110TH CONGRESS
1ST SESSION

H. R. 91

To establish a program to provide reinsurance for State natural catastrophe insurance programs to help the United States better prepare for and protect its citizens against the ravages of natural catastrophes, to encourage and promote mitigation and prevention for, and recovery and rebuilding from such catastrophes, and to better assist in the financial recovery from such catastrophes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2007

Ms. GINNY BROWN-WAITE of Florida (for herself and Mr. BUCHANAN) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish a program to provide reinsurance for State natural catastrophe insurance programs to help the United States better prepare for and protect its citizens against the ravages of natural catastrophes, to encourage and promote mitigation and prevention for, and recovery and rebuilding from such catastrophes, and to better assist in the financial recovery from such catastrophes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Homeowners Insurance Protection Act of 2007".

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

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the United States needs to take actions to be better prepared for and better protected from catastrophes;

(2) the hurricane seasons of 2004 and 2005 are startling reminders of both the human and economic devastation that hurricanes, flooding, and other natural disasters can cause;

(3) if a hurricane similar to the deadly 1900 Galveston hurricane occurred again it could cause over $36,000,000,000 in loss;

(4) if the 1904 San Francisco earthquake occurred again it could cause over $400,000,000,000 in loss;

(5) if a Category 5 hurricane were to hit Miami it could cause over $50,000,000,000 in loss and devastate the insurance industry in the United States;

(6) if the 1938 ''Long Island Express'' were to occur again it could cause over $30,000,000,000 in damage and if a hurricane that strong were to directly hit Manhattan it could cause over $150,000,000,000 in damage and cause irreparable harm to our Nation's economy;

(7) a more comprehensive and integrated approach to dealing with catastrophes is needed;

(8) using history as a guide, natural catastrophes will inevitably place a tremendous strain on homeowners' insurance markets in many areas, will raise costs for consumers, and will jeopardize the ability of many consumers to adequately insure their homes and possessions;

(9) the lack of sufficient insurance capacity and the inability of private insurers to build enough capital, in a short amount of time, threatens to increase the number of uninsured homeowners, which, in

turn, increases the risk of mortgage defaults and the strain on the Nation's banking system;

(10) some States have intervened to ensure the continued availability and affordability of homeowners' insurance for all residents;

(11) it is appropriate that efforts to improve insurance availability be designed and implemented at the State level;

(12) while State insurance programs may be adequate to cover losses from most natural disasters, a small percentage of events are likely to exceed the financial capacity of these programs and the local insurance markets;

(13) making available limited Federal reinsurance would improve the effectiveness of State insurance programs and private insurance markets and would increase the likelihood that homeowners' insurance claims will be fully paid in the event of a large natural catastrophe and that routine claims that occur after a mega-catastrophe will also continue to be paid;

(14) it is necessary to provide a Federal reinsurance program on a temporary basis that will provide more protection at an overall lower cost and that will promote stability in the homeowners' insur-

ance market in the short term and encourage growth of reinsurance capacity by the private and capital markets as soon as practical;

(15) it is the proper role of the Federal Government to prepare for and protect its citizens from catastrophes and to facilitate consumer protection, victim assistance, and recovery, including financial recovery;

(16) any Federal reinsurance program must be founded upon sound actuarial principles and priced in a manner that minimizes the potential impact on the Treasury of the United States, encourages the creation of State funds and maximizes the buying potential of these State funds, encourages and promotes prevention and mitigation, recovery and rebuilding, and consumer education, and emphasizes continuous analysis and improvement; and

(17) such a Federal reinsurance program should not remain in existence longer than necessary for the private entities or the capital markets, or both, to provide adequate reinsurance capacity to address the homeowners' insurance market.

SEC. 3. NATIONAL COMMISSION ON CATASTROPHE PREPARATION AND PROTECTION.

(a) ESTABLISHMENT.—The Secretary of the Treasury shall establish a commission to be known as the National Commission on Catastrophe Preparation and Protection.

(b) DUTIES.—The Commission shall meet for the purpose of advising the Secretary regarding the estimated loss costs associated with the contracts for reinsurance coverage available under this Act and carrying out the functions specified in this Act, including—

(1) the development and implementation of public education concerning the risks posed by natural catastrophes;

(2) the development and implementation of prevention, mitigation, recovery, and rebuilding standards that better prepare and protect the United States from catastrophes;

(3) the establishment of requirements under section 7(e) to ensure that cost savings resulting from this Act inure to the benefit of consumers; and

(4) conducting continuous analysis of the effectiveness of this Act and recommending improvements to the Congress so that the costs of providing catastrophe protection are decreased and so that the United States is better prepared.

(c) MEMBERS.—

(1) APPOINTMENT AND QUALIFICATION.—The Commission shall consist of 9 members, as follows:

(A) HOMELAND SECURITY MEMBER.—The Secretary of Homeland Security or the Secretary's designee.

(B) APPOINTED MEMBERS.—8 members appointed by the Secretary, who shall consist of—

(i) one individual who is an actuary;

(ii) one individual who is employed in engineering;

(iii) one individual representing the scientific community;

(iv) one individual representing property and casualty insurers;

(v) one individual representing reinsurers;

(vi) one individual who is a member or former member of the National Association of Insurance Commissioners; and

(vii) two individuals who are consumers.

(2) PREVENTION OF CONFLICTS OF INTEREST.—Members shall have no personal or financial

interest at stake in the deliberations of the Commission.

(d) TREATMENT OF NON-FEDERAL MEMBERS.—Each member of the Commission who is not otherwise employed by the Federal Government shall be considered a special Government employee for purposes of sections 202 and 208 of title 18, United States Code.

(e) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services from individuals or groups recognized as experts in the fields of meteorology, seismology, vulcanology, geology, structural engineering, wind engineering, and hydrology, and other fields, under section 3109(b) of title 5, United States Code, but at a rate not in excess of the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule, for each day during which the individual procured is performing such services for the Commission. The Commission may also procure, and the Congress encourages the Commission to procure, experts from universities, research centers, foundations, and other appropriate organizations who could study, research, and develop methods and mechanisms that could be utilized to strengthen structures to better withstand the perils covered by this Act.

(f) COMPENSATION.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate of basic pay payable for level V of the Executive Schedule, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(g) OBTAINING DATA.—The Commission and the Secretary may solicit loss exposure data and such other information either deems necessary to carry out its responsibilities from governmental agencies and bodies and organizations that act as statistical agents for the insurance industry. The Commission and the Secretary shall take such actions as are necessary to ensure that information that either deems is confidential or proprietary is disclosed only to authorized individuals working for the Commission or the Secretary. No company which refuses to provide information requested by the Commission or the Secretary may participate in the program for reinsurance coverage authorized under this Act, nor may any State insurance or reinsurance program participate if any governmental agency within that State has refused to provide information requested by the Commission or the Secretary.

(h) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated—

(A) $10,000,000 for fiscal year 2008 for the initial expenses in establishing the Commission and the initial activities of the Commission that cannot timely be covered by amounts obtained pursuant to section 7(b)(6)(B)(iii), as determined by the Secretary;

(B) such additional sums as may be necessary to carry out subsequent activities of the Commission;

(C) $10,000,000 for fiscal year 2008 for the initial expenses of the Secretary in carrying out the program authorized under section 4; and

(D) such additional sums as may be necessary to carry out subsequent activities of the Secretary under this Act.

(2) OFFSET.—The Secretary shall provide, to the maximum extent practicable, that an amount equal to any amount appropriated under paragraph (1) is obtained from purchasers of reinsurance cov-

erage under this Act and deposited in the Fund established under section 10. Such amounts shall be obtained by inclusion of a provision for the Secretary's and the Commission's expenses incorporated into the pricing of the contracts for such reinsurance coverage, pursuant to section 7(b)(6)(B)(iii).

(i) TERMINATION.—The Commission shall terminate upon the effective date of the repeal under section 14(c).

SEC. 4. PROGRAM AUTHORITY.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Secretary of Homeland Security, shall carry out a program under this Act to improve the availability and affordability of homeowners protection coverage by making available for purchase, only by eligible State programs, contracts for reinsurance coverage under section 7.

(b) PURPOSE.—The program shall be designed to make reinsurance coverage under this Act available—

(1) to improve the availability and affordability of homeowners' insurance for the purpose of facilitating the pooling, and spreading the risk, of catastrophic financial losses from natural catastrophes;

(2) to improve the solvency and capacity of homeowners' insurance markets;

(3) to encourage the development and implementation of mitigation, prevention, recovery, and rebuilding standards; and

(4) to recommend methods to continuously improve the way the United States reacts and responds to catastrophes, including improvements to the HELP Fund established under section 10.

(c) CONTRACT PRINCIPLES.—Under the program under this Act, the Secretary shall offer reinsurance coverage through contracts with covered purchasers, which contracts—

(1) shall not displace or compete with the private insurance or reinsurance markets or the capital market;

(2) shall minimize the administrative costs of the Federal Government; and

(3) shall provide coverage based solely on insured losses within the State for the eligible State program purchasing the contract.

SEC. 5. QUALIFIED LINES OF COVERAGE.

Each contract for reinsurance coverage made available under this Act shall provide insurance coverage against residential property losses to homes (including dwellings owned under condominium and cooperative ownership arrangements) and the contents of apartment buildings.

SEC. 6. COVERED PERILS.

Each contract for reinsurance coverage made available under this Act shall cover losses insured or reinsured by the eligible State program purchasing the contract that are proximately caused by—

(1) earthquakes;

(2) perils ensuing from earthquakes, including fire and tsunamis;

(3) tropical cyclones having maximum sustained winds of at least 74 miles per hour, including hurricanes and typhoons;

(4) tornadoes;

(5) volcanic eruptions;

(6) catastrophic winter storms; and

(7) any other natural catastrophe (not including any flood) insured or reinsured under the eligible State program for which reinsurance coverage under section 7 is provided.

The Secretary shall, by regulation, define the natural catastrophe perils under this section.

SEC. 7. CONTRACTS FOR REINSURANCE COVERAGE FOR ELIGIBLE STATE PROGRAMS.

(a) ELIGIBLE STATE PROGRAMS.—A program shall be eligible to purchase a contract under this section for reinsurance coverage under this Act only if the State entity authorized to make such determinations certifies to the Secretary that the program complies with the following requirements:

(1) PROGRAM DESIGN.—The program shall be a State-operated—

(A) insurance program that—

(i) offers coverage for homes (which may include dwellings owned under condominium and cooperative ownership arrangements) and the contents of apartments to State residents; and

(ii) is authorized by State law; or

(B) reinsurance program that is designed to improve private insurance markets that offer coverage for homes (which may include dwellings owned under condominium and cooperative ownership arrangements) and the contents of apartments because of a finding by the State insurance commissioner or other State entity authorized to make such a determination that such program is necessary in order to provide for the continued availability of such residential coverage for all residents.

(2) OPERATION.—The program shall meet the following requirements:

(A) A majority of the members of the governing body of the program shall be public officials.

(B) The State shall have a financial interest in the program, which shall not include a program authorized by State law or regulation that requires insurers to pool resources to provide property insurance coverage for covered perils.

(C) If the State has at any time appropriated amounts from the State fund for the State program for any purpose other than payments under the program, the State shall have repaid such amounts to the State fund, together with interest on such amounts.

(3) TAX STATUS.—The program shall be structured and carried out in a manner so that the program is exempt from all Federal taxation.

(4) COVERAGE.—The program shall cover all perils specified in section 6.

(5) EARNINGS.—The program may not provide for, nor shall have ever made, any redistribution of any part of any net profits of the program to any insurer that participates in the program.

(6) PREVENTION AND MITIGATION.—The program shall include prevention and mitigation provisions that require that not less $10,000,000 and not more than 35 percent of the net investment income of the State insurance or reinsurance program be used for programs to mitigate losses from natural catastrophes for which the State insurance or reinsurance program was established. For purposes of this paragraph, prevention and mitigation shall include methods to reduce losses of life and property, including appropriate measures to adequately reflect—

(A) encouragement of awareness about the risk factors and what can be done to eliminate or reduce them;

(B) location of the risk, by giving careful consideration of the natural risks for the location of the property before allowing building and considerations if structures are allowed; and

(C) construction relative to the risk and hazards, which act upon—

(i) State mandated building codes appropriate for the risk;

(ii) adequate enforcement of the risk-appropriate building codes;

(iii) building materials that prevent or significantly lessen potential damage from the natural catastrophes;

(iv) building methods that prevent or significantly lessen potential damage from the natural catastrophes; and

(v) a focus on prevention and mitigation for any substantially damaged structure, with an emphasis on how structures can be retrofitted so as to make them building code compliant.

(7) REQUIREMENTS REGARDING COVERAGE.—

(A) IN GENERAL.—The program—

(i) may not, except for charges or assessments related to post-event financing or bonding, involve cross-subsidization between any separate property and casualty lines covered under the program unless the elimination of such activity in an existing program would negatively impact the eligibility of the program to purchase a contract for reinsurance coverage under this Act pursuant to paragraph (3);

(ii) shall include provisions that authorize the State insurance commissioner or other State entity authorized to make such a determination to terminate the program if the insurance commissioner or other such entity determines that the program is no longer necessary to ensure the availability of homeowners' insurance for all residents of the State; and

(iii) shall provide that, for any insurance coverage for homes (which may include dwellings owned under condominium and cooperative ownership arrangements) and the contents of apartments that is made available under the State insurance program and for any reinsurance coverage for such insurance coverage made available under the State reinsurance program, the premium rates charged shall be amounts that, at a minimum, are sufficient to cover the full actuarial costs of such coverage, based on consideration of the risks involved and accepted actuarial and rate making principles, anticipated administrative expenses, and loss and loss-adjustment expenses.

(B) APPLICABILITY.—This paragraph shall apply after the expiration of the 2-year period beginning on the date of the enactment of this Act.

(8) PROHIBITION OF COMPETITION WITH PRIVATE MARKET.—Any insurance or reinsurance coverage, as applicable, made available through the State program shall not supplant coverage that is otherwise reasonably available and affordable in the private market.

(9) OTHER QUALIFICATIONS.—

(A) IN GENERAL.—The State program shall (for the year for which the coverage is in effect) comply with regulations that shall be issued under this paragraph by the Secretary, in consultation with the Commission. The regulations shall establish criteria for State programs to qualify to purchase reinsurance under this section, which are in addition to the requirements under the other paragraphs of this subsection.

(B) CONTENTS.—The regulations issued under this paragraph shall include requirements that—

(i) the State program shall have public members on its board of directors or have an advisory board with public members;

(ii) the State program provide adequate insurance or reinsurance protection, as applicable, for the perils covered, which shall include a range of deductibles and premium costs that reflect the applicable risks to eligible properties;

(iii) insurance or reinsurance coverage, as applicable, provided by the State program is made available on a nondiscriminatory basis to all qualifying residents;

(iv) any new construction, substantial rehabilitation, and renovation insured or reinsured by the program complies with applicable State or local government building, fire, and safety codes;

(v) the State, or appropriate local governments within the State, have in effect and enforce nationally recognized model building, fire, and safety codes and consensus-based standards that offer risk responsive resistance that is substantially equivalent or greater than the resistance to earthquakes or high winds;

(vi) the State has taken actions to establish an insurance rate structure that takes into account measures to mitigate insurance losses;

(vii) there are in effect, in such State, laws or regulations sufficient to prohibit price gouging, during the term of reinsurance coverage under this Act for the State program in any disaster area located within the State; and

(viii) the State program complies with such other requirements that the Secretary considers necessary to carry out the purposes of this Act.

(b) TERMS OF CONTRACTS.—Each contract under this section for reinsurance coverage under this Act shall be subject to the following terms and conditions:

(1) MATURITY.—The term of the contract shall not exceed 1 year or such other term as the Secretary may determine.

(2) PAYMENT CONDITION.—The contract shall authorize claims payments only for eligible losses to the eligible State program purchasing the coverage.

(3) RETAINED LOSSES REQUIREMENT.—For each event of a covered peril, the contract shall make a payment for the event only if the total amount of insurance claims for losses, which are covered by qualified lines, occur to properties located within the State covered by the contract, and that result from insured losses (as defined in section 12) for the State program, exceeds the amount of retained losses provided under the contract (pursuant to section 8(a)) purchased by the eligible State program.

(4) MULTIPLE EVENTS.—The contract shall cover any eligible losses from one or more covered events that may occur during the term of the contract and shall provide that if multiple events occur, the retained losses requirement under paragraph (3) shall apply on a calendar year basis, in the aggregate and not separately to each individual event.

(5) TIMING OF ELIGIBLE LOSSES.—Eligible losses under the contract shall include only insurance claims for property covered by qualified lines that are reported to the eligible State program within the 3-year period beginning upon the event or events for which payment under the contract is provided.

(6) PRICING.—

(A) DETERMINATION.—The price of reinsurance coverage under the contract shall be an amount established by the Secretary as follows:

(i) RECOMMENDATIONS.—The Secretary shall take into consideration the recommendations of the Commission in establishing the price, but the price may not be less than the amount recommended by the Commission.

(ii) FAIRNESS TO TAXPAYERS.—The price shall be established at a level that is designed to reflect the risks and costs being borne under each reinsurance contract issued under this Act and that takes into consideration empirical models of natural disasters and the capacity of private markets to absorb insured losses from natural disasters.

(iii) SELF-SUFFICIENCY.—The rates for reinsurance coverage shall be established at a level that annually produces expected premiums that shall be sufficient to pay the expected annualized cost of all claims, loss adjustment expenses, and all administrative costs of reinsurance coverage offered under this section.

(B) COMPONENTS.—The price shall consist of the following components:

(i) RISK-BASED PRICE.—A risk-based price, which shall reflect the anticipated annualized payout of the contract according to the actuarial analysis and recommendations of the Commission.

(ii) RISK LOAD.—A risk load in an amount that is not less than the risk-based price under clause (i). In establishing risk loads under this clause, the Secretary shall take into consideration comparable private risk loads.

(iii) ADMINISTRATIVE COSTS.—A sum sufficient to provide for the operation of the Commission and the administrative expenses incurred by the Secretary in carrying out this Act.

(7) INFORMATION.—The contract shall contain a condition providing that the Commission may require the State program that is covered under the contract to submit to the Commission all information on the State program relevant to the duties of the Commission, as determined by the Secretary.

(8) ADDITIONAL CONTRACT OPTION.—The contract shall provide that the purchaser of the contract may, during the term of such original contract, purchase additional contracts from among those offered by the Secretary at the beginning of the term, subject to the limitations under section 8, at the prices at which such contracts were offered at the beginning of the term, prorated based upon the remaining term as determined by the Secretary. Such additional contracts shall provide coverage beginning on a date 15 days after the date of purchase but shall not provide coverage for losses for an event that has already occurred.

(9) OTHERS.—The contract shall contain such other terms as the Secretary considers necessary to

carry out this Act and to ensure the long-term financial integrity of the program under this Act.

(c) PRIVATE SECTOR RIGHT TO PARTICIPATE.—

(1) ESTABLISHMENT OF COMPETITIVE PROCEDURE.—The Secretary shall establish, by regulation, a competitive procedure under this subsection that provides qualified entities an opportunity, on a basis consistent with the contract cycle established under this Act by the Secretary, to offer to provide, in lieu of reinsurance coverage under this section, reinsurance coverage that is substantially similar to coverage otherwise made available under this section.

(2) COMPETITIVE PROCEDURE.—Under the procedure established under this subsection—

(A) the Secretary shall establish criteria for private insurers, reinsurers, and capital market companies, and consortia of such entities to be treated as qualified entities for purposes of this subsection, which criteria shall require such an entity to have at all times capital sufficient to satisfy the terms of the reinsurance contracts and shall include such other industry and credit rating standards as the Secretary considers appropriate;

(B) not less than 30 days before the beginning of each contract cycle during which any reinsurance coverage under this section is to be made available, the Secretary may request proposals and shall publish in the Federal Register the rates and terms for contracts for reinsurance coverage under this section that are to be made available during such contract cycle;

(C) the Secretary shall provide qualified entities a period of not less than 10 days (which shall terminate not less than 20 days before the beginning of the contract cycle) to submit to the Secretary a written expression of interest in providing reinsurance coverage in lieu of the coverage otherwise to be made available under this section;

(D) the Secretary shall provide any qualified entity submitting an expression of interest during the period referred to in subparagraph (C) a period of not less than 20 days (which shall terminate before the beginning of the contract cycle) to submit to the Secretary an offer to provide, in lieu of the reinsurance coverage otherwise to be made available under this section, coverage that is substantially similar to such coverage;

(E) if the Secretary determines that an offer submitted during the period referred to in subparagraph (D) is a bona fide offer to provide reinsurance coverage during the contract cycle at rates and terms that are substantially similar to the rates and terms for reinsurance coverage otherwise to be provided under this section by the Secretary, the Secretary shall accept the offer (if still outstanding) and, notwithstanding any other provision of this Act, provide for such entity to make reinsurance coverage available in accordance with the offer; and

(F) if the Secretary accepts an offer pursuant to subparagraph (E) to make reinsurance coverage available, notwithstanding any other provision of this Act, the Secretary shall reduce, to an equivalent extent, the amount of reinsurance coverage available under this section during the contract cycle to which the offer relates, unless and until the Secretary determines that the entity is not complying with the terms of the accepted offer.

(d) PARTICIPATION BY MULTI-STATE CATASTROPHE FUND PROGRAMS.—Nothing in this Act shall prohibit the creation of multi-State catastrophe insurance or reinsurance programs, or the participation by such programs in the program established pursuant to section 4. The Secretary shall, by regulation, apply the provisions of this Act to multi-State catastrophe insurance and reinsurance programs.

(e) REQUIREMENT FOR INSURERS TO PASS THROUGH SAVINGS TO CONSUMERS.—Notwithstanding any other provision of this Act, a State program shall not be eligible to purchase a contract for reinsurance coverage made available under this Act unless such State has in effect such laws, regulations, or other requirements, as the Secretary shall by regulation require, that—

(1) to the extent that reinsurance coverage made available under the program under this Act results in any cost savings in providing insurance coverage for risks in such State, such cost savings be reflected in premium rates charged to consumers for such coverage; and

(2) the State take such actions as the Secretary considers appropriate to ensure that the requirement under paragraph (1) is carried out and enforced.

SEC. 8. TREATMENT OF INSURED LOSSES AND MAXIMUM FEDERAL LIABILITY.

(a) AVAILABLE LEVELS OF RETAINED LOSSES.—In making reinsurance coverage available under this Act, the Secretary shall make available for purchase contracts for such coverage that require the sustainment of retained losses from covered perils (as required under section 7(b)(3) for payment of eligible losses) in various amounts, as the Secretary, in consultation with the Commission, determines appropriate and subject to the requirements under subsection (b).

(b) MINIMUM LEVEL OF RETAINED LOSSES.—

(1) AMOUNT.—Subject to paragraph (2) and notwithstanding any other provision of this Act, a contract for reinsurance coverage under section 7 for an eligible State program that offers insurance or reinsurance coverage described in subparagraph (A) or (B), respectively, of section 7(a)(1) may not be made available or sold unless the contract requires that the State program sustain an amount of retained losses from covered perils in the following amount:

(A) IN GENERAL.—The State program shall sustain an amount of retained losses of not less than the greater of—

(i) the claims-paying capacity of the eligible State program, as determined by the Secretary; and

(ii) an amount, determined by the Secretary in consultation with the Commission, that is the amount equal to the eligible losses projected to be incurred once every 200 years on an annual basis from covered perils.

(B) TRANSITION RULE FOR NEW PROGRAMS.—

(i) 200-YEAR EVENT.—The Secretary may provide that, in the case of an eligible State program that, after the date of the enactment of this Act, commences offering insurance or reinsurance coverage, during the 7-year period beginning on the date that reinsurance coverage under section 7 is first made available, the minimum level of retained losses applicable under this paragraph shall be the amount determined for the State under subparagraph (A)(i), except that such minimum level shall be adjusted annually as provided in clause (ii) of this subparagraph.

(ii) ANNUAL ADJUSTMENT.—Each annual adjustment under this clause shall increase the minimum level of retained losses applicable under this subparagraph to an eligible State program described in clause (i) in a manner such that—

(I) during the course of such 7-year period, the applicable minimum level of retained losses approaches the minimum level that, under subparagraph (A)(ii), will apply to the eligible State program upon the expiration of such period; and

(II) each such annual increase is a substantially similar amount, to the extent practicable.

(C) REDUCTION BECAUSE OF REDUCED CLAIMS-PAYING CAPACITY.—

(i) AUTHORITY.—Notwithstanding subparagraphs (A), (B), and (C) or the terms contained in a contract for reinsurance pursuant to such subparagraphs, if the Secretary determines that the claims-paying capacity of an eligible State program has been reduced because of payment for losses due to an event, the Secretary may reduce the minimum level of retained losses.

(ii) TERM OF REDUCTION.—The Secretary may extend the 5-year period for not more than 5 additional one-year periods if the Secretary determines that losses incurred by the State program as a result of covered perils create excessive hardship on the State program. The Secretary shall consult with the appropriate officials of the State program regarding the required schedule and any potential one-year extensions.

(D) CLAIMS-PAYING CAPACITY.—For purposes of this paragraph, the claims-paying capacity of a State-operated insurance or reinsurance program under section 7(a)(1) shall be determined by the Secretary, in consultation with the Commission, taking into consideration the claims-paying capacity as determined by the State program, retained losses to private insurers in the State in an amount assigned by the State insurance commissioner, the cash surplus of the program, and the lines of credit, reinsurance, and other financing mechanisms of the program established by law.

(2) INITIAL ADJUSTMENT BASED ON PRIVATE MARKET.—The Secretary may, before making contracts for reinsurance coverage under this Act initially available under section 7, raise the minimum level of retained losses from the amount required under paragraph (1) for an eligible State program to ensure, as determined by the Secretary, that such contracts comply with the principle under section 4(c)(1).

(c) 90 PERCENT COVERAGE OF INSURED LOSSES IN EXCESS OF RETAINED LOSSES.—Each contract for reinsurance coverage under this Act for a covered purchaser shall provide that the amount paid out under the contract shall, subject to subsection (d), be equal to 90 percent of the amount of insured losses of the eligible State program of the purchaser in excess of the amount of retained losses that the contract requires, pursuant to subsection (b), to be incurred by such program.

(d) MAXIMUM FEDERAL LIABILITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may sell only contracts for reinsurance coverage under this Act in

various amounts that comply with the following requirements:

(A) ESTIMATE OF AGGREGATE LIABILITY.—The aggregate liability for payment of claims under all such contracts in any single year is unlikely to exceed $200,000,000,000 (as such amount is adjusted under paragraph (2)).

(B) ELIGIBLE LOSS COVERAGE SOLD.—Eligible losses covered by all contracts sold within a State during a 12-month period do not exceed the difference between the following amounts (each of which shall be determined by the Secretary in consultation with the Commission):

(i) The amount equal to the eligible loss projected to be incurred once every 500 years from a single event in the State.

(ii) The amount equal to the eligible loss projected to be incurred once every 200 years from a single event in the State.

(2) ANNUAL ADJUSTMENTS.—The Secretary shall annually adjust the amount under paragraph (1)(A) (as it may have been previously adjusted) to provide for inflation in accordance with an inflation index that the Secretary determines to be appropriate.

SEC. 9. CATASTROPHE CAPITAL RESERVE FUNDS.

(a) ESTABLISHMENT.—Any insurer who participates in an eligible State program under section 7(a) may establish a Catastrophe Capital Reserve Fund (in this section referred to as a "reserve fund") in which it may hold funds in a fiduciary capacity on behalf of the Secretary.

(b) FUNDING.—An insurer may fund a reserve fund by making an election, in advance, to treat some or all of the premiums received for such coverage as charges imposed by the Secretary for participation in, and operation of, the program for reinsurance coverage under this Act. Any such premiums for which such an election has been made shall be maintained in a segregated account in a fiduciary capacity on behalf of the Secretary. Such funds may be invested in any otherwise legally permissible manner but all interest, dividends, and capital accumulations also shall be retained in such segregated account on behalf of the Secretary.

(c) USE.—Amounts in a reserve fund established pursuant to this section shall be collected and used by the Secretary to offset, in whole or in part, the cost to the Secretary of claims paid under reinsurance coverage provided under the program, except that, in the case only of a single event that results in an amount of eligible losses to insurers that is equal to or greater than the amount of such losses projected to be incurred from a single event having an extent of such losses such that the event has a 1.0 percent chance of occurring in any year, an insurer may first use the funds in a reserve fund of the insurer to satisfy any one or more of the following:

(1) The retained losses for the insurer required under section 8(b).

(2) The portion of the insurer's losses that exceed the required retained losses but are not compensated under a reinsurance contract made available under the Program pursuant to section 8(c).

(3) The insurer's obligations to pay for insured losses if any conditions precedent to payment under a contract for reinsurance made available under the Program are not met.

(4) Any risk-sharing obligations that the insurer may have entered into.

(d) TERMINATION.—

(1) TERMINATION OF PROGRAM.—Upon termination under section 14 of the program under this Act, and subject to the continuing authority of the Secretary to adjust claims in satisfaction of contracts for reinsurance in force under the Program, 10 percent of each insurer's reserve funds shall be remitted to the Secretary and the remainder shall be remitted to the insurer. The Secretary shall deter-

mine the manner in which the remittance of such income to the insurer shall be made.

(2) ELIMINATION OF COVERAGE OF INSURED LOSSES IN EXCESS OF RETAINED LOSSES.—If at any time the Program remains in effect but contracts for reinsurance under the Program do not provide any payment for insured losses in excess of retained losses, the reserve funds shall be retained and used for the purposes set forth in subsection (c) of this section. At such time as an insurer's liability for insured losses under the Program terminates, as a consequence of the insurer's termination of its business or otherwise, the insurer shall remit any amounts remaining in its reserve funds to the Secretary.

SEC. 10. CONSUMER HURRICANE, EARTHQUAKE, LOSS PROTECTION (HELP) FUND.

(a) ESTABLISHMENT.—There is established within the Treasury of the United States a fund to be known as the Consumer HELP Fund (in this section referred to as the "Fund").

(b) CREDITS.—The Fund shall be credited with—

(1) amounts received annually from the sale of contracts for reinsurance coverage under this Act;

(2) any amounts borrowed under subsection (d);

(3) any amounts earned on investments of the Fund pursuant to subsection (e); and

(4) such other amounts as may be credited to the Fund.

(c) USES.—Amounts in the Fund shall be available to the Secretary only for the following purposes:

(1) CONTRACT PAYMENTS.—For payments to covered purchasers under contracts for reinsurance coverage for eligible losses under such contracts.

(2) COMMISSION COSTS.—To pay for the operating costs of the Commission.

(3) ADMINISTRATIVE EXPENSES.—To pay for the administrative expenses incurred by the Secretary in carrying out the reinsurance program under this Act.

(4) TERMINATION.—Upon termination under section 14, as provided in such section.

(d) BORROWING.—

(1) AUTHORITY.—To the extent that the amounts in the Fund are insufficient to pay claims and expenses under subsection (c), the Secretary may issue such obligations of the Fund as may be

necessary to cover the insufficiency and shall purchase any such obligations issued.

(2) PUBLIC DEBT TRANSACTION.—For the purpose of purchasing any such obligations, the Secretary may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities are issued under such chapter are hereby extended to include any purchase by the Secretary of such obligations under this subsection.

(3) CHARACTERISTICS OF OBLIGATIONS.—Obligations issued under this subsection shall be in such forms and denominations, bear such maturities, bear interest at such rate, and be subject to such other terms and conditions, as the Secretary shall determine.

(4) TREATMENT.—All redemptions, purchases, and sales by the Secretary of obligations under this subsection shall be treated as public debt transactions of the United States.

(5) REPAYMENT.—Any obligations issued under this subsection shall be repaid including interest, from the Fund and shall be recouped from pre-

miums charged for reinsurance coverage provided under this Act.

(e) INVESTMENT.—If the Secretary determines that the amounts in the Fund are in excess of current needs, the Secretary may invest such amounts as the Secretary considers advisable in obligations issued or guaranteed by the United States.

(f) PROHIBITION OF FEDERAL FUNDS.—Except for amounts made available pursuant to subsection (d) and section 3(h), no further Federal funds shall be authorized or appropriated for the Fund or for carrying out the reinsurance program under this Act.

SEC. 11. ANNUAL STUDY CONCERNING BENEFITS OF REINSURANCE PROGRAM.

(a) IN GENERAL.—The Secretary shall, on an annual basis, conduct a study and submit to the Congress a report that—

(1) analyzes the cost and availability of homeowners' insurance for losses resulting from catastrophic natural disasters covered by the reinsurance program under this Act;

(2) describes the efforts of the participating States in—

(A) enacting preparedness, prevention, mitigation, recovery, and rebuilding standards; and

(B) educating the public on the risks associated with natural catastrophe; and

(3) makes recommendations regarding ways to improve the program under this Act and its administration.

(b) CONTENTS.—Each annual study under this section shall also determine and identify, on an aggregate basis—

(1) for each State or region, the capacity of the private homeowners' insurance market with respect to coverage for losses from catastrophic natural disasters;

(2) for each State or region, the percentage of homeowners who have such coverage, the catastrophes covered, and the average cost of such coverage; and

(3) for each State or region, the effects this Act is having on the availability and affordability of such insurance.

(c) TIMING.—Each annual report under this section shall be submitted not later than March 30 of the year after the year for which the study was conducted.

(d) COMMENCEMENT OF REPORTING REQUIREMENT.—The Secretary shall first submit an annual report under this section not later than two years after the date of the enactment of this Act.

SEC. 12. DEFINITIONS.

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

(1) COMMISSION.—The term ''Commission'' means the National Commission on Catastrophe Risks and Insurance Loss Costs established under section 3.

(2) COVERED PERILS.—The term ''covered perils'' means the natural disaster perils under section 6.

(3) COVERED PURCHASER.—The term ''covered purchaser'' means an eligible State-operated insurance or reinsurance program that purchases reinsurance coverage made available under a contract under section 7.

(4) DISASTER AREA.—The term ''disaster area'' means a geographical area, with respect to which—

(A) a covered peril specified in section 6 has occurred; and

(B) a declaration that a major disaster exists, as a result of the occurrence of such peril—

(i) has been made by the President of the United States; and

(ii) is in effect.

(5) ELIGIBLE LOSSES.—The term ''eligible losses'' means, with respect to a contract for reinsurance coverage made available under this Act for a covered purchaser, the insured losses of the covered purchaser that exceed the amount of retained losses that the contract requires, pursuant to section 8(b), to be incurred by the eligible State program of such purchaser, as defined by the Secretary after consultation with the Commission.

(6) ELIGIBLE STATE PROGRAM.—The term ''eligible State program'' means a State program that, pursuant to section 7(a), is eligible to purchase reinsurance coverage made available through contracts under section 7, or a multi-State program that is eligible to purchase such coverage pursuant to section 7(c).

(7) INSURED LOSS.—The term ''insured loss'' means, with respect to contract for reinsurance coverage made available under this Act for a covered

purchaser, any loss resulting from a covered peril that is covered by insurance or reinsurance made available under the eligible State program of the covered purchaser.

(8) PRICE GOUGING.—The term ''price gouging'' means the providing of any consumer good or service by a supplier related to repair or restoration of property damaged from a catastrophe for a price that the supplier knows or has reason to know is greater, by at least the percentage set forth in a State law or regulation prohibiting such act (notwithstanding any real cost increase due to any attendant business risk and other reasonable expenses that result from the major catastrophe involved), than the price charged by the supplier for such consumer good or service immediately before the disaster.

(9) QUALIFIED LINES.—The term ''qualified lines'' means lines of insurance coverage for which losses are covered under section 5 by reinsurance coverage under this Act.

(10) REINSURANCE COVERAGE.—The term ''reinsurance coverage under this Act'' means coverage under contracts made available under section 7.

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

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

SEC. 13. REGULATIONS.

The Secretary, in consultation with the Secretary of the Department of Homeland Security, shall issue any regulations necessary to carry out the program for reinsurance coverage under this Act.

SEC. 14. TERMINATION.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary may not provide any reinsurance coverage under this Act covering any period after the expiration of the 20-year period beginning on the date of the enactment of this Act.

(b) EXTENSION.—If upon the expiration of the period under subsection (a) the Secretary, in consultation with the Commission, determines that continuation of the program for reinsurance coverage under this Act is necessary or appropriate to carry out the purpose of the program under section 4(b) because of insufficient growth of capacity in the private homeowners' insurance market, the Secretary shall continue to provide reinsurance coverage under this Act until the expiration of the 5-year period beginning upon the expiration of the period under subsection (a).

(c) REPEAL.—Effective upon the date that reinsurance coverage under this Act is no longer available or in force pursuant to subsection (a) or (b), this Act (except for this section) is repealed.

(d) DEFICIT REDUCTION.—The Secretary shall cover into the General Fund of the Treasury any amounts remaining in the Fund under section 9 upon the repeal of this Act under subsection (c).

SEC. 15. GAO STUDY OF THE NATIONAL FLOOD INSURANCE PROGRAM AND HURRICANE-RELATED FLOODING.

(a) IN GENERAL.—In light of the flooding associated with Hurricane Katrina, the Comptroller General of the United States shall conduct a study of the availability and adequacy of flood insurance coverage for losses to residences and other properties caused by hurricane-related flooding.

(b) CONTENTS.—The study under this section shall determine and analyze—

(1) the frequency and severity of hurricane-related flooding during the last 20 years in comparison with flooding that is not hurricane-related;

(2) the differences between the risks of flood-related losses to properties located within the 100-year floodplain and those located outside of such floodplain;

(3) the extent to which insurance coverage referred to in subsection (a) is available for properties not located within the 100-year floodplain;

(4) the advantages and disadvantages of making such coverage for such properties available under the national flood insurance program;

(5) appropriate methods for establishing premiums for insurance coverage under such program for such properties that, based on accepted actuarial and rate making principles, cover the full costs of providing such coverage;

(6) appropriate eligibility criteria for making flood insurance coverage under such program available for properties that are not located within the 100-year floodplain or within a community participating in the national flood insurance program;

(7) the appropriateness of the existing deductibles for all properties eligible for insurance

coverage under the national flood insurance program, including the standard and variable deductibles for pre-FIRM and post-FIRM properties, and whether a broader range of deductibles should be established;

(8) income levels of policyholders of insurance made available under the national flood insurance program whose properties are pre-FIRM subsidized properties;

(9) how the national flood program is marketed, if changes can be made so that more people are aware of flood coverage, and how take-up rates may be improved;

(10) the number of homes that are not primary residences that are insured under the national flood insurance program and are pre-FIRM subsidized properties; and

(11) suggestions and means on how the program under this Act can better meet its stated goals as well as the feasibility of expanding the NFIP to cover the perils covered by this Act.

(c) CONSULTATION WITH FEMA.—In conducting the study under this section, the Comptroller General shall consult with the Director of the Federal Emergency Management Agency.

(d) REPORT.—The Comptroller General shall complete the study under this section and submit a report to the Congress regarding the findings of the study not later than 5 months after the date of the enactment of this Act.

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