, the term ‘joint resolution for payment of  
16 Federal compensation’ means a joint resolution  
17 that—

18 “(A) does not have a preamble;

19 “(B) the matter after the resolving clause  
20 of which is as follows: ‘That the Congress ap-  
21 proves of the certification by the Secretary of  
22 the Treasury under section 102(1)(A) of the  
23 Terrorism Risk Insurance Act of 2002.’; and

1           “(C) the title of which is as follows: ‘To  
2           permit Federal compensation under the Ter-  
3           rorism Risk Insurance Act of 2002’.

4           “(3) INTRODUCTION AND REFERRAL.—Upon  
5           receipt of a submission under section 102(1)(G), the  
6           joint resolution described in this subsection shall be  
7           introduced by the majority leader of each House or  
8           his designee (by request). In the case in which a  
9           House is not in session, such joint resolution shall  
10          be so introduced upon convening the first day of ses-  
11          sion after the date of receipt of the certification.  
12          Upon introduction, the joint resolution shall be re-  
13          ferred to the appropriate calendar in each House.

14          “(4) CONSIDERATION IN THE HOUSE OF REP-  
15          RESENTATIVES.—

16          “(A) PROCEEDING TO CONSIDERATION.—  
17          Upon referral to the appropriate calendar, it  
18          shall be in order to move to proceed to consider  
19          the joint resolution in the House. Such a mo-  
20          tion shall be in order only at a time designated  
21          by the Speaker in the legislative schedule within  
22          two legislative days. The previous question shall  
23          be considered as ordered on the motion to its  
24          adoption without intervening motion. A motion



1 to reconsider the vote by which the motion is  
2 disposed of shall not be in order.

3 “(B) CONSIDERATION.—The joint resolu-  
4 tion shall be considered as read. All points of  
5 order against the joint resolution and against  
6 its consideration are waived. The previous ques-  
7 tion shall be considered as ordered on the joint  
8 resolution to its passage without intervening  
9 motion except one hour of debate equally di-  
10 vided and controlled by a proponent and an op-  
11 ponent and one motion to limit debate on the  
12 joint resolution. A motion to reconsider the vote  
13 on passage of the joint resolution shall not be  
14 in order.

15 “(5) CONSIDERATION IN THE SENATE.—

16 “(A) PROCEEDING.—Upon introduction,  
17 the joint resolution shall be placed on the Cal-  
18 endar of Business, General Orders. A motion to  
19 proceed to the consideration of the joint resolu-  
20 tion shall be in order at any time. The motion  
21 is privileged and not debatable. A motion to  
22 proceed to consideration of the joint resolution  
23 may be made even though a previous motion to  
24 the same effect has been disagreed to. An  
25 amendment to the motion shall not be in order,

1 nor shall it be in order to move to reconsider  
2 the vote by which the motion is agreed to.

3 “(B) DEBATE.—Debate on the joint reso-  
4 lution, and all debatable motions and appeals in  
5 connection therewith, shall be limited to not  
6 more than ten hours. The time shall be equally  
7 divided between and controlled by, the majority  
8 leader and the minority leader or their des-  
9 ignees.

10 “(C) DEBATABLE MOTIONS AND AP-  
11 PEALS.—Debate on any debatable motion or  
12 appeal in relation to the joint resolution shall be  
13 limited to not more than one hour from the  
14 time allotted for debate, equally divided and  
15 controlled by the majority leader and the minor-  
16 ity leader or their designees.

17 “(D) MOTION TO LIMIT DEBATE.—A mo-  
18 tion to further limit debate is not debatable.

19 “(E) MOTION TO RECOMMIT.—Any motion  
20 to commit or recommit the joint resolution shall  
21 not be in order.

22 “(F) FINAL PASSAGE.—The Chair shall  
23 put the question on final passage of the joint  
24 resolution no later than 72 hours from the time  
25 the measure is introduced.

1           “(6) AMENDMENTS PROHIBITED.—No amend-  
2           ment to, or motion to strike a provision from, a joint  
3           resolution considered under this subsection shall be  
4           in order in either the Senate or the House of Rep-  
5           resentatives.

6           “(7) CONSIDERATION BY THE OTHER HOUSE.—  
7           In the case of a joint resolution described in this  
8           subsection, if before passage by one House of a joint  
9           resolution of that House, that House receives such  
10          joint resolution from the other House, then—

11                  “(A) the procedure in that House shall be  
12                  the same as if no joint resolution had been re-  
13                  ceived from the other House; but

14                  “(B) the vote on final passage shall be on  
15                  the joint resolution of the other House.

16          “(8) HOUSE AND SENATE RULEMAKING.—This  
17          subsection is enacted by the Congress as an exercise  
18          of the rulemaking power of the House of Represent-  
19          atives and Senate, respectively, and as such is  
20          deemed a part of the rules of each House, respec-  
21          tively, and such procedures supersede other rules  
22          only to the extent that they are inconsistent with  
23          such rules; and with full recognition of the constitu-  
24          tional right of either House to change the rules (so  
25          far as relating to the procedures of that House) at

1 any time, in the same manner, and to the same ex-  
2 tent as any other rule of that House.”;

3 (2) in section 104(a)—

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

6 (B) in paragraph (2), by striking the pe-  
7 riod and inserting “; and”; and

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

10 “(3) during the 90-day period beginning upon  
11 the certification of any act of terrorism, to issue  
12 such regulations as the Secretary considers nec-  
13 essary to carry out this Act without regard to the  
14 notice and comment provisions of section 553 of title  
15 5, United States Code.”;

16 (3) in section 104, by adding at the end the fol-  
17 lowing new subsection:

18 “(h) ANNUAL ADJUSTMENT.—

19 “(1) IN GENERAL.—Notwithstanding any other  
20 provision of this title, the Secretary shall adjust, for  
21 the second additional Program Year and for each  
22 additional Program Year thereafter, based upon the  
23 percentage change in the Consumer Price Index for  
24 All Urban Consumers (CPI-U), as published by the  
25 Bureau of Labor Statistics of the Department of

1 Labor, during the 12-month period preceding such  
2 program year, each of the dollar amounts set forth  
3 in this title (as such amount may have been pre-  
4 viously adjusted), including the following amounts:

5 “(A) The dollar amount in section  
6 102(1)(B)(ii) (relating to act of terrorism).

7 “(B) The dollar amounts in subparagraphs  
8 (J) and (K) of section 102(11) (relating to an  
9 insurer deductible threshold based on the  
10 amount of aggregate industry insured losses).

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

14 “(D) The dollar amounts in section  
15 103(e)(1)(C) (relating to Program trigger).

16 “(E) The dollar amount in section  
17 103(e)(1)(D) (relating to limitation on group  
18 life insurance compensation).

19 “(F) The dollar amounts in section  
20 103(e)(2) (relating to cap on annual liability).

21 “(G) The dollar amounts in section  
22 103(e)(3)(C) (relating to limitation on insurer  
23 financial liability).

1           “(H) The dollar amounts in section  
2           103(e)(4) (relating to notices regarding losses  
3           and annual liability cap).

4           “(I) The dollar amounts in section  
5           103(e)(7) (relating to insurance marketplace  
6           aggregate retention amount).

7           “(J) The dollar amounts in section  
8           109(b)(1)(C) (relating to membership of Com-  
9           mission on Terrorism Insurance Risk).

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

14          (4) in section 106(a)(2)—

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

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

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

21                         “(C) during the period beginning on the  
22                         date of the enactment of the Terrorism Risk In-  
23                         surance Revision and Extension Act of 2007  
24                         and ending on December 31, 2008, rates and  
25                         forms for property and casualty insurance, and

1 group life insurance, required by this title and  
2 providing coverage except for NBCR terrorism  
3 that are filed with any State shall not be sub-  
4 ject to prior approval or a waiting period under  
5 any law of a State that would otherwise be ap-  
6 plicable, except that nothing in this title affects  
7 the ability of any State to invalidate a rate as  
8 excessive, inadequate, or unfairly discrimina-  
9 tory, and, with respect to forms, where a State  
10 has prior approval authority, it shall apply to  
11 allow subsequent review of such forms;

12 “(D) during the period beginning on the  
13 date of the enactment of the Terrorism Risk In-  
14 surance Revision and Extension Act of 2007,  
15 and ending on December 31, 2009, forms for  
16 property and casualty insurance, and group life  
17 insurance, covered by this title and providing  
18 coverage for NBCR terrorism that are filed  
19 with any State, to the extent of the addition of  
20 such coverage for NBCR terrorism and where  
21 such coverage was not previously required, shall  
22 not be subject to prior approval or waiting pe-  
23 riod under any law of a State that would other-  
24 wise be applicable;

1           “(E) during the period beginning on the  
2           date of the enactment of the Terrorism Risk In-  
3           surance Revision and Extension Act of 2007,  
4           and ending on December 31, 2010, rates for  
5           property and casualty insurance, and group life  
6           insurance, covered by this title and providing  
7           coverage for NBCR terrorism that are filed  
8           with any State, to the extent of the addition of  
9           such coverage for NBCR terrorism and where  
10          such coverage was not previously required, shall  
11          not be subject to prior approval or waiting pe-  
12          riod under any law of a State that would other-  
13          wise be applicable, except that nothing in this  
14          title affects the ability of any State to invalidate  
15          a rate as inadequate or unfairly discriminatory;  
16          and”;

17          (5) in section 106, by adding at the end the fol-  
18          lowing new subsection:

19          “(c) RULE OF CONSTRUCTION REGARDING INSURER  
20          COORDINATION.—Nothing in this Act shall be construed  
21          to prohibit, restrict, or otherwise limit an insurer from en-  
22          tering into an arrangement with another insurer to make  
23          available coverage for any portion of insured losses to ful-  
24          fill the requirements of section 103(c). The Secretary shall  
25          develop, in consultation with the NAIC, minimum finan-



1 cial solvency standards and other standards the Secretary  
2 determines appropriate with respect to such arrange-  
3 ments. Nothing in this subsection shall be construed to  
4 establish any legal partnership.”; and

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

8 (b) REGULATIONS ON CLAIMS ALLOCATIONS.—The  
9 Secretary of the Treasury shall issue the regulations re-  
10 ferred to in subparagraph (C) of section 103(e)(2) of the  
11 Terrorism Risk Insurance Act of 2002, as amended by  
12 subsection (a)(1) of this section, and to carry out subpara-  
13 graph (B) of such section 103(e)(2), not later than the  
14 expiration of the 120-day period beginning upon the date  
15 of the enactment of this Act.

16 (c) REGULATIONS ON CERTIFICATION OF AN ACT OF  
17 NBCR TERRORISM.—The Secretary of the Treasury shall  
18 issue the regulations to carry out subparagraph (C) of sec-  
19 tion 102(1) of the Terrorism Risk Insurance Act of 2002,  
20 as amended by subsection (a)(1) of this section, not later  
21 than the expiration of the 180-day period beginning upon  
22 the date of the enactment of this Act.

23 (d) REGULATIONS ON NBCR EXEMPTIONS.—The  
24 Secretary of the Treasury shall issue the regulations to  
25 carry out paragraph (4) of section 103(a) of the Terrorism

1 Risk Insurance Act of 2002, as amended by subsection  
2 (a)(1) of this section, not later than the expiration of the  
3 180-day period beginning upon the date of the enactment  
4 of this Act.

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

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

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

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

11 “(a) ESTABLISHMENT.—The Secretary shall estab-  
12 lish a Terrorism Buy-Down Fund (in this section referred  
13 to as the ‘Fund’) that shall make available additional ter-  
14 rorism coverage for the insured losses of insurers, which  
15 shall be available for purchase by insurers on a voluntary  
16 basis.

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

19 “(1) IN GENERAL.—An insurer may purchase  
20 deductible, co-share, and pre-trigger buy-down cov-  
21 erage (in this section referred to as ‘buy-down cov-  
22 erage’) through the Fund by making an election, in  
23 advance, to treat some or all of the premiums it has  
24 disclosed pursuant to section 106(b)(3) as fee

1 charges for the Program imposed by the Secretary  
2 and remitting such amounts to the Fund.

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

6 “(A) the highest amount specified in sec-  
7 tion 103(e)(1)(C); and

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

10 “(c) BUY-DOWN COVERAGE.—The Fund shall pro-  
11 vide the buy-down coverage to an insurer for losses for  
12 acts of terrorism, without application of the insurer de-  
13 ductible and in addition to any otherwise payable Federal  
14 share of compensation pursuant to section 103(e).

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

19 “(e) USE BY INSURERS.—

20 “(1) QUALIFYING LOSSES.—For the purpose of  
21 this section, qualifying losses are insured losses by  
22 an insurer that are not excess losses and that do not  
23 include amounts for which Federal financial assist-  
24 ance pursuant to section 103(e) is received, notwith-  
25 standing any limits otherwise applicable regarding

1 section 103(e)(1)(C) (regarding program triggers) or  
2 section 102(11) (regarding insurer deductibles).

3 “(2) USE OF BUY-DOWN COVERAGE.—An in-  
4 surer may use any buy-down coverage payments re-  
5 ceived under subsection (f) to satisfy—

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

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

11 “(C) the insurer’s obligations to pay for in-  
12 sured losses if the Program trigger under sec-  
13 tion 103(e)(1)(C) is not satisfied.

14 “(3) BUY-DOWN COVERAGE DOES NOT REDUCE  
15 FEDERAL CO-SHARE.—The receipt by an insurer of  
16 buy-down coverage under this section for insured  
17 losses shall not be considered with respect to calcu-  
18 lating the insurer’s insured losses with respect to the  
19 insurer’s deductible and eligibility for Federal finan-  
20 cial assistance pursuant to section 103(e).

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

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

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

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

12               “(2) any such amounts borrowed must be re-  
13 plenished with appropriate interest.

14       “(h) RISK-SHARING MECHANISMS.—The Secretary  
15 shall establish voluntary risk-sharing mechanisms for in-  
16 surers purchasing buy-down coverage from the Fund to  
17 pool their reinsurance purchases and otherwise share ter-  
18 rorism risk.

19       “(i) TERMINATION.—Upon termination of the Pro-  
20 gram under section 108, and subject to the Secretary’s  
21 continuing authority under section 108(b) to adjust claims  
22 in satisfaction under the Program, the Secretary shall pro-  
23 vide that the Fund shall become a privately-operated mu-  
24 tual terrorism reinsurance company owned by the insurers  
25 that have submitted buy-down coverage premiums in pro-

1 portion to such premiums minus any buy-down coverage  
2 payments received.”; and

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

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

6 **SEC. 5. ANALYSIS AND STUDY.**

7 (a) ANALYSIS OF MARKET CONDITIONS.—Section  
8 108 of the Terrorism Risk Insurance Act of 2002 (15  
9 U.S.C. 6701 note) is amended by striking subsection (e)  
10 and inserting the following:

11 “(e) ANALYSIS OF MARKET CONDITIONS FOR TER-  
12 RORISM RISK INSURANCE.—

13 “(1) IN GENERAL.—The Secretary, in consulta-  
14 tion with the NAIC, representatives of the insurance  
15 industry, representatives of the securities industry,  
16 and representatives of policyholders, shall perform  
17 an analysis regarding the long-term availability and  
18 affordability of insurance for terrorism risk in the  
19 private marketplace, including coverage for—

20 “(A) property and casualty insurance;

21 “(B) group life insurance;

22 “(C) workers’ compensation;

23 “(D) nuclear, biological, chemical, and ra-  
24 diological events; and

25 “(E) commercial real estate.

1           “(2) BIENNIAL REPORTS.—The Secretary shall  
2           submit biennial reports to the Committee on Finan-  
3           cial Services of the House of Representatives and  
4           the Committee on Banking, Housing, and Urban Af-  
5           fairs of the Senate, on its findings pursuant to the  
6           analysis conducted under paragraph (1). The first  
7           such report shall be submitted not later than the ex-  
8           piration of the 24-month period beginning on the  
9           date of the enactment of the Terrorism Risk Insur-  
10          ance Revision and Extension Act of 2007.

11          “(3) TESTIMONY.—Upon submission of each bi-  
12          ennial report under paragraph (2), the Secretary  
13          shall provide oral testimony to the Committee on Fi-  
14          nancial Services of the House of Representatives and  
15          Committee on Banking, Housing, and Urban Affairs  
16          of the United States Senate regarding the report  
17          and the analysis under this subsection for which the  
18          report is submitted.”.

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

22                 (1) by adding at the end the following new sec-  
23          tion:

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

2       “(a) ESTABLISHMENT.—There is hereby established  
3 the Commission on Terrorism Risk Insurance (in this sec-  
4 tion referred to as the ‘Commission’).

5       “(b) MEMBERSHIP.—

6           “(1) The Commission shall consist of 21 mem-  
7 bers, as follows:

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

10           “(B) One member who is a State insur-  
11 ance commissioner, designated by the NAIC.

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

14           “(i) a representative of group life in-  
15 surers;

16           “(ii) a representative of property and  
17 casualty insurers with direct earned pre-  
18 mium of \$1,000,000,000 or less;

19           “(iii) a representative of property and  
20 casualty insurers with direct earned pre-  
21 mium of more than \$1,000,000,000;

22           “(iv) a representative of multiline in-  
23 surers;

24           “(v) a representative of independent  
25 insurance agents;



1           “(vi) a representative of insurance  
2 brokers;

3           “(vii) a policyholder representative;

4           “(viii) a representative of the sur-  
5 vivors of the victims of the attacks of Sep-  
6 tember 11, 2001;

7           “(ix) a representative of the reinsur-  
8 ance industry;

9           “(x) a representative of workers’ com-  
10 pensation insurers;

11           “(xi) a representative from the com-  
12 mercial mortgage-backed securities indus-  
13 try;

14           “(xii) a representative from a nation-  
15 ally recognized statistical rating organiza-  
16 tion;

17           “(xiii) a real estate developer;

18           “(xiv) a representative of workers’  
19 compensation insurers created by State  
20 legislatures, selected in consultation with  
21 the American Association of State Com-  
22 pensation Insurance Funds from among its  
23 members; and

24           “(xv) a representative from the com-  
25 mercial real estate brokerage industry or

1           the commercial property management in-  
2           dustry.

3           “(D) Four members, who shall serve as li-  
4           aisons to the Congress, who shall include two  
5           members jointly selected by the Chairman and  
6           Ranking Member of the Committee on Finan-  
7           cial Services of the House of Representatives  
8           and two members jointly selected by the Chair-  
9           man and Ranking Member of the Committee on  
10          Banking, Housing, and Urban Affairs of the  
11          Senate.

12          “(2) SECRETARY.—The Program Director of  
13          the Terrorism Risk Insurance Act of the Depart-  
14          ment of the Treasury shall serve as Secretary of the  
15          Commission. The Secretary of the Commission shall  
16          determine the manner in which the Commission  
17          shall operate, including funding and staffing.

18          “(c) DUTIES.—

19                 “(1) IN GENERAL.—The Commission shall iden-  
20                 tify and make recommendations regarding—

21                         “(A) possible actions to encourage, facili-  
22                         tate, and sustain provision by the private insur-  
23                         ance industry in the United States of affordable  
24                         coverage for losses due to an act or acts of ter-  
25                         rorism;

1           “(B) possible actions or mechanisms to  
2           sustain or supplement the ability of the insur-  
3           ance industry in the United States to cover  
4           losses resulting from acts of terrorism in the  
5           event that—

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

9                   “(ii) other consequences from such  
10                  acts occur, as determined by the Commis-  
11                  sion, that may significantly affect the abil-  
12                  ity of the insurance industry in the United  
13                  States to cover such losses independently;  
14                  and

15                  “(C) possible actions to significantly re-  
16                  duce the Federal role in covering losses result-  
17                  ing from acts of terrorism.

18                  “(2) EVALUATIONS.—In identifying and mak-  
19                  ing the recommendations required under paragraph  
20                  (1), the Commission shall specifically evaluate the  
21                  utility and viability of proposals aimed at improving  
22                  the availability of insurance against terrorism risk in  
23                  the private marketplace.

24                  “(3) INITIAL MEETING.—The Commission shall  
25                  hold its first meeting during the 3-month period that

1 begins 15 months after the date of the enactment of  
2 the Terrorism Risk Insurance Revision and Extension  
3 Act of 2007.

4 “(4) REPORTS.—

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

7 “(i) evaluate and make recommenda-  
8 tions regarding whether there is a need for  
9 a Federal terrorism risk insurance pro-  
10 gram;

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

14 “(iii) include the identifications, eval-  
15 uations, and recommendations required  
16 under paragraphs (1) and (2).

17 “(B) TIMING.—The first report required  
18 under subparagraph (A) shall be submitted be-  
19 fore the expiration of the 60-month period be-  
20 ginning on the date of the enactment of the  
21 Terrorism Risk Insurance Revision and Extension  
22 Act of 2007. The second such report shall  
23 be submitted before the expiration of the 96-  
24 month period beginning upon such date of en-  
25 actment.”; and

1           (2) in the table of contents in section 1(b), by  
2           inserting after the item relating to section 108 the  
3           following new item:

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

4 **SEC. 6. APPLICABILITY.**

5           The amendments made by this Act shall apply begin-  
6           ning on January 1, 2008. The provisions of the Terrorism  
7           Risk Insurance Act of 2002, as in effect on the day before  
8           the date of the enactment of this Act, shall apply through  
9           the end of December 31, 2007.

          Passed the House of Representatives September 19,  
2007.

Attest:

*Clerk.*

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

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**H. R. 2761**

**AN ACT**

To extend the Terrorism Insurance Program of the Department of the Treasury, and for other purposes.