

## Union Calendar No. 201

110TH CONGRESS  
1ST SESSION

# H. R. 2761

[Report No. 110-318]

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

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### IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2007

Mr. CAPUANO (for himself, Mrs. MALONEY of New York, Mr. ACKERMAN, Mr. MEEKS of New York, Mrs. MCCARTHY of New York, Mr. CROWLEY, Mr. ISRAEL, Mr. KING of New York, Mr. GUTIERREZ, Mr. WATT, Mr. SHERMAN, Mr. LYNCH, Mr. SCOTT of Georgia, Mr. AL GREEN of Texas, Mr. CLEAVER, Mr. LINCOLN DAVIS of Tennessee, Mr. SIRES, Mr. MAHONEY of Florida, Mr. MURPHY of Connecticut, Mr. WEXLER, Mr. BOREN, Mr. FRANK of Massachusetts, Mr. HODES, and Mr. SHAYS) introduced the following bill; which was referred to the Committee on Financial Services

SEPTEMBER 6, 2007

Additional sponsors: Mr. RAMSTAD, Mr. DONNELLY, Mr. HIGGINS, Ms. HOOLEY, Mr. HINOJOSA, Ms. BERKLEY, Mr. COURTNEY, and Mr. ROTHMAN

SEPTEMBER 6, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 18, 2007]

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## A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. TERMINATION OF PROGRAM.**

7        *Subsection (a) of section 108 of the Terrorism Risk In-*  
8 *surance Act of 2002 (15 U.S.C. 6701 note) is amended by*  
9 *striking “December 31, 2007” and inserting “December 31,*  
10 *2022”.*

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

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

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

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

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

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

1       *and foreign trade in an increasingly interconnected*  
2       *world;*

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

10              “(3) *the ability of the insurance industry to*  
11       *cover the unprecedented financial risks presented by*  
12       *potential acts of terrorism in the United States can*  
13       *be a major factor in the recovery from terrorist at-*  
14       *tacks, while maintaining the stability of the economy;*

15              “(4) *widespread financial market uncertainties*  
16       *have arisen following the terrorist attacks of Sep-*  
17       *tember 11, 2001, including the absence of information*  
18       *from which financial institutions can make statis-*  
19       *tically valid estimates of the probability and cost of*  
20       *future terrorist events, and therefore the size, funding,*  
21       *and allocation of the risk of loss caused by such acts*  
22       *of terrorism;*

23              “(5) *a decision by property and casualty insur-*  
24       *ers to deal with such uncertainties, either by termi-*  
25       *nating property and casualty coverage for losses aris-*

1        *ing from terrorist events, or by radically escalating*  
2        *premium coverage to compensate for risks of loss that*  
3        *are not readily predictable, could seriously hamper*  
4        *ongoing and planned construction, property acquisi-*  
5        *tion, and other business projects, generate a dramatic*  
6        *increase in rents, and otherwise suppress economic*  
7        *activity;*

8                *“(6) the United States Government should co-*  
9                *ordinate with insurers to provide financial compensa-*  
10               *tion to insured parties for losses from acts of ter-*  
11               *rorism, contributing to the stabilization of the United*  
12               *States economy in a time of national crisis, and peri-*  
13               *odically assess the ability of the financial services in-*  
14               *dustry to develop the systems, mechanisms, products,*  
15               *and programs necessary to create a viable financial*  
16               *services market for private terrorism risk insurance*  
17               *that will lessen the financial participation of the*  
18               *United States Government;*

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

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

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

22           “(10) group life insurance companies are impor-  
23          tant financial institutions whose products make life  
24          insurance coverage affordable for millions of Ameri-

1        *cans and often serve as their only life insurance ben-*  
2        *efit;*

3            *“(11) the group life insurance industry, in the*  
4        *event of a severe act of terrorism, is vulnerable to in-*  
5        *solvency because high concentrations of covered em-*  
6        *ployees work in the same locations, because primary*  
7        *group life insurers do not exclude conventional and*  
8        *NBCR terrorism risks while most catastrophic rein-*  
9        *surance does exclude such terrorism risks, and because*  
10       *a large-scale loss of life would fall outside of actuarial*  
11       *expectations of death; and*

12           *“(12) the United States Government should pro-*  
13        *vide temporary financial compensation to insured*  
14        *parties, contributing to the stabilization of the United*  
15        *States economy in a time of national crisis, while the*  
16        *financial services industry develops the systems,*  
17        *mechanisms, products, and programs necessary to cre-*  
18        *ate a viable financial services market for private ter-*  
19        *rorism risk insurance.*

20           *“(b) PURPOSE.—The purpose of this title is to estab-*  
21        *lish a temporary Federal program that provides for a trans-*  
22        *parent system of shared public and private compensation*  
23        *for insured losses resulting from acts of terrorism, in order*  
24        *to—*

1           “(1) protect consumers by addressing market dis-  
2           ruptions and ensure the continued widespread avail-  
3           ability and affordability of property and casualty in-  
4           surance and group life insurance for all types of ter-  
5           rorism risk, including conventional terrorism risk  
6           and nuclear, biological, chemical, and radiological  
7           terrorism risk;

8           “(2) allow for a transitional period for the pri-  
9           vate markets to stabilize, resume pricing of such in-  
10          surance, and build capacity to absorb any future  
11          losses, while preserving State insurance regulation  
12          and consumer protections (unless otherwise preempted  
13          by this Act); and

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

17 **“SEC. 102. DEFINITIONS.**

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

19                 *“(1) ACT OF TERRORISM.—*

20                         *“(A) CERTIFICATION.—The term ‘act of ter-*  
21                         *rorism’ means any act that is certified by the*  
22                         *Secretary, in concurrence with the Secretary of*  
23                         *State, the Secretary of Homeland Security, and*  
24                         *the Attorney General of the United States—*

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

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

3                   “(I) human life;

4                   “(II) property; or

5                   “(III) infrastructure;

6                   “(iii) to have resulted in damage with-  
7 in the United States, or outside of the  
8 United States in the case of—

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

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

13                   “(iv) to have been committed by an in-  
14 dividual or individuals as part of an effort  
15 to coerce the civilian population of the  
16 United States or to influence the policy or  
17 affect the conduct of the United States Gov-  
18 ernment by coercion.

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

21                   “(i) the act is committed as part of the  
22 course of a war declared by the Congress,  
23 except that this clause shall not apply with  
24 respect to any coverage for workers’ com-  
25 pensation; or



1                   “(ii) *property and casualty insurance*  
2                   *and group life insurance losses resulting*  
3                   *from the act, in the aggregate, do not exceed*  
4                   *\$5,000,000.*

5                   “(C) *CERTIFICATION OF ACT OF NBCR TER-*  
6                   *RORISM.—Upon certification of an act of ter-*  
7                   *rorism, the Secretary, in concurrence with the*  
8                   *Secretary of State, the Secretary of Homeland*  
9                   *Security, and the Attorney General of the United*  
10                   *States, shall determine whether the act of ter-*  
11                   *rorism meets the definition of NBCR terrorism*  
12                   *in this section. If such determination is that the*  
13                   *act does meet such definition, the Secretary shall*  
14                   *further certify such act of terrorism as an act of*  
15                   *NBCR terrorism.*

16                   “(D) *DETERMINATIONS FINAL.—Any cer-*  
17                   *tification of, or determination not to certify, an*  
18                   *act as an act of terrorism or as an act of NBCR*  
19                   *terrorism under this paragraph shall be final,*  
20                   *and shall not be subject to judicial review.*

21                   “(E) *NONDELEGATION.—The Secretary may*  
22                   *not delegate or designate to any other officer, em-*  
23                   *ployee, or person, any determination under this*  
24                   *paragraph of whether, during the effective period*

1           *of the Program, an act of terrorism, including*  
2           *an act of NBCR terrorism, has occurred.*

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

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

12          “(4) *CONTROL.*—*An entity has ‘control’ over an-*  
13          *other entity, if—*

14                  “(A) *the entity directly or indirectly or act-*  
15                  *ing through 1 or more other persons owns, con-*  
16                  *trols, or has power to vote 25 percent or more of*  
17                  *any class of voting securities of the other entity;*

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

21                  “(C) *the Secretary determines, after notice*  
22                  *and opportunity for hearing, that the entity di-*  
23                  *rectly or indirectly exercises a controlling influ-*  
24                  *ence over the management or policies of the other*  
25                  *entity; except that for purposes of any proceeding*

1           under this subparagraph, there shall be a pre-  
2           sumption that any entity which directly or indi-  
3           rectly owns, controls, or has power to vote less  
4           than 5 percent of any class of voting securities  
5           of another entity does not have control over that  
6           entity.

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

10           “(6) *DIRECT EARNED PREMIUM*.—The term ‘di-  
11           rect earned premium’ means a direct earned premium  
12           for property and casualty insurance issued by any  
13           insurer for insurance against losses occurring at the  
14           locations described in subparagraph (A) of paragraph  
15           (9).

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

21           “(8) *GROUP LIFE INSURANCE*.—The term ‘group  
22           life insurance’ means an insurance contract that pro-  
23           vides life insurance coverage, including term life in-  
24           surance coverage, universal life insurance coverage,  
25           variable universal life insurance coverage, and acci-

1        *dental death coverage, or a combination thereof, for a*  
2        *number of individuals under a single contract, on the*  
3        *basis of a group selection of risks, but does not in-*  
4        *clude ‘Corporate Owned Life Insurance’ or ‘Business*  
5        *Owned Life Insurance,’ each as defined under the In-*  
6        *ternal Revenue Code of 1986, or any similar product,*  
7        *or group life reinsurance or retrocessional reinsur-*  
8        *ance.*

9                *“(9) INSURED LOSS.—*

10                *“(A) IN GENERAL.—Except as provided in*  
11                *subparagraph (B), the term ‘insured loss’ means*  
12                *any loss resulting from an act of terrorism (in-*  
13                *cluding an act of war, in the case of workers’*  
14                *compensation) that is covered by primary or ex-*  
15                *cess property and casualty insurance, or group*  
16                *life insurance to the extent of the amount at risk,*  
17                *issued by an insurer, if such loss—*

18                        *“(i) occurs within the United States;*

19                        *or*

20                        *“(ii) occurs to an air carrier (as de-*  
21                        *defined in section 40102 of title 49, United*  
22                        *States Code), to a United States flag vessel*  
23                        *(or a vessel based principally in the United*  
24                        *States, on which United States income tax*  
25                        *is paid and whose insurance coverage is*

1           *subject to regulation in the United States),*  
2           *regardless of where the loss occurs, or at the*  
3           *premises of any United States mission.*

4           “(B) *LIMITATION FOR GROUP LIFE INSUR-*  
5           *ANCE.—Such term shall not include any losses of*  
6           *an insurer resulting from coverage of any single*  
7           *certificate holder under any group life insurance*  
8           *coverages of the insurer to the extent such losses*  
9           *are not compensated under the Program by rea-*  
10          *son of section 103(e)(1)(D).*

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

13                 “(A) *that is—*

14                         “(i) *licensed or admitted to engage in*  
15                         *the business of providing primary or excess*  
16                         *insurance, or group life insurance, in any*  
17                         *State;*

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

23                         “(iii) *approved for the purpose of offer-*  
24                         *ing property and casualty insurance by a*

1           *Federal agency in connection with mari-*  
2           *time, energy, or aviation activity;*

3           *“(iv) a State residual market insur-*  
4           *ance entity or State workers’ compensation*  
5           *fund; or*

6           *“(v) any other entity described in sec-*  
7           *tion 103(f), to the extent provided in the*  
8           *rules of the Secretary issued under section*  
9           *103(f);*

10          *“(B) that receives direct earned premiums*  
11          *for any type of commercial property and cas-*  
12          *ualty insurance coverage, or, in the case of group*  
13          *life insurance, that receives direct premiums,*  
14          *other than in the case of entities described in sec-*  
15          *tions 103(d) and 103(f); and*

16          *“(C) that meets any other criteria that the*  
17          *Secretary may reasonably prescribe.*

18          *“(11) INSURER DEDUCTIBLE.—The term ‘insurer*  
19          *deductible’ means—*

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

24                 *“(B) for Program Year 1, the value of an*  
25                 *insurer’s direct earned premiums over the cal-*

1           *endar year immediately preceding Program Year*  
2           *1, multiplied by 7 percent;*

3           “(C) *for Program Year 2, the value of an*  
4           *insurer’s direct earned premiums over the cal-*  
5           *endar year immediately preceding Program Year*  
6           *2, multiplied by 10 percent;*

7           “(D) *for Program Year 3, the value of an*  
8           *insurer’s direct earned premiums over the cal-*  
9           *endar year immediately preceding Program Year*  
10          *3, multiplied by 15 percent;*

11          “(E) *for Program Year 4, the value of an*  
12          *insurer’s direct earned premiums over the cal-*  
13          *endar year immediately preceding Program Year*  
14          *4, multiplied by 17.5 percent;*

15          “(F) *for Program Year 5, the value of an*  
16          *insurer’s direct earned premiums over the cal-*  
17          *endar year immediately preceding Program Year*  
18          *5, multiplied by 20 percent;*

19          “(G) *for each additional Program 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 20 percent; and*

1           “(ii) with respect to group life insur-  
2           ance, the value of an insurer’s amount at  
3           risk over the calendar year immediately  
4           preceding such Program Year, multiplied by  
5           0.0351 percent;

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

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

23                 “(i) with respect to property and cas-  
24                 ualty insurance, the value of an insurer’s  
25                 direct earned premiums over the calendar



1                    *year immediately preceding such Program*  
2                    *Year, multiplied by a percentage, which—*

3                    *“(I) for the second additional Pro-*  
4                    *gram Year, shall be 3.5 percent; and*

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

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

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

18                    *“(II) for each succeeding Program*  
19                    *Year thereafter, shall be 0.088 basis*  
20                    *point greater than the percentage ap-*  
21                    *plicable to the preceding additional*  
22                    *Program Year; and*

23                    *“(J) notwithstanding subparagraph (G)(i),*  
24                    *if aggregate industry insured losses resulting*  
25                    *from a certified act of terrorism exceed*

1           \$1,000,000,000, for any insurer that sustains in-  
2           sured losses resulting from such act of terrorism,  
3           the value of such insurer's direct earned pre-  
4           miums over the calendar year immediately pre-  
5           ceding the Program Year, multiplied by a per-  
6           centage, which—

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

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

21           except that for purposes of determining under  
22           this subparagraph whether aggregate industry  
23           insured losses exceed \$1,000,000,000, the Sec-  
24           retary may combine insured losses resulting from  
25           two or more certified acts of terrorism occurring

1           *during such Program Year in the same geo-*  
2           *graphic area (with such area determined by the*  
3           *Secretary), in which case such insurer shall be*  
4           *permitted to combine insured losses resulting*  
5           *from such acts of terrorism for purposes of satis-*  
6           *fying its insurer deductible under this subpara-*  
7           *graph; and except that the insurer deductible*  
8           *under this subparagraph shall apply only with*  
9           *respect to compensation of insured losses result-*  
10          *ing from such certified act, or combined certified*  
11          *acts, and that for purposes of compensation of*  
12          *any other insured losses occurring in the same*  
13          *Program Year, the insurer deductible determined*  
14          *under subparagraph (G)(i) or (I) shall apply.*

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

17           “(13) *NBCR TERRORISM.*—*The term ‘NBCR ter-*  
18          *rorism’ means an act of terrorism that involves nu-*  
19          *clear, biological, chemical, or radiological reactions,*  
20          *releases, or contaminations, to the extent any insured*  
21          *losses result from any such reactions, releases, or con-*  
22          *taminations.*

23           “(14) *PERSON.*—*The term ‘person’ means any*  
24          *individual, business or nonprofit entity (including*  
25          *those organized in the form of a partnership, limited*

1 *liability company, corporation, or association), trust*  
2 *or estate, or a State or political subdivision of a State*  
3 *or other governmental unit.*

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

7 “(16) *PROGRAM YEARS*.—

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

12 “(B) *PROGRAM YEAR 1*.—*The term ‘Pro-*  
13 *gram Year 1’ means the period beginning on*  
14 *January 1, 2003 and ending on December 31,*  
15 *2003.*

16 “(C) *PROGRAM YEAR 2*.—*The term ‘Pro-*  
17 *gram Year 2’ means the period beginning on*  
18 *January 1, 2004 and ending on December 31,*  
19 *2004.*

20 “(D) *PROGRAM YEAR 3*.—*The term ‘Pro-*  
21 *gram Year 3’ means the period beginning on*  
22 *January 1, 2005 and ending on December 31,*  
23 *2005.*

24 “(E) *PROGRAM YEAR 4*.—*The term ‘Pro-*  
25 *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 pe-*  
11          *riod 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 Insurance*  
22                         *Act (7 U.S.C. 1501 et seq.), or any other*  
23                         *type of crop or livestock insurance that is*  
24                         *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’ means*  
23          *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 Commonwealth*  
2 *of the Northern Mariana Islands, American Samoa,*  
3 *Guam, each of the United States Virgin Islands, and*  
4 *any territory or possession of the United States.*

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

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

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

15 *and*

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

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

18 “(a) *ESTABLISHMENT OF PROGRAM.*—

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

22 “(2) *AUTHORITY OF THE SECRETARY.*—*Notwith-*  
23 *standing any other provision of State or Federal law,*  
24 *the Secretary shall administer the Program, and shall*

1        *pay the Federal share of compensation for insured*  
2        *losses in accordance with subsection (e).*

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

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

9            *“(A) ELIGIBILITY.—Upon request, the Sec-*  
10        *retary may provide an exemption from the re-*  
11        *quirements of subparagraph (B) of subsection*  
12        *(c)(1) in the Program to an entity that otherwise*  
13        *meets the definition of an insurer under this title*  
14        *if—*

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

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

21            *“(B) INSURER GROUP.—For purposes of*  
22        *subparagraph (A)(i), the direct earned premium*  
23        *of any insurer shall include the direct earned*  
24        *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 standards*  
6           *for evaluating eligibility for the exemption under*  
7           *this paragraph, the Secretary shall consult with*  
8           *the NAIC.*

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

18                 “(i) *its deductible and maximum ap-*  
19                 *plicable share above the deductible pursuant*  
20                 *to sections 102(11)(I) and 103(e)(1)(B), re-*  
21                 *spectively, for such act of NBCR terrorism*  
22                 *resulting in aggregate industry insured*  
23                 *losses above the trigger established in section*  
24                 *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 estab-*  
5           *lished in section 103(e)(1)(C).*

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

14           “(F) *EXEMPTION PERIOD.—*

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

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

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

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

8               “(2) *the insurer provides clear and conspicuous*  
9       *disclosure to the policyholder of the premium charged*  
10       *for insured losses covered by the Program (including*  
11       *the additional premium, if any, charged for the cov-*  
12       *erage for insured losses resulting from acts of NBCR*  
13       *terrorism as made available pursuant to subsection*  
14       *(c)(1)(B)) and the Federal share of compensation for*  
15       *insured losses under the Program—*

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

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

23               “(C) *in the case of any policy that is issued*  
24       *more than 90 days after the date of enactment*  
25       *of this Act, on a separate line item in the policy,*

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

3           “(3) *the insurer processes the claim for the in-*  
4           *sured loss in accordance with appropriate business*  
5           *practices, and any reasonable procedures that the Sec-*  
6           *retary may prescribe; and*

7           “(4) *the insurer submits to the Secretary, in ac-*  
8           *cordance with such reasonable procedures as the Sec-*  
9           *retary may establish—*

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

13           “(B) *written certification—*

14           “(i) *of the underlying claim; and*

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

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

19           “(c) *MANDATORY AVAILABILITY.—*

20           “(1) *AVAILABILITY OF COVERAGE FOR INSURED*  
21           *LOSSES.—Subject to paragraph (3), during each Pro-*  
22           *gram Year, each entity that meets the definition of an*  
23           *insurer under section 102 shall make available—*

24           “(A) *in all of its insurance policies for cov-*  
25           *ered lines, coverage for insured losses that does*

1           *not differ materially from the terms, amounts,*  
2           *and other coverage limitations applicable to*  
3           *losses arising from events other than acts of ter-*  
4           *rorism; and*

5           *“(B) in insurance policies for covered lines*  
6           *for which the coverage described in subparagraph*  
7           *(A) is provided, exceptions to the pollution and*  
8           *nuclear hazard exclusions of such policies that*  
9           *render such exclusions inapplicable only as to*  
10           *insured losses arising from acts of NBCR ter-*  
11           *rorism.*

12           *“(2) ALLOWABLE EXCLUSIONS IN OTHER COV-*  
13           *ERAGE.—Subject to paragraph (3) and notwith-*  
14           *standing any other provision of Federal or State law,*  
15           *including any State workers’ compensation and other*  
16           *compulsory insurance law, if a person elects not to*  
17           *purchase an insurance policy with the coverage de-*  
18           *scribed in paragraph (1)—*

19           *“(A) an insurer may exclude coverage for*  
20           *all losses from acts of terrorism including acts of*  
21           *NBCR terrorism, except for State workers’ com-*  
22           *ensation and other compulsory insurance law*  
23           *requiring coverage of the risks described in sub-*  
24           *section (c)(1) (unless permitted by State law); or*

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

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

14          “(4) *AVAILABILITY OF LIFE INSURANCE WITHOUT*  
15          *REGARD TO LAWFUL FOREIGN TRAVEL.*—During each  
16          Program Year, each entity that meets the definition  
17          of an insurer under section 102 shall make available,  
18          in all of its life insurance policies issued after the  
19          date of the enactment of the Terrorism Risk Insurance  
20          Revision and Extension Act of 2007 under which the  
21          insured person is a citizen of the United States or an  
22          alien lawfully admitted for permanent residence in  
23          the United States, coverage that neither considers  
24          past, nor precludes future, lawful foreign travel by the  
25          person insured, and shall not decline such coverage

1       *based on past or future, lawful foreign travel by the*  
2       *person insured or charge a premium for such coverage*  
3       *that is excessive and not based on a good faith actu-*  
4       *arial analysis, except that an insurer may decline or,*  
5       *upon inception or renewal of a policy, limit the*  
6       *amount of coverage provided under any life insurance*  
7       *policy based on plans to engage in future lawful for-*  
8       *foreign travel to occur within 12 months of such incep-*  
9       *tion or renewal of the policy but only if, at time of*  
10       *application—*

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

14                       “(i) *for which the Director of the Cen-*  
15                       *ters for Disease Control and Prevention of*  
16                       *the Department of Health and Human*  
17                       *Services has issued a highest level alert or*  
18                       *warning, including a recommendation*  
19                       *against non-essential travel, due to a seri-*  
20                       *ous health-related condition;*

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

1                   “(iii)(I) that the insurer has specifi-  
2                   cally designated in the terms of the life in-  
3                   surance policy at the inception of the policy  
4                   or at renewal, as applicable; and

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

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

9                   “(bb) the credibility of informa-  
10                  tion by which the insurer can verify  
11                  the death of the insured person is com-  
12                  promised; and

13                  “(B) in the case of any limitation of cov-  
14                  erage, such limitation is specifically stated in the  
15                  terms of the life insurance policy at the incep-  
16                  tion of the policy or at renewal, as applicable.

17                  “(d) *STATE RESIDUAL MARKET INSURANCE ENTI-*  
18                  *TIES.—*

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



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

4                   “(A) a State residual market insurance en-  
5                   tity that does not share its profits and losses  
6                   with private sector insurers shall be treated as a  
7                   separate insurer; and

8                   “(B) a State residual market insurance en-  
9                   tity that shares its profits and losses with pri-  
10                  vate sector insurers shall not be treated as a sep-  
11                  arate insurer, and shall report to each private  
12                  sector insurance participant its share of the in-  
13                  sured losses of the entity, which shall be included  
14                  in each private sector insurer’s insured losses.

15           “(3) *TREATMENT OF PARTICIPATION IN CERTAIN*  
16           *ENTITIES.*—Any insurer that participates in sharing  
17           profits and losses of a State residual market insur-  
18           ance entity shall include in its calculations of pre-  
19           miums any premiums distributed to the insurer by  
20           the State residual market insurance entity.

21           “(e) *INSURED LOSS SHARED COMPENSATION.*—

22                   “(1) *FEDERAL SHARE.*—

23                   “(A) *CONVENTIONAL TERRORISM.*—Except  
24                   as provided in subparagraph (B), the Federal  
25                   share of compensation under the Program to be

1           *paid by the Secretary for insured losses of an in-*  
2           *surer during any additional Program Year shall*  
3           *be equal to the sum of—*

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

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

9                             *“(II) based upon pro rata deter-*  
10                            *minations pursuant to paragraph*  
11                            *(2)(B), does not result in aggregate in-*  
12                            *dustry insured losses during such Pro-*  
13                            *gram Year exceeding \$100,000,000,000;*  
14                            *and*

15                            *“(ii) 100 percent of the insured losses*  
16                            *of the insurer that, based upon pro rata de-*  
17                            *terminations pursuant to paragraph (2)(B),*  
18                            *result in aggregate industry insured losses*  
19                            *during such Program Year exceeding*  
20                            *\$100,000,000,000, up to the limit under*  
21                            *paragraph (2)(A).*

22                     *“(B) NBCR TERRORISM.—*

23                             *“(i) AMOUNT OF COMPENSATION.—The*  
24                             *Federal share of compensation under the*  
25                             *Program to be paid by the Secretary for in-*

1           *sured losses of an insurer resulting from*  
2           *NBCR terrorism during any additional*  
3           *Program Year shall be equal to the sum*  
4           *of—*

5                   *“(I) the amount of qualified*  
6                   *NBCR losses (as such term is defined*  
7                   *in clause (ii)) of the insurer, multi-*  
8                   *plied by a percentage based on the ag-*  
9                   *gregate industry qualified NBCR losses*  
10                  *for the Program Year, which percent-*  
11                  *age shall be—*

12                           *“(aa) 85 percent of such ag-*  
13                           *gregate industry qualified NBCR*  
14                           *losses of less than*  
15                           *\$10,000,000,000;*

16                           *“(bb) 87.5 percent of such ag-*  
17                           *gregate industry qualified NBCR*  
18                           *losses between \$10,000,000,000*  
19                           *and \$20,000,000,000;*

20                           *“(cc) 90 percent of such ag-*  
21                           *gregate industry qualified NBCR*  
22                           *losses between \$20,000,000,000*  
23                           *and \$40,000,000,000;*

24                           *“(dd) 92.5 percent of such*  
25                           *aggregate industry qualified*

1                   NBCR losses of between  
2                   \$40,000,000,000                   and  
3                   \$60,000,000,000; and

4                   “(ee) 95 percent of such ag-  
5                   gregate industry qualified NBCR  
6                   losses of more than  
7                   \$60,000,000,000;

8                   and shall be prorated per insurer based  
9                   on each insurer’s percentage of the ag-  
10                  gregate industry qualified NBCR losses  
11                  for such additional Program Year; and

12                  “(II) 100 percent of the insured  
13                  losses of the insurer resulting from  
14                  NBCR terrorism that, based upon pro  
15                  rata determinations pursuant to para-  
16                  graph (2)(B), result in aggregate in-  
17                  dustry insured losses during such Pro-  
18                  gram Year exceeding \$100,000,000,000,  
19                  up to the limit under paragraph  
20                  (2)(A).

21                  “(ii) QUALIFIED NBCR LOSSES.—For  
22                  purposes of this subparagraph, the term  
23                  ‘qualified NBCR losses’ means, with respect  
24                  to insured losses of an insurer resulting  
25                  from NBCR terrorism during an additional

1                    *Program Year, that portion of the amount*  
2                    *of such insured losses that—*

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

6                    *“(II) based upon pro rata deter-*  
7                    *minations pursuant to paragraph*  
8                    *(2)(B), does not result in aggregate in-*  
9                    *dustry insured losses during such Pro-*  
10                    *gram Year exceeding \$100,000,000,000.*

11                    *“(C) PROGRAM TRIGGER.—In the case of a*  
12                    *certified act of terrorism occurring after March*  
13                    *31, 2006, no compensation shall be paid by the*  
14                    *Secretary under subsection (a), unless the aggre-*  
15                    *gate industry insured losses resulting from such*  
16                    *certified act of terrorism exceed \$50,000,000, ex-*  
17                    *cept that if a certified act of terrorism occurs for*  
18                    *which resulting aggregate industry insured losses*  
19                    *exceed \$1,000,000,000, the applicable amount for*  
20                    *any subsequent certified act of terrorism shall be*  
21                    *the amount specified in section 102(1)(B)(ii).*

22                    *“(D) LIMITATION ON COMPENSATION FOR*  
23                    *GROUP LIFE INSURANCE.—Notwithstanding any*  
24                    *other provision of this Act, the Federal share of*  
25                    *compensation under the Program paid by the*

1           *Secretary for insured losses of an insurer result-*  
2           *ing from coverage of any single certificate holder*  
3           *under any group life insurance coverages of the*  
4           *insurer may not during any additional Program*  
5           *Year exceed \$1,000,000.*

6           “(E) *PROHIBITION ON DUPLICATIVE COM-*  
7           *PENSATION.—The Federal share of compensation*  
8           *for insured losses under the Program shall be re-*  
9           *duced by the amount of compensation provided*  
10           *by the Federal Government to any person under*  
11           *any other Federal program for those insured*  
12           *losses.*

13           “(2) *CAP ON ANNUAL LIABILITY.—*

14           “(A) *IN GENERAL.—Notwithstanding para-*  
15           *graph (1) or any other provision of Federal or*  
16           *State law, including any State workers’ com-*  
17           *ensation or other compulsory insurance law, if*  
18           *the aggregate amount of the Federal share of*  
19           *compensation to be paid to all insurers pursuant*  
20           *to paragraph (1) exceeds \$100,000,000,000, dur-*  
21           *ing any additional Program Year (until such*  
22           *time as the Congress may act otherwise with re-*  
23           *spect to such losses)—*

24                    “(i) *the Secretary shall not make any*  
25                    *payment under this title for any portion of*

1           *the amount of the aggregate insured losses*  
2           *during such Program Year for which the*  
3           *Federal share exceeds \$100,000,000,000; and*

4           “(i) *no insurer that has met its in-*  
5           *surer deductible shall be liable for the pay-*  
6           *ment of any portion of the aggregate in-*  
7           *sured losses during such Program Year that*  
8           *exceeds \$100,000,000,000.*

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

14          “(C) *CLAIMS ALLOCATIONS.—The Secretary*  
15          *shall, by regulation, provide for insurers to allo-*  
16          *cate claims payments for insured losses under*  
17          *applicable insurance policies in any case de-*  
18          *scribed in subparagraph (A). Such regulations*  
19          *shall include provisions for payment, for the*  
20          *purpose of addressing emergency needs of appli-*  
21          *cable individuals affected by an act of terrorism,*  
22          *of a portion of claims for insured losses prompt-*  
23          *ly upon filing of such claims.*

24          “(3) *LIMITATION ON INSURER FINANCIAL RE-*  
25          *SPONSIBILITY.—*

1           “(A) *LIMITATION.*—*Notwithstanding any*  
2 *other provision of Federal or State law, includ-*  
3 *ing any State workers’ compensation or other*  
4 *compulsory insurance law, an insurer’s financial*  
5 *responsibility for insured losses from acts of ter-*  
6 *rorism shall be limited to its applicable insurer*  
7 *deductible and its applicable share of insured*  
8 *losses that exceed its applicable insurer deduct-*  
9 *ible, subject to the requirements of paragraph*  
10 *(2).*

11           “(B) *FEDERAL REIMBURSEMENT.*—*Notwith-*  
12 *standing any other provision of Federal or State*  
13 *law, the Secretary shall—*

14           “(i) *reimburse insurers for any pay-*  
15 *ment of excess insured losses made prior to*  
16 *publication of any notification pursuant to*  
17 *paragraph (4)(A);*

18           “(ii) *reimburse insurers for any pay-*  
19 *ment of excess insured losses occurring on or*  
20 *after the date of any notification pursuant*  
21 *to paragraph (4)(A), but only to the extent*  
22 *that—*

23           “(I) *such payment is ordered by a*  
24 *court pursuant to subparagraph (C) of*  
25 *this paragraph or is directed by State*



1                   *law, notwithstanding this paragraph,*  
2                   *or by Federal law;*

3                   “(II) *such payment is limited to*  
4                   *compensating insurers for their pay-*  
5                   *ment of excess insured losses and does*  
6                   *not include punitive damages, or liti-*  
7                   *gation or other costs; and*

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

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

14                  “(C) *FEDERAL COURT JURISDICTION.—*

15                  “(i) *CONDITIONS.—All claims relating*  
16                  *to or arising out of an insurer’s financial*  
17                  *responsibility for insured losses from acts of*  
18                  *terrorism under this paragraph shall be*  
19                  *within the original and exclusive jurisdic-*  
20                  *tion of the district courts of the United*  
21                  *States, in accordance with the procedures*  
22                  *established in subparagraph (D), if the Sec-*  
23                  *retary certifies that the following conditions*  
24                  *have been met, or that there is a reasonable*

1           *likelihood that the following conditions may*  
2           *be met:*

3                     “(I) *The aggregate amount of the*  
4                     *Federal share of compensation to be*  
5                     *paid to all insurers pursuant to para-*  
6                     *graph (1) exceeds \$100,000,000,000,*  
7                     *pursuant to paragraph (2); and*

8                     “(II) *the insurer has paid its ap-*  
9                     *plicable insurer deductible and its pro*  
10                    *rata share of insured losses determined*  
11                    *pursuant to paragraph (2)(B).*

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

22                    “(D) *VENUE.—For each certification made*  
23                    *by the Secretary pursuant to subparagraph*  
24                    *(C)(i), not later than 90 days after the Sec-*  
25                    *retary’s determination the Judicial Panel on*

1           *Multidistrict Litigation shall designate one dis-*  
2           *trict court or, if necessary, multiple district*  
3           *courts of the United States that shall have origi-*  
4           *nal and exclusive jurisdiction over all actions for*  
5           *any claim relating to or arising out of an insur-*  
6           *er's financial responsibility for insured losses*  
7           *from acts of terrorism under this paragraph.*

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

10           “(A) *APPROACHING CAP.—If the Secretary*  
11           *determines estimated or actual aggregate Federal*  
12           *compensation to be paid pursuant to paragraph*  
13           *(1) equals or exceeds \$80,000,000,000 during any*  
14           *Program Year, the Secretary shall promptly pro-*  
15           *vide notification in accordance with subpara-*  
16           *graph (D)—*

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

19           “(ii) *of the likelihood that such aggre-*  
20           *gate Federal compensation to be paid for*  
21           *such Program Year will equal or exceed*  
22           *\$100,000,000,000; and*

23           “(iii) *that, pursuant to paragraph*  
24           *(2)(A)(ii), insurers are not required to make*  
25           *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 compensa-*  
5           *tion to be paid pursuant to paragraph (1) to ex-*  
6           *ceed \$100,000,000,000 during any Program*  
7           *Year, the Secretary shall, not later than 10 days*  
8           *after such act, provide notification in accordance*  
9           *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 make*  
14                   *payments for excess insured losses.*

15           “(C) *EXCEEDING CAP.—If the Secretary de-*  
16           *termines estimated or actual aggregate Federal*  
17           *compensation to be paid pursuant to paragraph*  
18           *(1) equals or exceeds \$100,000,000,000 during*  
19           *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 for  
5                   payments for excess insured losses pur-  
6                   suant to clause (ii) of this subpara-  
7                   graph; 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 Register.

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

22                  “(F) MANDATORY DISCLOSURE FOR INSUR-  
23                  ANCE CONTRACTS.—All policies for property and  
24                  casualty insurance and group life insurance  
25                  shall be deemed to contain a provision to the ef-

1           *fect that no insurer that has met its applicable*  
2           *insurer deductible and its applicable share of in-*  
3           *sured losses that exceed its applicable insurer de-*  
4           *ductible but are not compensated pursuant to*  
5           *paragraph (1), shall be obligated to pay for any*  
6           *portion of excess insured loss. Notwithstanding*  
7           *the preceding sentence, insurers shall include a*  
8           *disclosure in their policies detailing the max-*  
9           *imum level of Government assistance and the ap-*  
10          *plicable insurer share.*

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

15           “(6) *DETERMINATIONS FINAL.*—*Any determina-*  
16          *tion of the Secretary under this subsection shall be*  
17          *final, unless expressly provided, and shall not be sub-*  
18          *ject to judicial review.*

19           “(7) *INSURANCE MARKETPLACE AGGREGATE RE-*  
20          *TENTION AMOUNT.*—*For purposes of paragraph (8),*  
21          *the insurance marketplace aggregate retention amount*  
22          *shall be—*

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

1                   “(i) \$10,000,000,000; and  
2                   “(ii) the aggregate amount, for all in-  
3                   surers, of insured losses during such period;  
4                   “(B) for Program Year 2, the lesser of—  
5                   “(i) \$12,500,000,000; and  
6                   “(ii) the aggregate amount, for all in-  
7                   surers, of insured losses during such Pro-  
8                   gram Year;  
9                   “(C) for Program Year 3, the lesser of—  
10                   “(i) \$15,000,000,000; and  
11                   “(ii) the aggregate amount, for all in-  
12                   surers, of insured losses during such Pro-  
13                   gram Year;  
14                   “(D) for Program Year 4, the lesser of—  
15                   “(i) \$25,000,000,000; and  
16                   “(ii) the aggregate amount, for all in-  
17                   surers, of insured losses during such Pro-  
18                   gram Year;  
19                   “(E) for Program Year 5, the lesser of—  
20                   “(i) \$27,500,000,000; and  
21                   “(ii) the aggregate amount, for all in-  
22                   surers, of insured losses during such Pro-  
23                   gram Year; and  
24                   “(F) for each additional Program Year—

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

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

4                       “(II) the aggregate amount, for all  
5           such insurance, of insured losses dur-  
6           ing such Program Year; and

7           “(ii) for group life insurance, the lesser  
8           of—

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

10                      “(II) the aggregate amount, for all  
11           such insurance, of insured losses dur-  
12           ing such Program Year.

13           “(8) RECOUPMENT OF FEDERAL SHARE.—

14                      “(A) MANDATORY RECOUPMENT AMOUNT.—

15           For purposes of this paragraph, the mandatory  
16           recoupment amount for each of the Program  
17           Years referred to in subparagraphs (A) through  
18           (F) of paragraph (7) shall be the difference be-  
19           tween—

20                      “(i) the applicable insurance market-  
21           place aggregate retention amount under  
22           paragraph (7) for such Program Year; and

23                      “(ii) the aggregate amount, for all ap-  
24           plicable insurers (pursuant to subparagraph  
25           (E)), of insured losses during such Program



1                   Year that are not compensated by the Fed-  
2                   eral Government because such losses—

3                   “(I) are within the insurer de-  
4                   ductible for the insurer subject to the  
5                   losses; or

6                   “(II) are within the portion of  
7                   losses of the insurer that exceed the in-  
8                   surer deductible, but are not com-  
9                   pensated pursuant to paragraph (1).

10                  “(B) NO MANDATORY RECOUPMENT IF UN-  
11                  COMPENSATED LOSSES EXCEED APPLICABLE IN-  
12                  SURANCE MARKETPLACE RETENTION.—Notwith-  
13                  standing subparagraph (A), if the aggregate  
14                  amount of uncompensated insured losses referred  
15                  to in clause (ii) of such subparagraph for any  
16                  Program Year referred to in any of subpara-  
17                  graphs (A) through (F) of paragraph (7) is  
18                  greater than the applicable insurance market-  
19                  place aggregate retention amount under para-  
20                  graph (7) for such Program Year, the mandatory  
21                  recoupment amount shall be \$0.

22                  “(C) MANDATORY ESTABLISHMENT OF SUR-  
23                  CHARGES TO RECOUP MANDATORY RECOUPMENT  
24                  AMOUNT.—The Secretary shall collect, for repay-  
25                  ment of the Federal financial assistance provided

1           *in connection with all acts of terrorism (or acts*  
2           *of war, in the case of workers' compensation) oc-*  
3           *curring during any of the Program Years re-*  
4           *ferred to in any of subparagraphs (A) through*  
5           *(F) of paragraph (7), terrorism loss risk-spread-*  
6           *ing premiums in an amount equal to any man-*  
7           *datory recoupment amount for such Program*  
8           *Year.*

9                   “(D) *DISCRETIONARY RECOUPMENT OF RE-*  
10            *MAINDER OF FINANCIAL ASSISTANCE.—To the ex-*  
11            *tent that the amount of Federal financial assist-*  
12            *ance provided exceeds any mandatory*  
13            *recoupment amount, the Secretary may—*

14                    “(i) *recoup, through terrorism loss*  
15                    *risk-spreading premiums, such additional*  
16                    *amounts; or*

17                    “(ii) *submit a report to the Congress*  
18                    *identifying such amounts that the Secretary*  
19                    *believes cannot be recouped, based on—*

20                           “(I) *the ultimate costs to tax-*  
21                            *payers of no additional recoupment;*

22                           “(II) *the economic conditions in*  
23                            *the commercial marketplace, including*  
24                            *the capitalization, profitability, and*  
25                            *investment returns of the insurance in-*

1 *dustry and the current cycle of the in-*  
2 *surance markets;*

3 *“(III) the affordability of commer-*  
4 *cial insurance for small- and medium-*  
5 *sized businesses; and*

6 *“(IV) such other factors as the*  
7 *Secretary considers appropriate.*

8 *“(E) SEPARATE RECOUPMENT.—“The Sec-*  
9 *retary shall provide that—*

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

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

21 *“(9) POLICY SURCHARGE FOR TERRORISM LOSS*  
22 *RISK-SPREADING PREMIUMS.—*

23 *“(A) POLICYHOLDER PREMIUM.—Subject to*  
24 *paragraph (8)(E), any amount established by the*

1           *Secretary as a terrorism loss risk-spreading pre-*  
2           *mium shall—*

3                     “(i) *be imposed as a policyholder pre-*  
4                     *mium surcharge on property and casualty*  
5                     *insurance policies and group life insurance*  
6                     *policies in force after the date of such estab-*  
7                     *lishment;*

8                     “(ii) *begin with such period of coverage*  
9                     *during the year as the Secretary determines*  
10                    *appropriate; and*

11                    “(iii) *be based on—*

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

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

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

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

1           “(i) with respect to property and cas-  
2           ualty insurance, the amount equal to 3 per-  
3           cent of the premium charged under the pol-  
4           icy; and

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

8           “(D) ADJUSTMENT FOR URBAN AND SMALL-  
9           ER COMMERCIAL AND RURAL AREAS AND DIF-  
10          FERENT LINES OF INSURANCE.—

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

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

24               “(II) the risk factors related to  
25               rural areas and smaller commercial

1                   *centers, including the potential expo-*  
2                   *sure to loss and the likely magnitude of*  
3                   *such loss, as well as any resulting*  
4                   *cross-subsidization that might result;*  
5                   *and*

6                   “(III) *the various exposures to*  
7                   *terrorism risk for different lines of in-*  
8                   *surance.*

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

15                  “(E) *TIMING OF PREMIUMS.—The Secretary*  
16                  *may adjust the timing of terrorism loss risk-*  
17                  *spreading premiums to provide for equivalent*  
18                  *application of the provisions of this title to poli-*  
19                  *cies that are not based on a calendar year, or to*  
20                  *apply such provisions on a daily, monthly, or*  
21                  *quarterly basis, as appropriate.*

22                  “(f) *CAPTIVE INSURERS AND OTHER SELF-INSURANCE*  
23                  *ARRANGEMENTS.—The Secretary may, in consultation with*  
24                  *the NAIC or the appropriate State regulatory authority,*  
25                  *apply the provisions of this title, as appropriate, to other*

1 *classes or types of captive insurers and other self-insurance*  
2 *arrangements by municipalities and other entities (such as*  
3 *workers' compensation self-insurance programs and State*  
4 *workers' compensation reinsurance pools), but only if such*  
5 *application is determined before the occurrence of an act*  
6 *of terrorism in which such an entity incurs an insured loss*  
7 *and all of the provisions of this title are applied comparably*  
8 *to such entities.*

9       “(g) *REINSURANCE TO COVER EXPOSURE.*—

10           “(1) *OBTAINING COVERAGE.*—*This title may not*  
11 *be construed to limit or prevent insurers from obtain-*  
12 *ing reinsurance coverage for insurer deductibles or in-*  
13 *sured losses retained by insurers pursuant to this sec-*  
14 *tion, nor shall the obtaining of such coverage affect*  
15 *the calculation of such deductibles or retentions.*

16           “(2) *LIMITATION ON FINANCIAL ASSISTANCE.*—  
17 *The amount of financial assistance provided pursuant*  
18 *to this section shall not be reduced by reinsurance*  
19 *paid or payable to an insurer from other sources, ex-*  
20 *cept that recoveries from such other sources, taken to-*  
21 *gether with financial assistance for the Transition Pe-*  
22 *riod or a Program Year provided pursuant to this*  
23 *section, may not exceed the aggregate amount of the*  
24 *insurer's insured losses for such period. If such recov-*  
25 *eries and financial assistance for the Transition Pe-*

1        *riod or a Program Year exceed such aggregate amount*  
2        *of insured losses for that period and there is no agree-*  
3        *ment between the insurer and any reinsurer to the*  
4        *contrary, an amount in excess of such aggregate in-*  
5        *sured losses shall be returned to the Secretary.”;*

6            *(2) in section 104(a)—*

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

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

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

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

19                   *(3) in section 104, by adding at the end the fol-*  
20                   *lowing new subsection:*

21                   *“(h) ANNUAL ADJUSTMENT.—*

22                   *“(1) IN GENERAL.—Notwithstanding any other*  
23                   *provision of this title, the Secretary shall adjust, for*  
24                   *the second additional Program Year and for each ad-*  
25                   *ditional Program Year thereafter, based upon the per-*



1        *centage change in an appropriate index during the*  
2        *12-month period preceding such Program Year, each*  
3        *of the following amounts (as such amount may have*  
4        *been previously adjusted):*

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

7                *“(B) The dollar amount in section*  
8                *102(11)(J) (relating to aggregate industry in-*  
9                *sured losses in a previously impacted area).*

10                *“(C) The dollar amounts in subparagraphs*  
11                *(A) and (B) of section 103(e)(1) (relating to lim-*  
12                *itation on Federal share).*

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

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

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

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

23                *“(H) The dollar amounts in section*  
24                *103(e)(4) (relating to notices regarding losses*  
25                *and annual liability cap).*

1           “(I) The dollar amounts in section  
2           103(e)(7) (relating to insurance marketplace ag-  
3           gregate retention amount).

4           “(J) The dollar amounts in section  
5           109(b)(1)(C) (relating to membership of Commis-  
6           sion on Terrorism Insurance Risk).

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

11          (4) in section 106(a)(2)—

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

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

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

18           “(C) during the period beginning on the  
19           date of the enactment of the Terrorism Risk In-  
20           surance Revision and Extension Act of 2007 and  
21           ending on December 31, 2008, rates and forms  
22           for property and casualty insurance, and group  
23           life insurance, required by this title and pro-  
24           viding coverage except for NBCR terrorism that  
25           are filed with any State shall not be subject to

1           *prior approval or a waiting period under any*  
2           *law of a State that would otherwise be applica-*  
3           *ble, except that nothing in this title affects the*  
4           *ability of any State to invalidate a rate as exces-*  
5           *sive, inadequate, or unfairly discriminatory,*  
6           *and, with respect to forms, where a State has*  
7           *prior approval authority, it shall apply to allow*  
8           *subsequent review of such forms;*

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

22          “(E) during the period beginning on the  
23          *date of the enactment of the Terrorism Risk In-*  
24          *surance Revision and Extension Act of 2007,*  
25          *and ending on December 31, 2010, rates for*

1           *property and casualty insurance, and group life*  
2           *insurance, covered by this title and providing*  
3           *coverage for NBCR terrorism that are filed with*  
4           *any State, to the extent of the addition of such*  
5           *coverage for NBCR terrorism and where such*  
6           *coverage was not previously required, shall not*  
7           *be subject to prior approval or waiting period*  
8           *under any law of a State that would otherwise*  
9           *be applicable, except that nothing in this title af-*  
10          *fects the ability of any State to invalidate a rate*  
11          *as inadequate or unfairly discriminatory; and”;*

12          (5) *in section 106, by adding at the end the fol-*  
13          *lowing new subsection:*

14          “(c) *RULE OF CONSTRUCTION REGARDING INSURER*  
15          *COORDINATION.—Nothing in this Act shall be construed to*  
16          *prohibit, restrict, or otherwise limit an insurer from enter-*  
17          *ing into an arrangement with another insurer to make*  
18          *available coverage for any portion of insured losses to fulfill*  
19          *the requirements of section 103(c). The Secretary shall de-*  
20          *velop, in consultation with the NAIC, minimum financial*  
21          *solvency standards and other standards the Secretary deter-*  
22          *mines appropriate with respect to such arrangements. Noth-*  
23          *ing in this subsection shall be construed to establish any*  
24          *legal partnership.”; and*

1           (6) in section 108(c)(1), by striking “paragraph  
2           (4), (5), (6), (7), or (8)” and inserting “paragraph  
3           (5), (6), (7), (8), or (9)”.

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

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

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

19           *The Terrorism Risk Insurance Act of 2002 (15 U.S.C.*  
20 *6701 note) is amended—*

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

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

24           “(a) *ESTABLISHMENT.*—The Secretary shall establish  
25 a Terrorism Buy-Down Fund (in this section referred to

1 *as the ‘Fund’)* that shall make available additional ter-  
2 *rorism coverage for the insured losses of insurers, which*  
3 *shall be available for purchase by insurers on a voluntary*  
4 *basis.*

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

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

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

18                       “(A) *the highest amount specified in section*  
19 *103(e)(1)(C); and*

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

22       “(c) *BUY-DOWN COVERAGE.—The Fund shall provide*  
23 *the buy-down coverage to an insurer for losses for acts of*  
24 *terrorism, without application of the insurer deductible and*

1 *in addition to any otherwise payable Federal share of com-*  
2 *ensation pursuant to section 103(e).*

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

7       “(e) *USE BY INSURERS.*—

8               “(1) *QUALIFYING LOSSES.*—*For the purpose of*  
9 *this section, qualifying losses are insured losses by an*  
10 *insurer that are not excess losses and that do not in-*  
11 *clude amounts for which Federal financial assistance*  
12 *pursuant to section 103(e) is received, notwith-*  
13 *standing any limits otherwise applicable regarding*  
14 *section 103(e)(1)(C) (regarding program triggers) or*  
15 *section 102(11) (regarding insurer deductibles).*

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

19                       “(A) *the applicable insurer deductibles for*  
20 *the insurer;*

21                       “(B) *the portion of the insurer’s losses that*  
22 *exceed the insurer deductible but are not com-*  
23 *pensated by the Federal share; and*

1           “(C) *the insurer’s obligations to pay for in-*  
2           *sured losses if the Program trigger under section*  
3           *103(e)(1)(C) is not satisfied.*

4           “(3) *BUY-DOWN COVERAGE DOES NOT REDUCE*  
5           *FEDERAL CO-SHARE.—The receipt by an insurer of*  
6           *buy-down coverage under this section for insured*  
7           *losses shall not be considered with respect to calcu-*  
8           *lating the insurer’s insured losses with respect to the*  
9           *insurer’s deductible and eligibility for Federal finan-*  
10          *cial assistance pursuant to section 103(e).*

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

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

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

23                 “(1) *the Fund shall always immediately provide*  
24                 *any buy-down coverage payments required under sub-*  
25                 *section (f); and*



1           “(2) any such amounts borrowed must be replen-  
2           ished with appropriate interest.

3           “(h) *RISK-SHARING MECHANISMS.*—The Secretary  
4 shall establish voluntary risk-sharing mechanisms for in-  
5 surers purchasing buy-down coverage from the Fund to pool  
6 their reinsurance purchases and otherwise share terrorism  
7 risk.

8           “(i) *TERMINATION.*—Upon termination of the Pro-  
9 gram under section 108, and subject to the Secretary’s con-  
10 tinuing authority under section 108(b) to adjust claims in  
11 satisfaction under the Program, the Secretary shall provide  
12 that the Fund shall become a privately-operated mutual ter-  
13 rorism reinsurance company owned by the insurers that  
14 have submitted buy-down coverage premiums in proportion  
15 to such premiums minus any buy-down coverage payments  
16 received.”; and

17           (2) in the table of contents in section 1(b), by in-  
18           serting after the item relating to section 106 the fol-  
19           lowing new item:

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

20 **SEC. 5. ANALYSIS AND STUDY.**

21           (a) *ANALYSIS OF MARKET CONDITIONS.*—Section 108  
22 of the *Terrorism Risk Insurance Act of 2002* (15 U.S.C.  
23 6701 note) is amended by striking subsection (e) and insert-  
24 ing the following:

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

3               “(1) IN GENERAL.—The Secretary, in consulta-  
4       tion with the NAIC, representatives of the insurance  
5       industry, representatives of the securities industry,  
6       and representatives of policyholders, shall perform an  
7       analysis regarding the long-term availability and af-  
8       fordability of insurance for terrorism risk in the pri-  
9       vate marketplace, including coverage for—

10                       “(A) property and casualty insurance;

11                       “(B) group life insurance;

12                       “(C) workers’ compensation;

13                       “(D) nuclear, biological, chemical, and ra-  
14       diological events; and

15                       “(E) commercial real estate.

16               “(2) BIENNIAL REPORTS.—The Secretary shall  
17       submit biennial reports to the Committee on Finan-  
18       cial Services of the House of Representatives and the  
19       Committee on Banking, Housing, and Urban Affairs  
20       of the Senate, on its findings pursuant to the analysis  
21       conducted under paragraph (1). The first such report  
22       shall be submitted not later than the expiration of the  
23       24-month period beginning on the date of the enact-  
24       ment of the Terrorism Risk Insurance Revision and  
25       Extension Act of 2007.

1           “(3) *TESTIMONY.*—Upon submission of each bi-  
2           ennial report under paragraph (2), the Secretary  
3           shall provide oral testimony to the Committee on Fi-  
4           nancial Services of the House of Representatives and  
5           Committee on Banking, Housing, and Urban Affairs  
6           of the United States Senate regarding the report and  
7           the analysis under this subsection for which the report  
8           is submitted.”.

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

12                   (1) by adding at the end the following new sec-  
13          tion:

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

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

18                   “(b) *MEMBERSHIP.*—

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

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

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

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

3                   “(i) a representative of group life in-  
4                   surers;

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

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

11                  “(iv) a representative of multiline in-  
12                  surers;

13                  “(v) a representative of independent  
14                  insurance agents;

15                  “(vi) a representative of insurance bro-  
16                  kers;

17                  “(vii) a policyholder representative;

18                  “(viii) a representative of the survivors  
19                  of the victims of the attacks of September  
20                  11, 2001;

21                  “(ix) a representative of the reinsur-  
22                  ance industry;

23                  “(x) a representative of workers’ com-  
24                  pensation insurers;

1                   “(xi) a representative from the com-  
2                   mercial mortgage-backed securities industry;

3                   “(xii) a representative from a nation-  
4                   ally recognized statistical rating organiza-  
5                   tion;

6                   “(xiii) a real estate developer;

7                   “(xiv) a representative of workers’ com-  
8                   pensation insurers created by State legisla-  
9                   tures, selected in consultation with the  
10                  American Association of State Compensa-  
11                  tion Insurance Funds from among its mem-  
12                  bers; and

13                  “(xv) a representative from the com-  
14                  mercial real estate brokerage industry or the  
15                  commercial property management industry.

16                  “(D) Four members, who shall serve as liai-  
17                  sons to the Congress, who shall include two mem-  
18                  bers jointly selected by the Chairman and Rank-  
19                  ing Member of the Committee on Financial Serv-  
20                  ices of the House of Representatives and two  
21                  members jointly selected by the Chairman and  
22                  Ranking Member of the Committee on Banking,  
23                  Housing, and Urban Affairs of the Senate.

24                  “(2) SECRETARY.—The Program Director of the  
25                  Terrorism Risk Insurance Act of the Department of

1 *the Treasury shall serve as Secretary of the Commis-*  
2 *sion. The Secretary of the Commission shall deter-*  
3 *mine the manner in which the Commission shall op-*  
4 *erate, including funding and staffing.*

5 *“(c) DUTIES.—*

6 *“(1) IN GENERAL.—The Commission shall iden-*  
7 *tify and make recommendations regarding—*

8 *“(A) possible actions to encourage, facili-*  
9 *tate, and sustain provision by the private insur-*  
10 *ance industry in the United States of affordable*  
11 *coverage for losses due to an act or acts of ter-*  
12 *rorism;*

13 *“(B) possible actions or mechanisms to sus-*  
14 *tain or supplement the ability of the insurance*  
15 *industry in the United States to cover losses re-*  
16 *sulting from acts of terrorism in the event that—*

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

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

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

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

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

15           “(4) REPORTS.—

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

18                   “(i) evaluate and make recommenda-  
19                   tions regarding whether there is a need for  
20                   a Federal terrorism risk insurance pro-  
21                   gram;

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

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

4           “(B) *TIMING.*—The first report required  
5           under subparagraph (A) shall be submitted be-  
6           fore the expiration of the 60-month period begin-  
7           ning on the date of the enactment of the Ter-  
8           rorism Risk Insurance Revision and Extension  
9           Act of 2007. The second such report shall be sub-  
10          mitted before the expiration of the 96-month pe-  
11          riod beginning upon such date of enactment.”;  
12          and

13          (2) in the table of contents in section 1(b), by in-  
14          serting after the item relating to section 108 the fol-  
15          lowing new item:

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

16 **SEC. 6. APPLICABILITY.**

17          The amendments made by this Act shall apply begin-  
18          ning on January 1, 2008. The provisions of the Terrorism  
19          Risk Insurance Act of 2002, as in effect on the day before  
20          the date of the enactment of this Act, shall apply through  
21          the end of December 31, 2007.





Union Calendar No. 201

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

**H. R. 2761**

[Report No. 110-318]

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**A BILL**

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

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SEPTEMBER 6, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed