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1ST SESSION

H. R. 26

IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2015

Received

AN ACT

To extend the termination date of the Terrorism Insurance Program established under the Terrorism Risk Insurance Act of 2002, and for other purposes.

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

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “Terrorism Risk Insurance Program Reauthorization Act
 4 of 2015”.

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

Sec. 1. Short title and table of contents.

TITLE I—EXTENSION OF TERRORISM INSURANCE PROGRAM

Sec. 101. Extension of Terrorism Insurance Program.

Sec. 102. Federal share.

Sec. 103. Program trigger.

Sec. 104. Recoupment of Federal share of compensation under the program.

Sec. 105. Certification of acts of terrorism; consultation with Secretary of
 Homeland Security.

Sec. 106. Technical amendments.

Sec. 107. Improving the certification process.

Sec. 108. GAO study.

Sec. 109. Membership of Board of Governors of the Federal Reserve System.

Sec. 110. Advisory Committee on Risk-Sharing Mechanisms.

Sec. 111. Reporting of terrorism insurance data.

Sec. 112. Annual study of small insurer market competitiveness.

**TITLE II—NATIONAL ASSOCIATION OF REGISTERED AGENTS AND
 BROKERS REFORM**

Sec. 201. Short title.

Sec. 202. Reestablishment of the National Association of Registered Agents
 and Brokers.

**TITLE III—BUSINESS RISK MITIGATION AND PRICE
 STABILIZATION**

Sec. 301. Short title.

Sec. 302. Margin requirements.

Sec. 303. Implementation.

1 **TITLE I—EXTENSION OF TER-**
2 **RORISM INSURANCE PRO-**
3 **GRAM**

4 **SEC. 101. EXTENSION OF TERRORISM INSURANCE PRO-**
5 **GRAM.**

6 Section 108(a) of the Terrorism Risk Insurance Act
7 of 2002 (15 U.S.C. 6701 note) is amended by striking
8 “December 31, 2014” and inserting “December 31,
9 2020”.

10 **SEC. 102. FEDERAL SHARE.**

11 Section 103(e)(1)(A) of the Terrorism Risk Insur-
12 ance Act of 2002 (15 U.S.C. 6701 note) is amended by
13 inserting “and beginning on January 1, 2016, shall de-
14 crease by 1 percentage point per calendar year until equal
15 to 80 percent” after “85 percent”.

16 **SEC. 103. PROGRAM TRIGGER.**

17 Subparagraph (B) of section 103(e)(1) (15 U.S.C.
18 6701 note) is amended in the matter preceding clause
19 (i)—

20 (1) by striking “a certified act” and inserting
21 “certified acts”;

22 (2) by striking “such certified act” and insert-
23 ing “such certified acts”; and

1 (3) by striking “exceed” and all that follows
2 through clause (ii) and inserting the following: “ex-
3 ceed—

4 “(i) \$100,000,000, with respect to
5 such insured losses occurring in calendar
6 year 2015;

7 “(ii) \$120,000,000, with respect to
8 such insured losses occurring in calendar
9 year 2016;

10 “(iii) \$140,000,000, with respect to
11 such insured losses occurring in calendar
12 year 2017;

13 “(iv) \$160,000,000, with respect to
14 such insured losses occurring in calendar
15 year 2018;

16 “(v) \$180,000,000, with respect to
17 such insured losses occurring in calendar
18 year 2019; and

19 “(vi) \$200,000,000, with respect to
20 such insured losses occurring in calendar
21 year 2020 and any calendar year there-
22 after.”.

1 **SEC. 104. RECOUPMENT OF FEDERAL SHARE OF COM-**
2 **PENSATION UNDER THE PROGRAM.**

3 Section 103(e) of the Terrorism Risk Insurance Act
4 of 2002 (15 U.S.C. 6701 note) is amended—

5 (1) by amending paragraph (6) to read as fol-
6 lows:

7 “(6) INSURANCE MARKETPLACE AGGREGATE
8 RETENTION AMOUNT.—

9 “(A) IN GENERAL.—For purposes of para-
10 graph (7), the insurance marketplace aggregate
11 retention amount shall be the lesser of—

12 “(i) \$27,500,000,000, as such amount
13 is revised pursuant to this paragraph; and

14 “(ii) the aggregate amount, for all in-
15 surers, of insured losses during such cal-
16 endar year.

17 “(B) REVISION OF INSURANCE MARKET-
18 PLACE AGGREGATE RETENTION AMOUNT.—

19 “(i) PHASE-IN.—Beginning in the cal-
20 endar year of enactment of the Terrorism
21 Risk Insurance Program Reauthorization
22 Act of 2015, the amount set forth under
23 subparagraph (A)(i) shall increase by
24 \$2,000,000,000 per calendar year until
25 equal to \$37,500,000,000.

1 “(ii) FURTHER REVISION.—Beginning
 2 in the calendar year that follows the cal-
 3 endar year in which the amount set forth
 4 under subparagraph (A)(i) is equal to
 5 \$37,500,000,000, the amount under sub-
 6 paragraph (A)(i) shall be revised to be the
 7 amount equal to the annual average of the
 8 sum of insurer deductibles for all insurers
 9 participating in the Program for the prior
 10 3 calendar years, as such sum is deter-
 11 mined by the Secretary under subpara-
 12 graph (C).

13 “(C) RULEMAKING.—Not later than 3
 14 years after the date of enactment of the Ter-
 15 rorism Risk Insurance Program Reauthoriza-
 16 tion Act of 2015, the Secretary shall—

17 “(i) issue final rules for determining
 18 the amount of the sum described under
 19 subparagraph (B)(ii); and

20 “(ii) provide a timeline for public noti-
 21 fication of such determination.”; and

22 (2) in paragraph (7)—

23 (A) in subparagraph (A)—

24 (i) in the matter preceding clause (i),
 25 by striking “for each of the periods re-

1 ferred to in subparagraphs (A) through
2 (E) of paragraph (6)”; and

3 (ii) in clause (i), by striking “for such
4 period”;

5 (B) by striking subparagraph (B) and in-
6 serting the following:

7 “(B) [Reserved.]”;

8 (C) in subparagraph (C)—

9 (i) by striking “occurring during any
10 of the periods referred to in any of sub-
11 paragraphs (A) through (E) of paragraph
12 (6), terrorism loss risk-spreading pre-
13 miums in an amount equal to 133 percent”
14 and inserting “, terrorism loss risk-spread-
15 ing premiums in an amount equal to 140
16 percent”; and

17 (ii) by inserting “as calculated under
18 subparagraph (A)” after “mandatory
19 recoupment amount”; and

20 (D) in subparagraph (E)(i)—

21 (i) in subclause (I)—

22 (I) by striking “2010” and in-
23 serting “2017”; and

24 (II) by striking “2012” and in-
25 serting “2019”;

1 (ii) in subclause (II)—

2 (I) by striking “2011” and in-
3 serting “2018”;

4 (II) by striking “2012” and in-
5 serting “2019”; and

6 (III) by striking “2017” and in-
7 serting “2024”; and

8 (iii) in subclause (III)—

9 (I) by striking “2012” and in-
10 serting “2019”; and

11 (II) by striking “2017” and in-
12 serting “2024”.

13 **SEC. 105. CERTIFICATION OF ACTS OF TERRORISM; CON-**
14 **SULTATION WITH SECRETARY OF HOMELAND**
15 **SECURITY.**

16 Paragraph (1)(A) of section 102 (15 U.S.C. 6701
17 note) is amended in the matter preceding clause (i), by
18 striking “concurrence with the Secretary of State” and in-
19 serting “consultation with the Secretary of Homeland Se-
20 curity”.

21 **SEC. 106. TECHNICAL AMENDMENTS.**

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

24 (1) in section 102—

25 (A) in paragraph (3)—

1 (i) by redesignating subparagraphs
2 (A), (B), and (C) as clauses (i), (ii), and
3 (iii), respectively;

4 (ii) in the matter preceding clause (i)
5 (as so redesignated), by striking “An enti-
6 ty has” and inserting the following:

7 “(A) IN GENERAL.—An entity has”; and

8 (iii) by adding at the end the fol-
9 lowing new subparagraph:

10 “(B) RULE OF CONSTRUCTION.—An enti-
11 ty, including any affiliate thereof, does not have
12 ‘control’ over another entity, if, as of the date
13 of enactment of the Terrorism Risk Insurance
14 Program Reauthorization Act of 2015, the enti-
15 ty is acting as an attorney-in-fact, as defined by
16 the Secretary, for the other entity and such
17 other entity is a reciprocal insurer, provided
18 that the entity is not, for reasons other than
19 the attorney-in-fact relationship, defined as hav-
20 ing ‘control’ under subparagraph (A).”;

21 (B) in paragraph (7)—

22 (i) by striking subparagraphs (A)
23 through (F) and inserting the following:

24 “(A) the value of an insurer’s direct
25 earned premiums during the immediately pre-

ceding calendar year, multiplied by 20 percent;
and”;

(ii) by redesignating subparagraph
(G) as subparagraph (B); and

(iii) in subparagraph (B), as so redesignated by clause (ii)—

(I) by striking “notwithstanding
subparagraphs (A) through (F), for
the Transition Period or any Program
Year” and inserting “notwithstanding
subparagraph (A), for any calendar
year”; and

(II) by striking “Period or Program
Year” and inserting “calendar
year”;

(C) by striking paragraph (11); and

(D) by redesignating paragraphs (12)
through (16) as paragraphs (11) through (15),
respectively; and

(2) in section 103—

(A) in subsection (b)(2)—

(i) in subparagraph (B), by striking “,
purchase,”; and

(ii) in subparagraph (C), by striking
“, purchase,”;

1 (B) in subsection (c), by striking “Pro-
2 gram Year” and inserting “calendar year”;

3 (C) in subsection (e)—

4 (i) in paragraph (1)(A), as previously
5 amended by section 102—

6 (I) by striking “the Transition
7 Period and each Program Year
8 through Program Year 4 shall be
9 equal to 90 percent, and during Pro-
10 gram Year 5 and each Program Year
11 thereafter” and inserting “each cal-
12 endar year”;

13 (II) by striking the comma after
14 “80 percent”; and

15 (III) by striking “such Transition
16 Period or such Program Year” and
17 inserting “such calendar year”;

18 (ii) in paragraph (2)(A), by striking
19 “the period beginning on the first day of
20 the Transition Period and ending on the
21 last day of Program Year 1, or during any
22 Program Year thereafter” and inserting “a
23 calendar year”; and

24 (iii) in paragraph (3), by striking “the
25 period beginning on the first day of the

1 Transition Period and ending on the last
2 day of Program Year 1, or during any
3 other Program Year” and inserting “any
4 calendar year”; and

5 (D) in subsection (g)(2)—

6 (i) by striking “the Transition Period
7 or a Program Year” each place that term
8 appears and inserting “the calendar year”;

9 (ii) by striking “such period” and in-
10 serting “the calendar year”; and

11 (iii) by striking “that period” and in-
12 serting “the calendar year”.

13 **SEC. 107. IMPROVING THE CERTIFICATION PROCESS.**

14 (a) DEFINITIONS.—As used in this section—

15 (1) the term “act of terrorism” has the same
16 meaning as in section 102(1) of the Terrorism Risk
17 Insurance Act of 2002 (15 U.S.C. 6701 note);

18 (2) the term “certification process” means the
19 process by which the Secretary determines whether
20 to certify an act as an act of terrorism under section
21 102(1) of the Terrorism Risk Insurance Act of 2002
22 (15 U.S.C. 6701 note); and

23 (3) the term “Secretary” means the Secretary
24 of the Treasury.

1 (b) STUDY.—Not later than 9 months after the date
2 of enactment of this Act, the Secretary shall conduct and
3 complete a study on the certification process.

4 (c) REQUIRED CONTENT.—The study required under
5 subsection (a) shall include an examination and analysis
6 of—

7 (1) the establishment of a reasonable timeline
8 by which the Secretary must make an accurate de-
9 termination on whether to certify an act as an act
10 of terrorism;

11 (2) the impact that the length of any timeline
12 proposed to be established under paragraph (1) may
13 have on the insurance industry, policyholders, con-
14 sumers, and taxpayers as a whole;

15 (3) the factors the Secretary would evaluate
16 and monitor during the certification process, includ-
17 ing the ability of the Secretary to obtain the re-
18 quired information regarding the amount of pro-
19 jected and incurred losses resulting from an act
20 which the Secretary would need in determining
21 whether to certify the act as an act of terrorism;

22 (4) the appropriateness, efficiency, and effec-
23 tiveness of the consultation process required under
24 section 102(1)(A) of the Terrorism Risk Insurance
25 Act of 2002 (15 U.S.C. 6701 note) and any rec-

1 ommendations on changes to the consultation proc-
2 ess; and

3 (5) the ability of the Secretary to provide guid-
4 ance and updates to the public regarding any act
5 that may reasonably be certified as an act of ter-
6 rorism.

7 (d) REPORT.—Upon completion of the study required
8 under subsection (a), the Secretary shall submit a report
9 on the results of such study to the Committee on Banking,
10 Housing, and Urban Affairs of the Senate and the Com-
11 mittee on Financial Services of the House of Representa-
12 tives.

13 (e) RULEMAKING.—Section 102(1) of the Terrorism
14 Risk Insurance Act of 2002 (15 U.S.C. 6701 note) is
15 amended—

16 (1) by redesignating subparagraph (D) as sub-
17 paragraph (E); and

18 (2) by inserting after subparagraph (C) the fol-
19 lowing:

20 “(D) TIMING OF CERTIFICATION.—Not
21 later than 9 months after the report required
22 under section 107 of the Terrorism Risk Insur-
23 ance Program Reauthorization Act of 2015 is
24 submitted to the appropriate committees of
25 Congress, the Secretary shall issue final rules

1 governing the certification process, including es-
2 tablishing a timeline for which an act is eligible
3 for certification by the Secretary on whether an
4 act is an act of terrorism under this para-
5 graph.”.

6 **SEC. 108. GAO STUDY.**

7 (a) STUDY.—Not later than 2 years after the date
8 of enactment of this Act, the Comptroller General of the
9 United States shall complete a study on the viability and
10 effects of the Federal Government—

11 (1) assessing and collecting upfront premiums
12 on insurers that participate in the Terrorism Insur-
13 ance Program established under the Terrorism Risk
14 Insurance Act of 2002 (15 U.S.C. 6701 note) (here-
15 after in this section referred to as the “Program”),
16 which shall include a comparison of practices in
17 international markets to assess and collect premiums
18 either before or after terrorism losses are incurred;
19 and

20 (2) creating a capital reserve fund under the
21 Program and requiring insurers participating in the
22 Program to dedicate capital specifically for terrorism
23 losses before such losses are incurred, which shall in-
24 clude a comparison of practices in international mar-
25 kets to establish reserve funds.

1 (b) REQUIRED CONTENT.—The study required under
2 subsection (a) shall examine, but shall not be limited to,
3 the following issues:

4 (1) UPFRONT PREMIUMS.—With respect to up-
5 front premiums described in subsection (a)(1)—

6 (A) how the Federal Government could de-
7 termine the price of such upfront premiums on
8 insurers that participate in the Program;

9 (B) how the Federal Government could col-
10 lect and manage such upfront premiums;

11 (C) how the Federal Government could en-
12 sure that such upfront premiums are not spent
13 for purposes other than claims through the Pro-
14 gram;

15 (D) how the assessment and collection of
16 such upfront premiums could affect take-up
17 rates for terrorism risk coverage in different re-
18 gions and industries and how it could impact
19 small businesses and consumers in both metro-
20 politan and non-metropolitan areas;

21 (E) the effect of collecting such upfront
22 premiums on insurers both large and small;

23 (F) the effect of collecting such upfront
24 premiums on the private market for terrorism
25 risk reinsurance; and

1 (G) the size of any Federal Government
2 subsidy insurers may receive through their par-
3 ticipation in the Program, taking into account
4 the Program's current post-event recoupment
5 structure.

6 (2) CAPITAL RESERVE FUND.—With respect to
7 the capital reserve fund described in subsection
8 (a)(2)—

9 (A) how the creation of a capital reserve
10 fund would affect the Federal Government's fis-
11 cal exposure under the Terrorism Risk Insur-
12 ance Program and the ability of the Program to
13 meet its statutory purposes;

14 (B) how a capital reserve fund would im-
15 pact insurers and reinsurers, including liquidity,
16 insurance pricing, and capacity to provide ter-
17 rorism risk coverage;

18 (C) the feasibility of segregating funds at-
19 tributable to terrorism risk from funds attrib-
20 utable to other insurance lines;

21 (D) how a capital reserve fund would be
22 viewed and treated under current Financial Ac-
23 counting Standards Board accounting rules and
24 the tax laws; and

1 (E) how a capital reserve fund would affect
2 the States' ability to regulate insurers partici-
3 pating in the Program.

4 (3) INTERNATIONAL PRACTICES.—With respect
5 to international markets referred to in paragraphs
6 (1) and (2) of subsection (a), how other countries,
7 if any—

8 (A) have established terrorism insurance
9 structures;

10 (B) charge premiums or otherwise collect
11 funds to pay for the costs of terrorism insur-
12 ance structures, including risk and administra-
13 tive costs; and

14 (C) have established capital reserve funds
15 to pay for the costs of terrorism insurance
16 structures.

17 (c) REPORT.—Upon completion of the study required
18 under subsection (a), the Comptroller General shall sub-
19 mit a report on the results of such study to the Committee
20 on Banking, Housing, and Urban Affairs of the Senate
21 and the Committee on Financial Services of the House of
22 Representatives.

23 (d) PUBLIC AVAILABILITY.—The study and report
24 required under this section shall be made available to the

1 public in electronic form and shall be published on the
 2 website of the Government Accountability Office.

3 **SEC. 109. MEMBERSHIP OF BOARD OF GOVERNORS OF THE**
 4 **FEDERAL RESERVE SYSTEM.**

5 (a) IN GENERAL.—The first undesignated paragraph
 6 of section 10 of the Federal Reserve Act (12 U.S.C. 241)
 7 is amended by inserting after the second sentence the fol-
 8 lowing: “In selecting members of the Board, the President
 9 shall appoint at least 1 member with demonstrated pri-
 10 mary experience working in or supervising community
 11 banks having less than \$10,000,000,000 in total assets.”.

12 (b) EFFECTIVE DATE.—The amendment made by
 13 this section shall take effect on the date of enactment of
 14 this Act and apply to appointments made on and after
 15 that effective date, excluding any nomination pending in
 16 the Senate on that date.

17 **SEC. 110. ADVISORY COMMITTEE ON RISK-SHARING MECH-**
 18 **ANISMS.**

19 (a) FINDING; RULE OF CONSTRUCTION.—

20 (1) FINDING.—Congress finds that it is desir-
 21 able to encourage the growth of nongovernmental,
 22 private market reinsurance capacity for protection
 23 against losses arising from acts of terrorism.

24 (2) RULE OF CONSTRUCTION.—Nothing in this
 25 Act, any amendment made by this Act, or the Ter-

1 rorism Risk Insurance Act of 2002 (15 U.S.C. 6701
2 note) shall prohibit insurers from developing risk-
3 sharing mechanisms to voluntarily reinsure terrorism
4 losses between and among themselves.

5 (b) ADVISORY COMMITTEE ON RISK-SHARING MECH-
6 ANISMS.—

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

12 (2) DUTIES.—The Advisory Committee shall
13 provide advice, recommendations, and encourage-
14 ment with respect to the creation and development
15 of the nongovernmental risk-sharing mechanisms de-
16 scribed under subsection (a).

17 (3) MEMBERSHIP.—The Advisory Committee
18 shall be composed of 9 members who are directors,
19 officers, or other employees of insurers, reinsurers,
20 or capital market participants that are participating
21 or that desire to participate in the nongovernmental
22 risk-sharing mechanisms described under subsection
23 (a), and who are representative of the affected sec-
24 tors of the insurance industry, including commercial

1 property insurance, commercial casualty insurance,
2 reinsurance, and alternative risk transfer industries.

3 **SEC. 111. REPORTING OF TERRORISM INSURANCE DATA.**

4 Section 104 (15 U.S.C. 6701 note) is amended by
5 adding at the end the following new subsection:

6 “(h) REPORTING OF TERRORISM INSURANCE
7 DATA.—

8 “(1) AUTHORITY.—During the calendar year
9 beginning on January 1, 2016, and in each calendar
10 year thereafter, the Secretary shall require insurers
11 participating in the Program to submit to the Sec-
12 retary such information regarding insurance cov-
13 erage for terrorism losses of such insurers as the
14 Secretary considers appropriate to analyze the effec-
15 tiveness of the Program, which shall include infor-
16 mation regarding—

17 “(A) lines of insurance with exposure to
18 such losses;

19 “(B) premiums earned on such coverage;

20 “(C) geographical location of exposures;

21 “(D) pricing of such coverage;

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

23 “(F) the amount of private reinsurance for
24 acts of terrorism purchased; and

1 “(G) such other matters as the Secretary
2 considers appropriate.

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

9 “(A) an analysis of the overall effectiveness
10 of the Program;

11 “(B) an evaluation of any changes or
12 trends in the data collected under paragraph
13 (1);

14 “(C) an evaluation of whether any aspects
15 of the Program have the effect of discouraging
16 or impeding insurers from providing commercial
17 property casualty insurance coverage or cov-
18 erage for acts of terrorism;

19 “(D) an evaluation of the impact of the
20 Program on workers’ compensation insurers;
21 and

22 “(E) in the case of the data reported in
23 paragraph (1)(B), an updated estimate of the
24 total amount earned since January 1, 2003.

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

9 “(4) ADVANCE COORDINATION.—Before col-
10 lecting any data or information under paragraph (1)
11 from an insurer, or affiliate of an insurer, the Sec-
12 retary shall coordinate with the appropriate State in-
13 surance regulatory authorities and any relevant gov-
14 ernment agency or publicly available sources to de-
15 termine if the information to be collected is available
16 from, and may be obtained in a timely manner by,
17 individually or collectively, such entities. If the Sec-
18 retary determines that such data or information is
19 available, and may be obtained in a timely matter,
20 from such entities, the Secretary shall obtain the
21 data or information from such entities. If the Sec-
22 retary determines that such data or information is
23 not so available, the Secretary may collect such data
24 or information from an insurer and affiliates.

25 “(5) CONFIDENTIALITY.—

1 “(A) RETENTION OF PRIVILEGE.—The
2 submission of any non-publicly available data
3 and information to the Secretary and the shar-
4 ing of any non-publicly available data with or
5 by the Secretary among other Federal agencies,
6 the State insurance regulatory authorities, or
7 any other entities under this subsection shall
8 not constitute a waiver of, or otherwise affect,
9 any privilege arising under Federal or State law
10 (including the rules of any Federal or State
11 court) to which the data or information is oth-
12 erwise subject.

13 “(B) CONTINUED APPLICATION OF PRIOR
14 CONFIDENTIALITY AGREEMENTS.—Any require-
15 ment under Federal or State law to the extent
16 otherwise applicable, or any requirement pursu-
17 ant to a written agreement in effect between
18 the original source of any non-publicly available
19 data or information and the source of such data
20 or information to the Secretary, regarding the
21 privacy or confidentiality of any data or infor-
22 mation in the possession of the source to the
23 Secretary, shall continue to apply to such data
24 or information after the data or information
25 has been provided pursuant to this subsection.

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

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

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

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

SEC. 112. ANNUAL STUDY OF SMALL INSURER MARKET COMPETITIVENESS.

Section 108 (15 U.S.C. 6701 note) is amended by adding at the end the following new subsection:

1 “(h) STUDY OF SMALL INSURER MARKET COMPETI-
2 TIVENESS.—

3 “(1) IN GENERAL.—Not later than June 30,
4 2017, and every other June 30 thereafter, the Sec-
5 retary shall conduct a study of small insurers (as
6 such term is defined by regulation by the Secretary)
7 participating in the Program, and identify any com-
8 petitive challenges small insurers face in the ter-
9 rorism risk insurance marketplace, including—

10 “(A) changes to the market share, pre-
11 mium volume, and policyholder surplus of small
12 insurers relative to large insurers;

13 “(B) how the property and casualty insur-
14 ance market for terrorism risk differs between
15 small and large insurers, and whether such a
16 difference exists within other perils;

17 “(C) the impact of the Program’s manda-
18 tory availability requirement under section
19 103(c) on small insurers;

20 “(D) the effect of increasing the trigger
21 amount for the Program under section
22 103(e)(1)(B) on small insurers;

23 “(E) the availability and cost of private re-
24 insurance for small insurers; and

1 “(F) the impact that State workers com-
 2 pensation laws have on small insurers and
 3 workers compensation carriers in the terrorism
 4 risk insurance marketplace.

5 “(2) REPORT.—The Secretary shall submit a
 6 report to the Congress setting forth the findings and
 7 conclusions of each study required under paragraph
 8 (1).”.

9 **TITLE II—NATIONAL ASSOCIA-**
 10 **TION OF REGISTERED**
 11 **AGENTS AND BROKERS RE-**
 12 **FORM**

13 **SEC. 201. SHORT TITLE.**

14 This title may be cited as the “National Association
 15 of Registered Agents and Brokers Reform Act of 2015”.

16 **SEC. 202. REESTABLISHMENT OF THE NATIONAL ASSOCIA-**
 17 **TION OF REGISTERED AGENTS AND BRO-**
 18 **KERS.**

19 (a) IN GENERAL.—Subtitle C of title III of the
 20 Gramm-Leach-Bliley Act (15 U.S.C. 6751 et seq.) is
 21 amended to read as follows:

1 **“Subtitle C—National Association**
2 **of Registered Agents and Brokers**

3 **“SEC. 321. NATIONAL ASSOCIATION OF REGISTERED**
4 **AGENTS AND BROKERS.**

5 “(a) ESTABLISHMENT.—There is established the Na-
6 tional Association of Registered Agents and Brokers (re-
7 ferred to in this subtitle as the ‘Association’).

8 “(b) STATUS.—The Association shall—

9 “(1) be a nonprofit corporation;

10 “(2) not be an agent or instrumentality of the
11 Federal Government;

12 “(3) be an independent organization that may
13 not be merged with or into any other private or pub-
14 lic entity; and

15 “(4) except as otherwise provided in this sub-
16 title, be subject to, and have all the powers conferred
17 upon, a nonprofit corporation by the District of Co-
18 lumbia Nonprofit Corporation Act (D.C. Code, sec.
19 29–301.01 et seq.) or any successor thereto.

20 **“SEC. 322. PURPOSE.**

21 “The purpose of the Association shall be to provide
22 a mechanism through which licensing, continuing edu-
23 cation, and other nonresident insurance producer quali-
24 fication requirements and conditions may be adopted and
25 applied on a multi-state basis without affecting the laws,

1 rules, and regulations, and preserving the rights of a
 2 State, pertaining to—

3 “(1) licensing, continuing education, and other
 4 qualification requirements of insurance producers
 5 that are not members of the Association;

6 “(2) resident or nonresident insurance producer
 7 appointment requirements;

8 “(3) supervising and disciplining resident and
 9 nonresident insurance producers;

10 “(4) establishing licensing fees for resident and
 11 nonresident insurance producers so that there is no
 12 loss of insurance producer licensing revenue to the
 13 State; and

14 “(5) prescribing and enforcing laws and regula-
 15 tions regulating the conduct of resident and non-
 16 resident insurance producers.

17 **“SEC. 323. MEMBERSHIP.**

18 “(a) **ELIGIBILITY.**—

19 “(1) **IN GENERAL.**—Any insurance producer li-
 20 censed in its home State shall, subject to paragraphs
 21 (2) and (4), be eligible to become a member of the
 22 Association.

23 “(2) **INELIGIBILITY FOR SUSPENSION OR REV-**
 24 **OCATION OF LICENSE.**—Subject to paragraph (3),
 25 an insurance producer is not eligible to become a

1 member of the Association if a State insurance regu-
2 lator has suspended or revoked the insurance license
3 of the insurance producer in that State.

4 “(3) RESUMPTION OF ELIGIBILITY.—Paragraph
5 (2) shall cease to apply to any insurance producer
6 if—

7 “(A) the State insurance regulator reissues
8 or renews the license of the insurance producer
9 in the State in which the license was suspended
10 or revoked, or otherwise terminates or vacates
11 the suspension or revocation; or

12 “(B) the suspension or revocation expires
13 or is subsequently overturned by a court of
14 competent jurisdiction.

15 “(4) CRIMINAL HISTORY RECORD CHECK RE-
16 QUIRED.—

17 “(A) IN GENERAL.—An insurance pro-
18 ducer who is an individual shall not be eligible
19 to become a member of the Association unless
20 the insurance producer has undergone a crimi-
21 nal history record check that complies with reg-
22 ulations prescribed by the Attorney General of
23 the United States under subparagraph (K).

24 “(B) CRIMINAL HISTORY RECORD CHECK
25 REQUESTED BY HOME STATE.—An insurance

1 producer who is licensed in a State and who has
2 undergone a criminal history record check dur-
3 ing the 2-year period preceding the date of sub-
4 mission of an application to become a member
5 of the Association, in compliance with a re-
6 quirement to undergo such criminal history
7 record check as a condition for such licensure
8 in the State, shall be deemed to have undergone
9 a criminal history record check for purposes of
10 subparagraph (A).

11 “(C) CRIMINAL HISTORY RECORD CHECK
12 REQUESTED BY ASSOCIATION.—

13 “(i) IN GENERAL.—The Association
14 shall, upon request by an insurance pro-
15 ducer licensed in a State, submit finger-
16 prints or other identification information
17 obtained from the insurance producer, and
18 a request for a criminal history record
19 check of the insurance producer, to the
20 Federal Bureau of Investigation.

21 “(ii) PROCEDURES.—The board of di-
22 rectors of the Association (referred to in
23 this subtitle as the ‘Board’) shall prescribe
24 procedures for obtaining and utilizing fin-
25 gerprints or other identification informa-

1 tion and criminal history record informa-
2 tion, including the establishment of reason-
3 able fees to defray the expenses of the As-
4 sociation in connection with the perform-
5 ance of a criminal history record check and
6 appropriate safeguards for maintaining
7 confidentiality and security of the informa-
8 tion. Any fees charged pursuant to this
9 clause shall be separate and distinct from
10 those charged by the Attorney General
11 pursuant to subparagraph (I).

12 “(D) FORM OF REQUEST.—A submission
13 under subparagraph (C)(i) shall include such
14 fingerprints or other identification information
15 as is required by the Attorney General con-
16 cerning the person about whom the criminal
17 history record check is requested, and a state-
18 ment signed by the person authorizing the At-
19 torney General to provide the information to
20 the Association and for the Association to re-
21 ceive the information.

22 “(E) PROVISION OF INFORMATION BY AT-
23 TORNEY GENERAL.—Upon receiving a submis-
24 sion under subparagraph (C)(i) from the Asso-
25 ciation, the Attorney General shall search all

1 criminal history records of the Federal Bureau
2 of Investigation, including records of the Crimi-
3 nal Justice Information Services Division of the
4 Federal Bureau of Investigation, that the At-
5 torney General determines appropriate for
6 criminal history records corresponding to the
7 fingerprints or other identification information
8 provided under subparagraph (D) and provide
9 all criminal history record information included
10 in the request to the Association.

11 “(F) LIMITATION ON PERMISSIBLE USES
12 OF INFORMATION.—Any information provided
13 to the Association under subparagraph (E) may
14 only—

15 “(i) be used for purposes of deter-
16 mining compliance with membership cri-
17 teria established by the Association;

18 “(ii) be disclosed to State insurance
19 regulators, or Federal or State law en-
20 forcement agencies, in conformance with
21 applicable law; or

22 “(iii) be disclosed, upon request, to
23 the insurance producer to whom the crimi-
24 nal history record information relates.

1 “(G) PENALTY FOR IMPROPER USE OR
2 DISCLOSURE.—Whoever knowingly uses any in-
3 formation provided under subparagraph (E) for
4 a purpose not authorized in subparagraph (F),
5 or discloses any such information to anyone not
6 authorized to receive it, shall be fined not more
7 than \$50,000 per violation as determined by a
8 court of competent jurisdiction.

9 “(H) RELIANCE ON INFORMATION.—Nei-
10 ther the Association nor any of its Board mem-
11 bers, officers, or employees shall be liable in
12 any action for using information provided under
13 subparagraph (E) as permitted under subpara-
14 graph (F) in good faith and in reasonable reli-
15 ance on its accuracy.

16 “(I) FEES.—The Attorney General may
17 charge a reasonable fee for conducting the
18 search and providing the information under
19 subparagraph (E), and any such fee shall be
20 collected and remitted by the Association to the
21 Attorney General.

22 “(J) RULE OF CONSTRUCTION.—Nothing
23 in this paragraph shall be construed as—

1 “(i) requiring a State insurance regu-
2 lator to perform criminal history record
3 checks under this section; or

4 “(ii) limiting any other authority that
5 allows access to criminal history records.

6 “(K) REGULATIONS.—The Attorney Gen-
7 eral shall prescribe regulations to carry out this
8 paragraph, which shall include—

9 “(i) appropriate protections for ensur-
10 ing the confidentiality of information pro-
11 vided under subparagraph (E); and

12 “(ii) procedures providing a reason-
13 able opportunity for an insurance producer
14 to contest the accuracy of information re-
15 garding the insurance producer provided
16 under subparagraph (E).

17 “(L) INELIGIBILITY FOR MEMBERSHIP.—

18 “(i) IN GENERAL.—The Association
19 may, under reasonably consistently applied
20 standards, deny membership to an insur-
21 ance producer on the basis of criminal his-
22 tory record information provided under
23 subparagraph (E), or where the insurance
24 producer has been subject to disciplinary
25 action, as described in paragraph (2).

1 “(ii) RIGHTS OF APPLICANTS DENIED
2 MEMBERSHIP.—The Association shall no-
3 tify any insurance producer who is denied
4 membership on the basis of criminal his-
5 tory record information provided under
6 subparagraph (E) of the right of the insur-
7 ance producer to—

8 “(I) obtain a copy of all criminal
9 history record information provided to
10 the Association under subparagraph
11 (E) with respect to the insurance pro-
12 ducer; and

13 “(II) challenge the denial of
14 membership based on the accuracy
15 and completeness of the information.

16 “(M) DEFINITION.—For purposes of this
17 paragraph, the term ‘criminal history record
18 check’ means a national background check of
19 criminal history records of the Federal Bureau
20 of Investigation.

21 “(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
22 TERIA.—The Association may establish membership cri-
23 teria that bear a reasonable relationship to the purposes
24 for which the Association was established.

1 “(c) ESTABLISHMENT OF CLASSES AND CATEGORIES
2 OF MEMBERSHIP.—

3 “(1) CLASSES OF MEMBERSHIP.—The Associa-
4 tion may establish separate classes of membership,
5 with separate criteria, if the Association reasonably
6 determines that performance of different duties re-
7 quires different levels of education, training, experi-
8 ence, or other qualifications.

9 “(2) BUSINESS ENTITIES.—The Association
10 shall establish a class of membership and member-
11 ship criteria for business entities. A business entity
12 that applies for membership shall be required to des-
13 ignate an individual Association member responsible
14 for the compliance of the business entity with Asso-
15 ciation standards and the insurance laws, standards,
16 and regulations of any State in which the business
17 entity seeks to do business on the basis of Associa-
18 tion membership.

19 “(3) CATEGORIES.—

20 “(A) SEPARATE CATEGORIES FOR INSUR-
21 ANCE PRODUCERS PERMITTED.—The Associa-
22 tion may establish separate categories of mem-
23 bership for insurance producers and for other
24 persons or entities within each class, based on

1 the types of licensing categories that exist
2 under State laws.

3 “(B) SEPARATE TREATMENT FOR DEPOSI-
4 TORY INSTITUTIONS PROHIBITED.—No special
5 categories of membership, and no distinct mem-
6 bership criteria, shall be established for mem-
7 bers that are depository institutions or for em-
8 ployees, agents, or affiliates of depository insti-
9 tutions.

10 “(d) MEMBERSHIP CRITERIA.—

11 “(1) IN GENERAL.—The Association may estab-
12 lish criteria for membership which shall include
13 standards for personal qualifications, education,
14 training, and experience. The Association shall not
15 establish criteria that unfairly limit the ability of a
16 small insurance producer to become a member of the
17 Association, including imposing discriminatory mem-
18 bership fees.

19 “(2) QUALIFICATIONS.—In establishing criteria
20 under paragraph (1), the Association shall not adopt
21 any qualification less protective to the public than
22 that contained in the National Association of Insur-
23 ance Commissioners (referred to in this subtitle as
24 the ‘NAIC’) Producer Licensing Model Act in effect
25 as of the date of enactment of the National Associa-

tion of Registered Agents and Brokers Reform Act of 2015, and shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

“(3) ASSISTANCE FROM STATES.—

“(A) IN GENERAL.—The Association may request a State to provide assistance in investigating and evaluating the eligibility of a prospective member for membership in the Association.

“(B) AUTHORIZATION OF INFORMATION SHARING.—A submission under subsection (a)(4)(C)(i) made by an insurance producer licensed in a State shall include a statement signed by the person about whom the assistance is requested authorizing—

“(i) the State to share information with the Association; and

“(ii) the Association to receive the information.

“(C) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as requiring or authorizing any State to adopt new or additional requirements concerning the licensing or evaluation of insurance producers.

1 “(4) DENIAL OF MEMBERSHIP.—The Associa-
2 tion may, based on reasonably consistently applied
3 standards, deny membership to any State-licensed
4 insurance producer for failure to meet the member-
5 ship criteria established by the Association.

6 “(e) EFFECT OF MEMBERSHIP.—

7 “(1) AUTHORITY OF ASSOCIATION MEMBERS.—
8 Membership in the Association shall—

9 “(A) authorize an insurance producer to
10 sell, solicit, or negotiate insurance in any State
11 for which the member pays the licensing fee set
12 by the State for any line or lines of insurance
13 specified in the home State license of the insur-
14 ance producer, and exercise all such incidental
15 powers as shall be necessary to carry out such
16 activities, including claims adjustments and set-
17 tlement to the extent permissible under the laws
18 of the State, risk management, employee bene-
19 fits advice, retirement planning, and any other
20 insurance-related consulting activities;

21 “(B) be the equivalent of a nonresident in-
22 surance producer license for purposes of author-
23 izing the insurance producer to engage in the
24 activities described in subparagraph (A) in any

1 State where the member pays the licensing fee;
2 and

3 “(C) be the equivalent of a nonresident in-
4 surance producer license for the purpose of sub-
5 jecting an insurance producer to all laws, regu-
6 lations, provisions or other action of any State
7 concerning revocation, suspension, or other en-
8 forcement action related to the ability of a
9 member to engage in any activity within the
10 scope of authority granted under this subsection
11 and to all State laws, regulations, provisions,
12 and actions preserved under paragraph (5).

13 “(2) VIOLENT CRIME CONTROL AND LAW EN-
14 FORCEMENT ACT OF 1994.—Nothing in this subtitle
15 shall be construed to alter, modify, or supercede any
16 requirement established by section 1033 of title 18,
17 United States Code.

18 “(3) AGENT FOR REMITTING FEES.—The Asso-
19 ciation shall act as an agent for any member for
20 purposes of remitting licensing fees to any State
21 pursuant to paragraph (1).

22 “(4) NOTIFICATION OF ACTION.—

23 “(A) IN GENERAL.—The Association shall
24 notify the States (including State insurance
25 regulators) and the NAIC when an insurance

1 producer has satisfied the membership criteria
2 of this section. The States (including State in-
3 surance regulators) shall have 10 business days
4 after the date of the notification in order to
5 provide the Association with evidence that the
6 insurance producer does not satisfy the criteria
7 for membership in the Association.

8 “(B) ONGOING DISCLOSURES REQUIRED.—

9 On an ongoing basis, the Association shall dis-
10 close to the States (including State insurance
11 regulators) and the NAIC a list of the States
12 in which each member is authorized to operate.
13 The Association shall immediately notify the
14 States (including State insurance regulators)
15 and the NAIC when a member is newly author-
16 ized to operate in one or more States, or is no
17 longer authorized to operate in one or more
18 States on the basis of Association membership.

19 “(5) PRESERVATION OF CONSUMER PROTEC-
20 TION AND MARKET CONDUCT REGULATION.—

21 “(A) IN GENERAL.—No provision of this
22 section shall be construed as altering or affect-
23 ing the applicability or continuing effectiveness
24 of any law, regulation, provision, or other action
25 of any State, including those described in sub-

paragraph (B), to the extent that the State law, regulation, provision, or other action is not inconsistent with the provisions of this subtitle related to market entry for nonresident insurance producers, and then only to the extent of the inconsistency.

“(B) PRESERVED REGULATIONS.—The laws, regulations, provisions, or other actions of any State referred to in subparagraph (A) include laws, regulations, provisions, or other actions that—

“(i) regulate market conduct, insurance producer conduct, or unfair trade practices;

“(ii) establish consumer protections;

or

“(iii) require insurance producers to be appointed by a licensed or authorized insurer.

“(f) BIENNIAL RENEWAL.—Membership in the Association shall be renewed on a biennial basis.

“(g) CONTINUING EDUCATION.—

“(1) IN GENERAL.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to

1 the continuing education requirements under the li-
2 censing laws of a majority of the States.

3 “(2) STATE CONTINUING EDUCATION REQUIRE-
4 MENTS.—A member may not be required to satisfy
5 continuing education requirements imposed under
6 the laws, regulations, provisions, or actions of any
7 State other than the home State of the member.

8 “(3) RECIPROCITY.—The Association shall not
9 require a member to satisfy continuing education re-
10 quirements that are equivalent to any continuing
11 education requirements of the home State of the
12 member that have been satisfied by the member dur-
13 ing the applicable licensing period.

14 “(4) LIMITATION ON THE ASSOCIATION.—The
15 Association shall not directly or indirectly offer any
16 continuing education courses for insurance pro-
17 ducers.

18 “(h) PROBATION, SUSPENSION AND REVOCATION.—

19 “(1) DISCIPLINARY ACTION.—The Association
20 may place an insurance producer that is a member
21 of the Association on probation or suspend or revoke
22 the membership of the insurance producer in the As-
23 sociation, or assess monetary fines or penalties, as
24 the Association determines to be appropriate, if—

1 “(A) the insurance producer fails to meet
2 the applicable membership criteria or other
3 standards established by the Association;

4 “(B) the insurance producer has been sub-
5 ject to disciplinary action pursuant to a final
6 adjudicatory proceeding under the jurisdiction
7 of a State insurance regulator;

8 “(C) an insurance license held by the in-
9 surance producer has been suspended or re-
10 voked by a State insurance regulator; or

11 “(D) the insurance producer has been con-
12 victed of a crime that would have resulted in
13 the denial of membership pursuant to sub-
14 section (a)(4)(L)(i) at the time of application,
15 and the Association has received a copy of the
16 final disposition from a court of competent ju-
17 risdiction.

18 “(2) VIOLATIONS OF ASSOCIATION STAND-
19 ARDS.—The Association shall have the power to in-
20 vestigate alleged violations of Association standards.

21 “(3) REPORTING.—The Association shall imme-
22 diately notify the States (including State insurance
23 regulators) and the NAIC when the membership of
24 an insurance producer has been placed on probation
25 or has been suspended, revoked, or otherwise termi-

1 nated, or when the Association has assessed mone-
2 tary fines or penalties.

3 “(i) CONSUMER COMPLAINTS.—

4 “(1) IN GENERAL.—The Association shall—

5 “(A) refer any complaint against a mem-
6 ber of the Association from a consumer relating
7 to alleged misconduct or violations of State in-
8 surance laws to the State insurance regulator
9 where the consumer resides and, when appro-
10 priate, to any additional State insurance regu-
11 lator, as determined by standards adopted by
12 the Association; and

13 “(B) make any related records and infor-
14 mation available to each State insurance regu-
15 lator to whom the complaint is forwarded.

16 “(2) TELEPHONE AND OTHER ACCESS.—The
17 Association shall maintain a toll-free number for
18 purposes of this subsection and, as practicable, other
19 alternative means of communication with consumers,
20 such as an Internet webpage.

21 “(3) FINAL DISPOSITION OF INVESTIGATION.—
22 State insurance regulators shall provide the Associa-
23 tion with information regarding the final disposition
24 of a complaint referred pursuant to paragraph
25 (1)(A), but nothing shall be construed to compel a

1 State to release confidential investigation reports or
2 other information protected by State law to the As-
3 sociation.

4 “(j) INFORMATION SHARING.—The Association
5 may—

6 “(1) share documents, materials, or other infor-
7 mation, including confidential and privileged docu-
8 ments, with a State, Federal, or international gov-
9 ernmental entity or with the NAIC or other appro-
10 priate entity referred to paragraphs (3) and (4),
11 provided that the recipient has the authority and
12 agrees to maintain the confidentiality or privileged
13 status of the document, material, or other informa-
14 tion;

15 “(2) limit the sharing of information as re-
16 quired under this subtitle with the NAIC or any
17 other non-governmental entity, in circumstances
18 under which the Association determines that the
19 sharing of such information is unnecessary to fur-
20 ther the purposes of this subtitle;

21 “(3) establish a central clearinghouse, or utilize
22 the NAIC or another appropriate entity, as deter-
23 mined by the Association, as a central clearinghouse,
24 for use by the Association and the States (including
25 State insurance regulators), through which members

1 of the Association may disclose their intent to oper-
2 ate in 1 or more States and pay the licensing fees
3 to the appropriate States; and

4 “(4) establish a database, or utilize the NAIC
5 or another appropriate entity, as determined by the
6 Association, as a database, for use by the Associa-
7 tion and the States (including State insurance regu-
8 lators) for the collection of regulatory information
9 concerning the activities of insurance producers.

10 “(k) EFFECTIVE DATE.—The provisions of this sec-
11 tion shall take effect on the later of—

12 “(1) the expiration of the 2-year period begin-
13 ning on the date of enactment of the National Asso-
14 ciation of Registered Agents and Brokers Reform
15 Act of 2015; and

16 “(2) the date of incorporation of the Associa-
17 tion.

18 **“SEC. 324. BOARD OF DIRECTORS.**

19 “(a) ESTABLISHMENT.—There is established a board
20 of directors of the Association, which shall have authority
21 to govern and supervise all activities of the Association.

22 “(b) POWERS.—The Board shall have such of the
23 powers and authority of the Association as may be speci-
24 fied in the bylaws of the Association.

25 “(c) COMPOSITION.—

1 “(1) IN GENERAL.—The Board shall consist of
2 13 members who shall be appointed by the Presi-
3 dent, by and with the advice and consent of the Sen-
4 ate, in accordance with the procedures established
5 under Senate Resolution 116 of the 112th Congress,
6 of whom—

7 “(A) 8 shall be State insurance commis-
8 sioners appointed in the manner provided in
9 paragraph (2), 1 of whom shall be designated
10 by the President to serve as the chairperson of
11 the Board until the Board elects one such State
12 insurance commissioner Board member to serve
13 as the chairperson of the Board;

14 “(B) 3 shall have demonstrated expertise
15 and experience with property and casualty in-
16 surance producer licensing; and

17 “(C) 2 shall have demonstrated expertise
18 and experience with life or health insurance
19 producer licensing.

20 “(2) STATE INSURANCE REGULATOR REP-
21 RESENTATIVES.—

22 “(A) RECOMMENDATIONS.—Before making
23 any appointments pursuant to paragraph
24 (1)(A), the President shall request a list of rec-
25 ommended candidates from the States through

1 the NAIC, which shall not be binding on the
2 President. If the NAIC fails to submit a list of
3 recommendations not later than 15 business
4 days after the date of the request, the President
5 may make the requisite appointments without
6 considering the views of the NAIC.

7 “(B) POLITICAL AFFILIATION.—Not more
8 than 4 Board members appointed under para-
9 graph (1)(A) shall belong to the same political
10 party.

11 “(C) FORMER STATE INSURANCE COMMIS-
12 SIONERS.—

13 “(i) IN GENERAL.—If, after offering
14 each currently serving State insurance
15 commissioner an appointment to the
16 Board, fewer than 8 State insurance com-
17 missioners have accepted appointment to
18 the Board, the President may appoint the
19 remaining State insurance commissioner
20 Board members, as required under para-
21 graph (1)(A), of the appropriate political
22 party as required under subparagraph (B),
23 from among individuals who are former
24 State insurance commissioners.

1 “(ii) LIMITATION.—A former State
2 insurance commissioner appointed as de-
3 scribed in clause (i) may not be employed
4 by or have any present direct or indirect fi-
5 nancial interest in any insurer, insurance
6 producer, or other entity in the insurance
7 industry, other than direct or indirect own-
8 ership of, or beneficial interest in, an in-
9 surance policy or annuity contract written
10 or sold by an insurer.

11 “(D) SERVICE THROUGH TERM.—If a
12 Board member appointed under paragraph
13 (1)(A) ceases to be a State insurance commis-
14 sioner during the term of the Board member,
15 the Board member shall cease to be a Board
16 member.

17 “(3) PRIVATE SECTOR REPRESENTATIVES.—In
18 making any appointment pursuant to subparagraph
19 (B) or (C) of paragraph (1), the President may seek
20 recommendations for candidates from groups rep-
21 resenting the category of individuals described,
22 which shall not be binding on the President.

23 “(4) STATE INSURANCE COMMISSIONER DE-
24 FINED.—For purposes of this subsection, the term
25 ‘State insurance commissioner’ means a person who

1 serves in the position in State government, or on the
2 board, commission, or other body that is the primary
3 insurance regulatory authority for the State.

4 “(d) TERMS.—

5 “(1) IN GENERAL.—Except as provided under
6 paragraph (2), the term of service for each Board
7 member shall be 2 years.

8 “(2) EXCEPTIONS.—

9 “(A) 1-YEAR TERMS.—The term of service
10 shall be 1 year, as designated by the President
11 at the time of the nomination of the subject
12 Board members for—

13 “(i) 4 of the State insurance commis-
14 sioner Board members initially appointed
15 under paragraph (1)(A), of whom not more
16 than 2 shall belong to the same political
17 party;

18 “(ii) 1 of the Board members initially
19 appointed under paragraph (1)(B); and

20 “(iii) 1 of the Board members initially
21 appointed under paragraph (1)(C).

22 “(B) EXPIRATION OF TERM.—A Board
23 member may continue to serve after the expira-
24 tion of the term to which the Board member

1 was appointed for the earlier of 2 years or until
2 a successor is appointed.

3 “(C) MID-TERM APPOINTMENTS.—A
4 Board member appointed to fill a vacancy oc-
5 curring before the expiration of the term for
6 which the predecessor of the Board member
7 was appointed shall be appointed only for the
8 remainder of that term.

9 “(3) SUCCESSIVE TERMS.—Board members
10 may be reappointed to successive terms.

11 “(e) INITIAL APPOINTMENTS.—The appointment of
12 initial Board members shall be made no later than 90 days
13 after the date of enactment of the National Association
14 of Registered Agents and Brokers Reform Act of 2015.

15 “(f) MEETINGS.—

16 “(1) IN GENERAL.—The Board shall meet—

17 “(A) at the call of the chairperson;

18 “(B) as requested in writing to the chair-
19 person by not fewer than 5 Board members; or

20 “(C) as otherwise provided by the bylaws
21 of the Association.

22 “(2) QUORUM REQUIRED.—A majority of all
23 Board members shall constitute a quorum.

1 “(3) VOTING.—Decisions of the Board shall re-
2 quire the approval of a majority of all Board mem-
3 bers present at a meeting, a quorum being present.

4 “(4) INITIAL MEETING.—The Board shall hold
5 its first meeting not later than 45 days after the
6 date on which all initial Board members have been
7 appointed.

8 “(g) RESTRICTION ON CONFIDENTIAL INFORMA-
9 TION.—Board members appointed pursuant to subpara-
10 graphs (B) and (C) of subsection (c)(1) shall not have ac-
11 cess to confidential information received by the Associa-
12 tion in connection with complaints, investigations, or dis-
13 ciplinary proceedings involving insurance producers.

14 “(h) ETHICS AND CONFLICTS OF INTEREST.—The
15 Board shall issue and enforce an ethical conduct code to
16 address permissible and prohibited activities of Board
17 members and Association officers, employees, agents, or
18 consultants. The code shall, at a minimum, include provi-
19 sions that prohibit any Board member or Association offi-
20 cer, employee, agent or consultant from—

21 “(1) engaging in unethical conduct in the
22 course of performing Association duties;

23 “(2) participating in the making or influencing
24 the making of any Association decision, the outcome
25 of which the Board member, officer, employee,

1 agent, or consultant knows or had reason to know
2 would have a reasonably foreseeable material finan-
3 cial effect, distinguishable from its effect on the pub-
4 lic generally, on the person or a member of the im-
5 mediate family of the person;

6 “(3) accepting any gift from any person or enti-
7 ty other than the Association that is given because
8 of the position held by the person in the Association;

9 “(4) making political contributions to any per-
10 son or entity on behalf of the Association; and

11 “(5) lobbying or paying a person to lobby on
12 behalf of the Association.

13 “(i) COMPENSATION.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), no Board member may receive any com-
16 pensation from the Association or any other person
17 or entity on account of Board membership.

18 “(2) TRAVEL EXPENSES AND PER DIEM.—
19 Board members may be reimbursed only by the As-
20 sociation for travel expenses, including per diem in
21 lieu of subsistence, at rates consistent with rates au-
22 thorized for employees of Federal agencies under
23 subchapter I of chapter 57 of title 5, United States
24 Code, while away from home or regular places of

1 business in performance of services for the Associa-
2 tion.

3 **“SEC. 325. BYLAWS, STANDARDS, AND DISCIPLINARY AC-**
4 **TIONS.**

5 “(a) ADOPTION AND AMENDMENT OF BYLAWS AND
6 STANDARDS.—

7 “(1) PROCEDURES.—The Association shall
8 adopt procedures for the adoption of bylaws and
9 standards that are similar to procedures under sub-
10 chapter II of chapter 5 of title 5, United States
11 Code (commonly known as the ‘Administrative Pro-
12 cedure Act’).

13 “(2) COPY REQUIRED TO BE FILED.—The
14 Board shall submit to the President, through the
15 Department of the Treasury, and the States (includ-
16 ing State insurance regulators), and shall publish on
17 the website of the Association, all proposed bylaws
18 and standards of the Association, or any proposed
19 amendment to the bylaws or standards of the Asso-
20 ciation, accompanied by a concise general statement
21 of the basis and purpose of such proposal.

22 “(3) EFFECTIVE DATE.—Any proposed bylaw
23 or standard of the Association, and any proposed
24 amendment to the bylaws or standards of the Asso-
25 ciation, shall take effect, after notice under para-

graph (2) and opportunity for public comment, on such date as the Association may designate, unless suspended under section 329(c).

“(4) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to subject the Board or the Association to the requirements of subchapter II of chapter 5 of title 5, United States Code (commonly known as the ‘Administrative Procedure Act’).

“(b) DISCIPLINARY ACTION BY THE ASSOCIATION.—

“(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed, or to determine whether a member of the Association should be placed on probation (referred to in this section as a ‘disciplinary action’) or whether to assess fines or monetary penalties, the Association shall bring specific charges, notify the member of the charges, give the member an opportunity to defend against the charges, and keep a record.

“(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—

“(A) any act or practice in which the member has been found to have been engaged;

1 “(B) the specific provision of this subtitle
2 or standard of the Association that any such
3 act or practice is deemed to violate; and

4 “(C) the sanction imposed and the reason
5 for the sanction.

6 “(3) INELIGIBILITY OF PRIVATE SECTOR REP-
7 RESENTATIVES.—Board members appointed pursu-
8 ant to section 324(c)(3) may not—

9 “(A) participate in any disciplinary action
10 or be counted toward establishing a quorum
11 during a disciplinary action; and

12 “(B) have access to confidential informa-
13 tion concerning any disciplinary action.

14 **“SEC. 326. POWERS.**

15 “In addition to all the powers conferred upon a non-
16 profit corporation by the District of Columbia Nonprofit
17 Corporation Act, the Association shall have the power to—

18 “(1) establish and collect such membership fees
19 as the Association finds necessary to impose to cover
20 the costs of its operations;

21 “(2) adopt, amend, and repeal bylaws, proce-
22 dures, or standards governing the conduct of Asso-
23 ciation business and performance of its duties;

1 “(3) establish procedures for providing notice
2 and opportunity for comment pursuant to section
3 325(a);

4 “(4) enter into and perform such agreements as
5 necessary to carry out the duties of the Association;

6 “(5) hire employees, professionals, or special-
7 ists, and elect or appoint officers, and to fix their
8 compensation, define their duties and give them ap-
9 propriate authority to carry out the purposes of this
10 subtitle, and determine their qualification;

11 “(6) establish personnel policies of the Associa-
12 tion and programs relating to, among other things,
13 conflicts of interest, rates of compensation, where
14 applicable, and qualifications of personnel;

15 “(7) borrow money; and

16 “(8) secure funding for such amounts as the
17 Association determines to be necessary and appro-
18 priate to organize and begin operations of the Asso-
19 ciation, which shall be treated as loans to be repaid
20 by the Association with interest at market rate.

21 **“SEC. 327. REPORT BY THE ASSOCIATION.**

22 “(a) IN GENERAL.—As soon as practicable after the
23 close of each fiscal year, the Association shall submit to
24 the President, through the Department of the Treasury,
25 and the States (including State insurance regulators), and

1 shall publish on the website of the Association, a written
 2 report regarding the conduct of its business, and the exer-
 3 cise of the other rights and powers granted by this sub-
 4 title, during such fiscal year.

5 “(b) FINANCIAL STATEMENTS.—Each report sub-
 6 mitted under subsection (a) with respect to any fiscal year
 7 shall include audited financial statements setting forth the
 8 financial position of the Association at the end of such
 9 fiscal year and the results of its operations (including the
 10 source and application of its funds) for such fiscal year.

11 **“SEC. 328. LIABILITY OF THE ASSOCIATION AND THE**
 12 **BOARD MEMBERS, OFFICERS, AND EMPLOY-**
 13 **EES OF THE ASSOCIATION.**

14 “(a) IN GENERAL.—The Association shall not be
 15 deemed to be an insurer or insurance producer within the
 16 meaning of any State law, rule, regulation, or order regu-
 17 lating or taxing insurers, insurance producers, or other en-
 18 titities engaged in the business of insurance, including pro-
 19 visions imposing premium taxes, regulating insurer sol-
 20 vency or financial condition, establishing guaranty funds
 21 and levying assessments, or requiring claims settlement
 22 practices.

23 “(b) LIABILITY OF BOARD MEMBERS, OFFICERS,
 24 AND EMPLOYEES.—No Board member, officer, or em-
 25 ployee of the Association shall be personally liable to any

1 person for any action taken or omitted in good faith in
2 any matter within the scope of their responsibilities in con-
3 nection with the Association.

4 **“SEC. 329. PRESIDENTIAL OVERSIGHT.**

5 “(a) REMOVAL OF BOARD.—If the President deter-
6 mines that the Association is acting in a manner contrary
7 to the interests of the public or the purposes of this sub-
8 title or has failed to perform its duties under this subtitle,
9 the President may remove the entire existing Board for
10 the remainder of the term to which the Board members
11 were appointed and appoint, in accordance with section
12 324 and with the advice and consent of the Senate, in
13 accordance with the procedures established under Senate
14 Resolution 116 of the 112th Congress, new Board mem-
15 bers to fill the vacancies on the Board for the remainder
16 of the terms.

17 “(b) REMOVAL OF BOARD MEMBER.—The President
18 may remove a Board member only for neglect of duty or
19 malfeasance in office.

20 “(c) SUSPENSION OF BYLAWS AND STANDARDS AND
21 PROHIBITION OF ACTIONS.—Following notice to the
22 Board, the President, or a person designated by the Presi-
23 dent for such purpose, may suspend the effectiveness of
24 any bylaw or standard, or prohibit any action, of the Asso-

1 ciation that the President or the designee determines is
2 contrary to the purposes of this subtitle.

3 **“SEC. 330. RELATIONSHIP TO STATE LAW.**

4 “(a) PREEMPTION OF STATE LAWS.—State laws,
5 regulations, provisions, or other actions purporting to reg-
6 ulate insurance producers shall be preempted to the extent
7 provided in subsection (b).

8 “(b) PROHIBITED ACTIONS.—

9 “(1) IN GENERAL.—No State shall—

10 “(A) impede the activities of, take any ac-
11 tion against, or apply any provision of law or
12 regulation arbitrarily or discriminatorily to, any
13 insurance producer because that insurance pro-
14 ducer or any affiliate plans to become, has ap-
15 plied to become, or is a member of the Associa-
16 tion;

17 “(B) impose any requirement upon a mem-
18 ber of the Association that it pay fees different
19 from those required to be paid to that State
20 were it not a member of the Association; or

21 “(C) impose any continuing education re-
22 quirements on any nonresident insurance pro-
23 ducer that is a member of the Association.

1 “(2) STATES OTHER THAN A HOME STATE.—

2 No State, other than the home State of a member
3 of the Association, shall—

4 “(A) impose any licensing, personal or cor-
5 porate qualifications, education, training, expe-
6 rience, residency, continuing education, or
7 bonding requirement upon a member of the As-
8 sociation that is different from the criteria for
9 membership in the Association or renewal of
10 such membership;

11 “(B) impose any requirement upon a mem-
12 ber of the Association that it be licensed, reg-
13 istered, or otherwise qualified to do business or
14 remain in good standing in the State, including
15 any requirement that the insurance producer
16 register as a foreign company with the sec-
17 retary of state or equivalent State official;

18 “(C) require that a member of the Associa-
19 tion submit to a criminal history record check
20 as a condition of doing business in the State; or

21 “(D) impose any licensing, registration, or
22 appointment requirements upon a member of
23 the Association, or require a member of the As-
24 sociation to be authorized to operate as an in-
25 surance producer, in order to sell, solicit, or ne-

1 gotiate insurance for commercial property and
2 casualty risks to an insured with risks located
3 in more than one State, if the member is li-
4 censed or otherwise authorized to operate in the
5 State where the insured maintains its principal
6 place of business and the contract of insurance
7 insures risks located in that State.

8 “(3) PRESERVATION OF STATE DISCIPLINARY
9 AUTHORITY.—Nothing in this section may be con-
10 strued to prohibit a State from investigating and
11 taking appropriate disciplinary action, including sus-
12 pension or revocation of authority of an insurance
13 producer to do business in a State, in accordance
14 with State law and that is not inconsistent with the
15 provisions of this section, against a member of the
16 Association as a result of a complaint or for any al-
17 leged activity, regardless of whether the activity oc-
18 curred before or after the insurance producer com-
19 menced doing business in the State pursuant to As-
20 sociation membership.

21 **“SEC. 331. COORDINATION WITH FINANCIAL INDUSTRY**
22 **REGULATORY AUTHORITY.**

23 “The Association shall coordinate with the Financial
24 Industry Regulatory Authority in order to ease any admin-
25 istrative burdens that fall on members of the Association

1 that are subject to regulation by the Financial Industry
2 Regulatory Authority, consistent with the requirements of
3 this subtitle and the Federal securities laws.

4 **“SEC. 332. RIGHT OF ACTION.**

5 “(a) RIGHT OF ACTION.—Any person aggrieved by
6 a decision or action of the Association may, after reason-
7 ably exhausting available avenues for resolution within the
8 Association, commence a civil action in an appropriate
9 United States district court, and obtain all appropriate re-
10 lief.

11 “(b) ASSOCIATION INTERPRETATIONS.—In any ac-
12 tion under subsection (a), the court shall give appropriate
13 weight to the interpretation of the Association of its by-
14 laws and standards and this subtitle.

15 **“SEC. 333. FEDERAL FUNDING PROHIBITED.**

16 “The Association may not receive, accept, or borrow
17 any amounts from the Federal Government to pay for, or
18 reimburse, the Association for, the costs of establishing
19 or operating the Association.

20 **“SEC. 334. DEFINITIONS.**

21 “For purposes of this subtitle, the following defini-
22 tions shall apply:

23 “(1) BUSINESS ENTITY.—The term ‘business
24 entity’ means a corporation, association, partnership,

1 limited liability company, limited liability partner-
2 ship, or other legal entity.

3 “(2) DEPOSITORY INSTITUTION.—The term ‘de-
4 pository institution’ has the meaning as in section 3
5 of the Federal Deposit Insurance Act (12 U.S.C.
6 1813).

7 “(3) HOME STATE.—The term ‘home State’
8 means the State in which the insurance producer
9 maintains its principal place of residence or business
10 and is licensed to act as an insurance producer.

11 “(4) INSURANCE.—The term ‘insurance’ means
12 any product, other than title insurance or bail
13 bonds, defined or regulated as insurance by the ap-
14 propriate State insurance regulatory authority.

15 “(5) INSURANCE PRODUCER.—The term ‘insur-
16 ance producer’ means any insurance agent or
17 broker, excess or surplus lines broker or agent, in-
18 surance consultant, limited insurance representative,
19 and any other individual or entity that sells, solicits,
20 or negotiates policies of insurance or offers advice,
21 counsel, opinions or services related to insurance.

22 “(6) INSURER.—The term ‘insurer’ has the
23 meaning as in section 313(e)(2)(B) of title 31,
24 United States Code.

1 “(7) PRINCIPAL PLACE OF BUSINESS.—The
2 term ‘principal place of business’ means the State in
3 which an insurance producer maintains the head-
4 quarters of the insurance producer and, in the case
5 of a business entity, where high-level officers of the
6 entity direct, control, and coordinate the business
7 activities of the business entity.

8 “(8) PRINCIPAL PLACE OF RESIDENCE.—The
9 term ‘principal place of residence’ means the State
10 in which an insurance producer resides for the great-
11 est number of days during a calendar year.

12 “(9) STATE.—The term ‘State’ includes any
13 State, the District of Columbia, any territory of the
14 United States, and Puerto Rico, Guam, American
15 Samoa, the Trust Territory of the Pacific Islands,
16 the Virgin Islands, and the Northern Mariana Is-
17 lands.

18 “(10) STATE LAW.—

19 “(A) IN GENERAL.—The term ‘State law’
20 includes all laws, decisions, rules, regulations,
21 or other State action having the effect of law,
22 of any State.

23 “(B) LAWS APPLICABLE IN THE DISTRICT
24 OF COLUMBIA.—A law of the United States ap-
25 plicable only to or within the District of Colum-

1 bia shall be treated as a State law rather than
2 a law of the United States.”.

3 (b) TECHNICAL AMENDMENT.—The table of contents
4 for the Gramm-Leach-Bliley Act is amended by striking
5 the items relating to subtitle C of title III and inserting
6 the following new items:

“Subtitle C—National Association of Registered Agents and Brokers

“Sec. 321. National Association of Registered Agents and Brokers.

“Sec. 322. Purpose.

“Sec. 323. Membership.

“Sec. 324. Board of directors.

“Sec. 325. Bylaws, standards, and disciplinary actions.

“Sec. 326. Powers.

“Sec. 327. Report by the Association.

“Sec. 328. Liability of the Association and the Board members, officers, and
employees of the Association.

“Sec. 329. Presidential oversight.

“Sec. 330. Relationship to State law.

“Sec. 331. Coordination with financial industry regulatory authority.

“Sec. 332. Right of action.

“Sec. 333. Federal funding prohibited.

“Sec. 334. Definitions.”.

7 **TITLE III—BUSINESS RISK MITI-** 8 **GATION AND PRICE STA-** 9 **BILIZATION**

10 **SEC. 301. SHORT TITLE.**

11 This title may be cited as the “Business Risk Mitiga-
12 tion and Price Stabilization Act of 2015”.

13 **SEC. 302. MARGIN REQUIREMENTS.**

14 (a) COMMODITY EXCHANGE ACT AMENDMENT.—
15 Section 4s(e) of the Commodity Exchange Act (7 U.S.C.
16 6s(e)), as added by section 731 of the Dodd-Frank Wall

1 Street Reform and Consumer Protection Act, is amended
2 by adding at the end the following new paragraph:

3 “(4) APPLICABILITY WITH RESPECT TO
4 COUNTERPARTIES.—The requirements of paragraphs
5 (2)(A)(ii) and (2)(B)(ii), including the initial and
6 variation margin requirements imposed by rules
7 adopted pursuant to paragraphs (2)(A)(ii) and
8 (2)(B)(ii), shall not apply to a swap in which a
9 counterparty qualifies for an exception under section
10 2(h)(7)(A), or an exemption issued under section
11 4(c)(1) from the requirements of section 2(h)(1)(A)
12 for cooperative entities as defined in such exemption,
13 or satisfies the criteria in section 2(h)(7)(D).”.

14 (b) SECURITIES EXCHANGE ACT AMENDMENT.—
15 Section 15F(e) of the Securities Exchange Act of 1934
16 (15 U.S.C. 78o–10(e)), as added by section 764(a) of the
17 Dodd-Frank Wall Street Reform and Consumer Protec-
18 tion Act, is amended by adding at the end the following
19 new paragraph:

20 “(4) APPLICABILITY WITH RESPECT TO
21 COUNTERPARTIES.—The requirements of paragraphs
22 (2)(A)(ii) and (2)(B)(ii) shall not apply to a secu-
23 rity-based swap in which a counterparty qualifies for
24 an exception under section 3C(g)(1) or satisfies the
25 criteria in section 3C(g)(4).”.

1 **SEC. 303. IMPLEMENTATION.**

2 The amendments made by this title to the Commodity
3 Exchange Act shall be implemented—

4 (1) without regard to—

5 (A) chapter 35 of title 44, United States
6 Code; and

7 (B) the notice and comment provisions of
8 section 553 of title 5, United States Code;

9 (2) through the promulgation of an interim
10 final rule, pursuant to which public comment will be
11 sought before a final rule is issued; and

12 (3) such that paragraph (1) shall apply solely
13 to changes to rules and regulations, or proposed
14 rules and regulations, that are limited to and di-
15 rectly a consequence of such amendments.

Passed the House of Representatives January 7,
2015.

Attest:

KAREN L. HAAS,
Clerk.