

[COMMITTEE PRINT]

[SHOWING THE TEXT OF H.R. 2761, AS ORDERED REPORTED BY THE SUB-COMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES ON JULY 24, 2007]

110TH CONGRESS
1ST SESSION

H. R. 2761

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

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2007

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

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

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

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

5 Subsection (a) of section 108 of the Terrorism Risk
6 Insurance Act of 2002 (15 U.S.C. 6701 note) is amended
7 by striking “December 31, 2007” and inserting “Decem-
8 ber 31, 2017”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **“SEC. 102. DEFINITIONS.**

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

14 “(1) ACT OF TERRORISM.—

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

20 “(i) to be an act of terrorism;

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

23 “(I) human life;

24 “(II) property; or

25 “(III) infrastructure;

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

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

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

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

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

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

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

1 “(C) CERTIFICATION OF ACTS OF NBCR
2 TERRORISM.—Upon certification of an act of
3 terrorism, the Secretary, in concurrence with
4 the Secretary of State, the Secretary of Home-
5 land Security, and the Attorney General of the
6 United States, shall determine whether the act
7 of terrorism meets the definition of NBCR ter-
8 rorism in this section. If such determination is
9 that the act does meet such definition, the Sec-
10 retary shall further certify such act of terrorism
11 as an act of NBCR terrorism.

12 “(D) DETERMINATIONS FINAL.—Any cer-
13 tification of, or determination not to certify, an
14 act as an act of terrorism or as an act of
15 NBCR terrorism under this paragraph shall be
16 final, and shall not be subject to judicial review.

17 “(E) NONDELEGATION.—The Secretary
18 may not delegate or designate to any other offi-
19 cer, employee, or person, any determination
20 under this paragraph of whether, during the ef-
21 fective period of the Program, an act of ter-
22 rorism, including an act of NBCR terrorism,
23 has occurred.

24 “(2) AFFILIATE.—The term ‘affiliate’ means,
25 with respect to an insurer, any entity that controls,

1 is controlled by, or is under common control with the
2 insurer.

3 “(3) AMOUNT AT RISK.—The term ‘amount at
4 risk’ means, with respect to group life insurance,
5 face amount less statutory policy reserves.

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

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

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

16 “(C) the Secretary determines, after notice
17 and opportunity for hearing, that the entity di-
18 rectly or indirectly exercises a controlling influ-
19 ence over the management or policies of the
20 other entity; except that for purposes of any
21 proceeding under this subparagraph, there shall
22 be a presumption that any entity which directly
23 or indirectly owns, controls, or has power to
24 vote less than 5 percent of any class of voting

1 securities of another entity does not have con-
2 trol over that entity.

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

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

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

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

1 ‘Business Owned Life Insurance,’ each as defined
2 under the Internal Revenue Code of 1986, or any
3 similar product, or group life reinsurance or
4 retrocessional reinsurance.

5 “(9) INSURED LOSS.—

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

15 “(i) occurs within the United States;

16 or

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

1 curs, or at the premises of any United
2 States mission.

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

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

12 “(A) that is—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(G) for each additional Program Year—

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

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

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

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

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

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

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

4 “(II) for each succeeding Pro-
5 gram Year thereafter, shall be 0.5
6 percentage point greater than the per-
7 centage applicable to the preceding
8 additional Program Year; and

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

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

17 “(II) for each succeeding Pro-
18 gram Year thereafter, shall be
19 0.00088 percentage point greater than
20 the percentage applicable to the pre-
21 ceding additional Program Year; and

22 “(J) if aggregate industry insured losses
23 arising from an act of terrorism in a previously
24 impacted area exceed \$1,000,000,000, the in-
25 surer deductibles otherwise applicable under

1 this paragraph of any insurers that sustain in-
2 sured losses arising from any subsequent act of
3 terrorism shall be reduced for the Program
4 Year in which such subsequent act of terrorism
5 occurred and each Program Year thereafter by
6 1 percent for each \$1,000,000,000 in aggregate
7 industry insured losses as a result of the pre-
8 vious act of terrorism in such previously im-
9 pacted area, except that no insurer deductible
10 for any Program Year shall be reduced below 5
11 percent.

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

14 “(13) NBCR TERRORISM.—The term ‘NBCR
15 terrorism’ means an act of terrorism that involves
16 nuclear, biological, chemical, or radiological reac-
17 tions, releases, or contaminations, to the extent any
18 insured losses result from any such reactions, re-
19 leases, or contaminations.

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

1 “(15) PREVIOUSLY IMPACTED AREA.—

2 “(A) IN GENERAL.—The term ‘previously
3 impacted area’ means a geographic area that,
4 after an act of terrorism, the Secretary deter-
5 mines has suffered a substantial and direct eco-
6 nomic impact as a result of such act of ter-
7 rorism. In designating such an area the Sec-
8 retary shall use postal zip codes, census tracts,
9 or such other geographic determinates as the
10 Secretary finds appropriate to provide a clear
11 delineation of the previously impacted area.

12 “(B) PREVIOUS ACTS OF TERRORISM.—
13 Notwithstanding subparagraph (A), the Sec-
14 retary shall designate as a previously impacted
15 area any area within the United States that
16 has, during the 15-year period ending upon the
17 date of the enactment of the Terrorism Risk In-
18 surance Revision and Extension Act of 2007,
19 been subject to an act of violence that—

20 “(i) would have been an act of ter-
21 rorism for purposes of this Act if this Act
22 had been in effect at the time of such act
23 of violence; and

1 “(ii) resulted in insured losses (as
2 such term is defined in this Act) of at least
3 \$1,000,000,000 at the time of the event.

4 Any such previous acts of violence shall be con-
5 sidered acts of terrorism for purposes of para-
6 graph (11) of this section (relating to insurer
7 deductible) and section 103(e)(1)(C) (relating
8 to program trigger).

9 “(16) PROGRAM.—The term ‘Program’ means
10 the Terrorism Insurance Program established by
11 this title.

12 “(17) PROGRAM YEARS.—

13 “(A) TRANSITION PERIOD.—The term
14 ‘Transition Period’ means the period beginning
15 on the date of enactment of this Act and ending
16 on December 31, 2002.

17 “(B) PROGRAM YEAR 1.—The term ‘Pro-
18 gram Year 1’ means the period beginning on
19 January 1, 2003 and ending on December 31,
20 2003.

21 “(C) PROGRAM YEAR 2.—The term ‘Pro-
22 gram Year 2’ means the period beginning on
23 January 1, 2004 and ending on December 31,
24 2004.

1 “(D) PROGRAM YEAR 3.—The term ‘Pro-
2 gram Year 3’ means the period beginning on
3 January 1, 2005 and ending on December 31,
4 2005.

5 “(E) PROGRAM YEAR 4.—The term ‘Pro-
6 gram Year 4’ means the period beginning on
7 January 1, 2006 and ending on December 31,
8 2006.

9 “(F) PROGRAM YEAR 5.—The term ‘Pro-
10 gram Year 5’ means the period beginning on
11 January 1, 2007 and ending on December 31,
12 2007.

13 “(G) ADDITIONAL PROGRAM YEAR.—The
14 term ‘additional Program Year’ means any ad-
15 ditional one-year period after Program Year 5
16 during which the Program is in effect, which
17 period shall begin on January 1 and end on De-
18 cember 31 of the same calendar year.

19 “(18) PROPERTY AND CASUALTY INSURANCE.—
20 The term ‘property and casualty insurance’—

21 “(A) means commercial lines of property
22 and casualty insurance, including excess insur-
23 ance, workers’ compensation insurance, and di-
24 rectors and officers liability insurance; and

25 “(B) does not include—

1 “(i) Federal crop insurance issued or
2 reinsured under the Federal Crop Insur-
3 ance Act (7 U.S.C. 1501 et seq.), or any
4 other type of crop or livestock insurance
5 that is privately issued or reinsured;

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

10 “(iii) financial guaranty insurance
11 issued by monoline financial guaranty in-
12 surance corporations;

13 “(iv) insurance for medical mal-
14 practice;

15 “(v) health or life insurance, including
16 group life insurance;

17 “(vi) flood insurance provided under
18 the National Flood Insurance Act of 1968
19 (42 U.S.C. 4001 et seq.);

20 “(vii) reinsurance or retrocessional re-
21 insurance;

22 “(viii) commercial automobile insur-
23 ance;

24 “(ix) burglary and theft insurance;

25 “(x) surety insurance;

1 “(xi) professional liability insurance;

2 or

3 “(xii) farm owners multiple peril in-

4 surance.

5 “(19) SECRETARY.—The term ‘Secretary’
6 means the Secretary of the Treasury.

7 “(20) STATE.—The term ‘State’ means any
8 State of the United States, the District of Columbia,
9 the Commonwealth of Puerto Rico, the Common-
10 wealth of the Northern Mariana Islands, American
11 Samoa, Guam, each of the United States Virgin Is-
12 lands, and any territory or possession of the United
13 States.

14 “(21) UNITED STATES.—The term ‘United
15 States’ means the several States, and includes the
16 territorial sea and the continental shelf of the
17 United States, as those terms are defined in the Vio-
18 lent Crime Control and Law Enforcement Act of
19 1994 (18 U.S.C. 2280, 2281).

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

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

24 and

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

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

2 “(a) ESTABLISHMENT OF PROGRAM.—

3 “(1) IN GENERAL.—There is established in the
4 Department of the Treasury the Terrorism Insur-
5 ance Program.

6 “(2) AUTHORITY OF THE SECRETARY.—Not-
7 withstanding any other provision of State or Federal
8 law, the Secretary shall administer the Program,
9 and shall pay the Federal share of compensation for
10 insured losses in accordance with subsection (e).

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

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

18 “(1) the person that suffers the insured loss, or
19 a person acting on behalf of that person, files a
20 claim with the insurer;

21 “(2) the insurer provides clear and conspicuous
22 disclosure to the policyholder of the premium
23 charged for insured losses covered by the Program
24 (including the additional premium, if any, charged
25 for the coverage for insured losses resulting from
26 acts of NBCR terrorism as made available pursuant

1 to subsection (c)(1)(B)) and the Federal share of
2 compensation for insured losses under the Pro-
3 gram—

4 “(A) in the case of any policy that is
5 issued before the date of enactment of this Act,
6 not later than 90 days after that date of enact-
7 ment;

8 “(B) in the case of any policy that is
9 issued within 90 days of the date of enactment
10 of this Act, at the time of offer, purchase, and
11 renewal of the policy; and

12 “(C) in the case of any policy that is
13 issued more than 90 days after the date of en-
14 actment of this Act, on a separate line item in
15 the policy, at the time of offer, purchase, and
16 renewal of the policy;

17 “(3) the insurer processes the claim for the in-
18 sured loss in accordance with appropriate business
19 practices, and any reasonable procedures that the
20 Secretary may prescribe; and

21 “(4) the insurer submits to the Secretary, in ac-
22 cordance with such reasonable procedures as the
23 Secretary may establish—

1 “(A) a claim for payment of the Federal
2 share of compensation for insured losses under
3 the Program;

4 “(B) written certification—

5 “(i) of the underlying claim; and

6 “(ii) of all payments made for insured
7 losses; and

8 “(C) certification of its compliance with
9 the provisions of this subsection.

10 “(c) MANDATORY AVAILABILITY.—

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

16 “(A) in all of its insurance policies for cov-
17 ered lines, coverage for insured losses that does
18 not differ materially from the terms, amounts,
19 and other coverage limitations applicable to
20 losses arising from events other than acts of
21 terrorism; and

22 “(B) in insurance policies for covered lines
23 for which the coverage described in subpara-
24 graph (A) is provided, exceptions to the pollu-
25 tion and nuclear hazard exclusions of such poli-

1 cies that render such exclusions inapplicable
2 only as to insured losses arising from acts of
3 NBCR terrorism.

4 “(2) ALLOWABLE EXCLUSIONS IN OTHER COV-
5 ERAGE.—Subject to paragraph (3) and notwith-
6 standing any other provision of Federal or State
7 law, including any State workers’ compensation and
8 other compulsory insurance law, if a person elects
9 not to purchase the insurance described in para-
10 graph (1)—

11 “(A) an insurer may exclude coverage for
12 all losses from acts of terrorism, including acts
13 of NBCR terrorism except for State workers’
14 compensation and other compulsory insurance
15 law (unless permitted by State law), or as de-
16 scribed in paragraph (4); or

17 “(B) an insurer may offer other options
18 for coverage that differ materially from the
19 terms, amounts, and other coverage limitations
20 applicable to losses arising from events other
21 than acts of terrorism.

22 “(3) APPLICABILITY FOR NBCR TERRORISM.—
23 Notwithstanding any other provision of this Act,
24 paragraphs (1) and (2) shall apply, beginning upon
25 January 1, 2009, with respect to coverage for acts

1 of NBCR terrorism, that is purchased or renewed on
2 or after such date, and to insured losses covered by
3 such coverage resulting from such acts.

4 “(4) AVAILABILITY OF LIFE INSURANCE WITH-
5 OUT REGARD TO LAWFUL FOREIGN TRAVEL.—Dur-
6 ing each Program Year, each entity that meets the
7 definition of an insurer under section 102 shall
8 make available, in all of its life insurance policies
9 issued after the date of the enactment of the Ter-
10 rorism Risk Insurance Revision and Extension Act
11 of 2007 under which the insured person is a citizen
12 of the United States or an alien lawfully admitted
13 for permanent residence in the United States, cov-
14 erage that neither considers past, nor precludes fu-
15 ture, lawful foreign travel by the person insured, and
16 shall not decline such coverage based on past or fu-
17 ture, lawful foreign travel by the person insured or
18 charge a premium for such coverage that is excessive
19 and not based on a good faith actuarial analysis, ex-
20 cept that an insurer may decline or, upon inception
21 or renewal of a policy, limit the amount of coverage
22 provided under any life insurance policy based on
23 plans to engage in future lawful foreign travel to
24 occur within 12 months of such inception or renewal
25 of the policy but only if, at time of application—

1 “(A) such declination is based on, or such
2 limitation applies only with respect to, travel to
3 a foreign destination—

4 “(i) for which the Director of the Cen-
5 ters for Disease Control and Prevention of
6 the Department of Health and Human
7 Services has issued a highest level alert or
8 warning, including a recommendation
9 against non-essential travel, due to a seri-
10 ous health-related condition;

11 “(ii) in which there is an ongoing
12 military conflict involving the armed forces
13 of a sovereign nation other than the nation
14 to which the insured person is traveling; or

15 “(iii)(I) that the insurer has specifi-
16 cally designated in the terms of the life in-
17 surance policy at the inception of the pol-
18 icy or at renewal, as applicable; and

19 “(II) with respect to which the insurer
20 has made a good-faith determination
21 that—

22 “(aa) a serious unlawful situation
23 exists which is ongoing; and

24 “(bb) the credibility of informa-
25 tion by which the insurer can verify

1 the death of the insured person is
2 compromised; and

3 “(B) in the case of any limitation of cov-
4 erage, such limitation is specifically stated in
5 the terms of the life insurance policy at the in-
6 ception of the policy or at renewal, as applica-
7 ble.

8 “(d) STATE RESIDUAL MARKET INSURANCE ENTI-
9 TIES.—

10 “(1) IN GENERAL.—The Secretary shall issue
11 regulations, as soon as practicable after the date of
12 enactment of this Act, that apply the provisions of
13 this title to State residual market insurance entities
14 and State workers’ compensation funds.

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

18 “(A) a State residual market insurance en-
19 tity that does not share its profits and losses
20 with private sector insurers shall be treated as
21 a separate insurer; and

22 “(B) a State residual market insurance en-
23 tity that shares its profits and losses with pri-
24 vate sector insurers shall not be treated as a
25 separate insurer, and shall report to each pri-

1 vate sector insurance participant its share of
2 the insured losses of the entity, which shall be
3 included in each private sector insurer's insured
4 losses.

5 “(3) TREATMENT OF PARTICIPATION IN CER-
6 TAIN ENTITIES.—Any insurer that participates in
7 sharing profits and losses of a State residual market
8 insurance entity shall include in its calculations of
9 premiums any premiums distributed to the insurer
10 by the State residual market insurance entity.

11 “(e) INSURED LOSS SHARED COMPENSATION.—

12 “(1) FEDERAL SHARE.—

13 “(A) CONVENTIONAL TERRORISM.—Except
14 as provided in subparagraph (B), the Federal
15 share of compensation under the Program to be
16 paid by the Secretary for insured losses of an
17 insurer during any additional Program Year
18 shall be equal to the sum of—

19 “(i) 85 percent of that portion of the
20 amount of such insured losses that—

21 “(I) exceeds the applicable in-
22 surer deductible required to be paid
23 during such Program Year; and

24 “(II) based upon pro rata deter-
25 minations pursuant to paragraph

1 (2)(B), does not result in aggregate
2 industry insured losses during such
3 Program Year exceeding
4 \$100,000,000,000; and

5 “(ii) 100 percent of the insured losses
6 of the insurer that, based upon pro rata
7 determinations pursuant to paragraph
8 (2)(B), result in aggregate industry in-
9 sured losses during such Program Year ex-
10 ceeding \$100,000,000,000, up to the limit
11 under paragraph (2)(A).

12 “(B) NBCR TERRORISM.—

13 “(i) AMOUNT OF COMPENSATION.—
14 The Federal share of compensation under
15 the Program to be paid by the Secretary
16 for insured losses of an insurer resulting
17 from NBCR terrorism during any addi-
18 tional Program Year shall be equal to the
19 sum of—

20 “(I) the amount of qualified
21 NBCR losses (as such term is defined
22 in clause (ii)) of the insurer, multi-
23 plied by a percentage based on the ag-
24 gregate industry qualified NBCR

1 losses for the Program Year, which
2 percentage shall be—

3 “(aa) 85 percent of such ag-
4 gregate industry qualified NBCR
5 losses of less than
6 \$10,000,000,000;

7 “(bb) 87.5 percent of such
8 aggregate industry qualified
9 NBCR losses between
10 \$10,000,000,000 and
11 \$20,000,000,000;

12 “(cc) 90 percent of such ag-
13 gregate industry qualified NBCR
14 losses between \$20,000,000,000
15 and \$40,000,000,000;

16 “(dd) 92.5 percent of such
17 aggregate industry qualified
18 NBCR losses of between
19 \$40,000,000,000 and
20 \$60,000,000,000; and

21 “(ee) 95 percent of such ag-
22 gregate industry qualified NBCR
23 losses of more than
24 \$60,000,000,000;

1 and shall be prorated per insurer
2 based on each insurer's percentage of
3 the aggregate industry qualified
4 NBCR losses for such additional Pro-
5 gram Year; and

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

15 “(ii) QUALIFIED NBCR LOSSES.—For
16 purposes of this subparagraph, the term
17 ‘qualified NBCR losses’ means, with re-
18 spect to insured losses of an insurer result-
19 ing from NBCR terrorism during an addi-
20 tional Program Year, that portion of the
21 amount of such insured losses that—

22 “(I) exceeds the applicable in-
23 surer deductible required to be paid
24 during such Program Year; and

1 “(II) based upon pro rata deter-
2 minations pursuant to paragraph
3 (2)(B), does not result in aggregate
4 industry insured losses during such
5 Program Year exceeding
6 \$100,000,000,000.

7 “(C) PROGRAM TRIGGER.—In the case of a
8 certified act of terrorism occurring after March
9 31, 2006, no compensation shall be paid by the
10 Secretary under subsection (a), unless the ag-
11 gregate industry insured losses resulting from
12 such certified act of terrorism exceed—

13 “(i) \$50,000,000, with respect to such
14 insured losses occurring in any additional
15 Program Year; or

16 “(ii) in the case of any certified act of
17 terrorism in any previously impacted area,
18 the amount in effect at such time under
19 clause (i), as reduced by \$10,000,000 for
20 each \$1,000,000,000 in aggregate industry
21 insured losses that were sustained as a re-
22 sult of a previous act of terrorism, except
23 that in no case may such amount be re-
24 duced below the amount specified in sec-
25 tion 102(1)(B)(ii).

1 “(D) LIMITATION ON COMPENSATION FOR
2 GROUP LIFE INSURANCE.—Notwithstanding any
3 other provision of this Act, the Federal share of
4 compensation under the Program paid by the
5 Secretary for insured losses of an insurer re-
6 sulting from coverage of any single certificate
7 holder under any group life insurance coverages
8 of the insurer may not during any additional
9 Program Year exceed \$1,000,000.

10 “(E) PROHIBITION ON DUPLICATIVE COM-
11 PENSATION.—The Federal share of compensa-
12 tion for insured losses under the Program shall
13 be reduced by the amount of compensation pro-
14 vided by the Federal Government to any person
15 under any other Federal program for those in-
16 sured losses.

17 “(2) CAP ON ANNUAL LIABILITY.—

18 “(A) IN GENERAL.—Notwithstanding para-
19 graph (1) or any other provision of Federal or
20 State law, including any State workers’ com-
21 pensation or other compulsory insurance law, if
22 the aggregate amount of the Federal share of
23 compensation to be paid to all insurers pursu-
24 ant to paragraph (1) exceeds
25 \$100,000,000,000, during any additional Pro-

1 gram Year (until such time as the Congress
2 may act otherwise with respect to such
3 losses)—

4 “(i) the Secretary shall not make any
5 payment under this title for any portion of
6 the amount of the aggregate insured losses
7 during such Program Year for which the
8 Federal share exceeds \$100,000,000,000;
9 and

10 “(ii) no insurer that has met its in-
11 surer deductible shall be liable for the pay-
12 ment of any portion of the aggregate in-
13 sured losses during such Program Year
14 that exceeds \$100,000,000,000.

15 “(B) INSURER SHARE.—For purposes of
16 subparagraph (A), the Secretary shall deter-
17 mine the pro rata share of insured losses to be
18 paid by each insurer that incurs insured losses
19 under the Program.

20 “(C) CLAIMS ALLOCATIONS.—The Sec-
21 retary shall, by regulation, provide for insurers
22 to allocate claims payments for insured losses
23 under applicable insurance policies in any case
24 described in subparagraph (A). Such regula-
25 tions shall include provisions for payment, for

1 the purpose of addressing emergency needs of
2 applicable individuals affected by an act of ter-
3 rorism, of a portion of claims for insured losses
4 promptly upon filing of such claims.

5 “(3) LIMITATION ON INSURER FINANCIAL RE-
6 SPONSIBILITY.—

7 “(A) LIMITATION.—Notwithstanding any
8 other provision of Federal or State law, includ-
9 ing any State workers’ compensation or other
10 compulsory insurance law, an insurer’s financial
11 responsibility for insured losses from acts of
12 terrorism shall be limited to its applicable in-
13 surer deductible and its applicable share of in-
14 sured losses that exceed its applicable insurer
15 deductible but are not compensated pursuant to
16 paragraph (1), subject to the requirements of
17 paragraph (2)(B).

18 “(B) FEDERAL REIMBURSEMENT.—Not-
19 withstanding any other provision of Federal or
20 State law, the Secretary shall—

21 “(i) reimburse insurers for any pay-
22 ment of excess insured losses made prior to
23 publication of any notification pursuant to
24 paragraph (4)(A);

1 “(ii) reimburse insurers for any pay-
2 ment of excess insured losses occurring on
3 or after the date of any notification pursu-
4 ant to paragraph (4)(A), but only to the
5 extent that—

6 “(I) such payment is ordered by
7 a court pursuant to subparagraph (C)
8 of this paragraph or is directed by
9 State law, notwithstanding this para-
10 graph, or by Federal law;

11 “(II) such payment is limited to
12 compensating insurers for their pay-
13 ment of excess insured losses and does
14 not include punitive damages, or liti-
15 gation or other costs; and

16 “(III) the insurer has made a
17 good-faith effort to defend against any
18 claims for such payment; and

19 “(iii) have the right to intervene in
20 any legal proceedings relating to such
21 claims specified in clause (ii)(III).

22 “(C) FEDERAL COURT JURISDICTION.—

23 “(i) CONDITIONS.—All claims relating
24 to or arising out of an insurer’s financial
25 responsibility for insured losses from acts

1 of terrorism under this section shall be
2 within the original and exclusive jurisdic-
3 tion of the district courts of the United
4 States, in accordance with the procedures
5 established in subparagraph (D), if the
6 Secretary certifies that the following condi-
7 tions have been met, or that there is a rea-
8 sonable likelihood that the following condi-
9 tions may be met:

10 “(I) The aggregate amount of
11 the Federal share of compensation to
12 be paid to all insurers pursuant to
13 paragraph (1) exceeds
14 \$100,000,000,000, pursuant to para-
15 graph (2); and

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

20 “(ii) REMOVAL OF STATE COURT AC-
21 TIONS.—If the Secretary certifies that con-
22 ditions set forth in subclauses (I) and (II)
23 of clause (i) have been met, all pending
24 State court actions that relate to or arise
25 out of an insurer’s financial responsibility

1 for insured losses from acts of terrorism
2 under this section shall be removed to a
3 district court of the United States in ac-
4 cordance with subparagraph (D).

5 “(D) VENUE.—For each certification made
6 by the Secretary pursuant to subparagraph
7 (C)(i), not later than 90 days after the Sec-
8 retary’s determination the Judicial Panel on
9 Multidistrict Litigation shall designate one dis-
10 trict court or, if necessary, multiple district
11 courts of the United States that shall have
12 original and exclusive jurisdiction over all ac-
13 tions for any claim relating to or arising out of
14 an insurer’s financial responsibility for insured
15 losses from acts of terrorism under this section.

16 “(4) NOTICES REGARDING LOSSES AND AN-
17 NUAL LIABILITY CAP.—

18 “(A) APPROACHING CAP.—If the Secretary
19 determines estimated or actual aggregate Fed-
20 eral compensation to be paid pursuant to para-
21 graph (1) equals or exceeds \$80,000,000,000
22 during any Program Year, the Secretary shall
23 promptly provide notification in accordance with
24 subparagraph (D)—

1 “(i) of such estimated or actual aggregate
2 Federal compensation to be paid;

3 “(ii) of the likelihood that such aggregate
4 Federal compensation to be paid for
5 such Program Year will equal or exceed
6 \$100,000,000,000; and

7 “(iii) that, pursuant to paragraph
8 (2)(A)(ii), insurers are not required to
9 make payments of excess insured losses.

10 “(B) EVENT LIKELY TO CAUSE LOSSES TO
11 EXCEED CAP.—If any act of terrorism occurs
12 that the Secretary determines is likely to cause
13 estimated or actual aggregate Federal com-
14 pensation to be paid pursuant to paragraph (1)
15 to exceed \$100,000,000,000 during any Pro-
16 gram Year, the Secretary shall, not later than
17 10 days after such act, provide notification in
18 accordance with subparagraph (D)—

19 “(i) of such estimated or actual aggregate
20 Federal compensation to be paid; and

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

24 “(C) EXCEEDING CAP.—If the Secretary
25 determines estimated or actual aggregate Fed-

1 eral compensation to be paid pursuant to para-
2 graph (1) equals or exceeds \$100,000,000,000
3 during any Program Year—

4 “(i) the Secretary shall promptly pro-
5 vide notification in accordance with sub-
6 paragraph (D)—

7 “(I) of such estimated or actual
8 aggregate Federal compensation to be
9 paid; and

10 “(II) that, pursuant to paragraph
11 (2)(A)(ii), insurers are not required to
12 make payments for excess insured
13 losses unless the Congress provides
14 for payments for excess insured losses
15 pursuant to clause (ii) of this sub-
16 paragraph; and

17 “(ii) the Congress shall determine the
18 procedures for and the source of any pay-
19 ments for such excess insured losses.

20 “(D) PARTIES NOTIFIED.—Notification is
21 provided in accordance with this subparagraph
22 only if notification is provided—

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

1 “(ii) to insurers, by causing such no-
2 tice to be published in the Federal Reg-
3 ister.

4 “(E) DETERMINATIONS.—The Secretary
5 shall make determinations regarding estimated
6 and actual aggregate Federal compensation to
7 be paid promptly after any act of terrorism as
8 may be necessary to comply with this para-
9 graph.

10 “(F) MANDATORY DISCLOSURE FOR IN-
11 SURANCE CONTRACTS.—All policies for property
12 and casualty insurance and group life insurance
13 shall be deemed to contain a provision to the ef-
14 fect that no insurer that has met its applicable
15 insurer deductible and its applicable share of
16 insured losses that exceed its applicable insurer
17 deductible but are not compensated pursuant to
18 paragraph (1), shall be obligated to pay for any
19 portion of excess insured loss. Notwithstanding
20 the preceding sentence, insurers shall include a
21 disclosure in their policies detailing the max-
22 imum level of Government assistance and the
23 applicable insurer share.

24 “(5) FINAL NETTING.—The Secretary shall
25 have sole discretion to determine the time at which

1 claims relating to any insured loss or act of ter-
2 rorism shall become final.

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

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

11 “(A) for the period beginning on the first
12 day of the Transition Period and ending on the
13 last day of Program Year 1, the lesser of—

14 “(i) \$10,000,000,000; and

15 “(ii) the aggregate amount, for all in-
16 surers, of insured losses during such pe-
17 riod;

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

19 “(i) \$12,500,000,000; and

20 “(ii) the aggregate amount, for all in-
21 surers, of insured losses during such Pro-
22 gram Year;

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

24 “(i) \$15,000,000,000; and

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

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

5 “(i) \$25,000,000,000; and

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

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

10 “(i) \$27,500,000,000; and

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

14 “(F) for each additional Program Year—

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

17 “(I) \$27,500,000,000; and

18 “(II) the aggregate amount, for
19 all such insurance, of insured losses
20 during such Program Year; and

21 “(ii) for group life insurance, the less-
22 er of—

23 “(I) \$5,000,000,000; and

1 “(II) the aggregate amount, for
2 all such insurance, of insured losses
3 during such Program Year.

4 “(8) RECOUPMENT OF FEDERAL SHARE.—

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

11 “(i) the applicable insurance market-
12 place aggregate retention amount under
13 paragraph (7) for such Program Year; and

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

20 “(I) are within the insurer de-
21 ductible for the insurer subject to the
22 losses; or

23 “(II) are within the portion of
24 losses of the insurer that exceed the

1 insurer deductible, but are not com-
2 pensated pursuant to paragraph (1).

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

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

1 amount equal to any mandatory recoupment
2 amount for such Program Year.

3 “(D) DISCRETIONARY RECOUPMENT OF
4 REMAINDER OF FINANCIAL ASSISTANCE.—To
5 the extent that the amount of Federal financial
6 assistance provided exceeds any mandatory
7 recoupment amount, the Secretary may recoup,
8 through terrorism loss risk-spreading pre-
9 miums, such additional amounts that the Sec-
10 retary believes can be recouped, based on—

11 “(i) the ultimate costs to taxpayers of
12 no additional recoupment;

13 “(ii) the economic conditions in the
14 commercial marketplace, including the cap-
15 italization, profitability, and investment re-
16 turns of the insurance industry and the
17 current cycle of the insurance markets;

18 “(iii) the affordability of commercial
19 insurance for small- and medium-sized
20 businesses; and

21 “(iv) such other factors as the Sec-
22 retary considers appropriate.

23 “(E) SEPARATE RECOUPMENT.—“The Sec-
24 retary shall provide that—

1 “(i) any recoupment under this para-
2 graph of amounts paid for Federal finan-
3 cial assistance for insured losses for prop-
4 erty and casualty insurance shall be ap-
5 plied to property and casualty insurance
6 policies; and

7 “(ii) any recoupment under this para-
8 graph of amounts paid for Federal finan-
9 cial assistance for insured losses for group
10 life insurance shall be applied to group life
11 insurance policies.

12 “(9) POLICY SURCHARGE FOR TERRORISM LOSS
13 RISK-SPREADING PREMIUMS.—

14 “(A) POLICYHOLDER PREMIUM.—Subject
15 to paragraph (8)(E), any amount established by
16 the Secretary as a terrorism loss risk-spreading
17 premium shall—

18 “(i) be imposed as a policyholder pre-
19 mium surcharge on property and casualty
20 insurance policies and group life insurance
21 policies in force after the date of such es-
22 tablishment;

23 “(ii) begin with such period of cov-
24 erage during the year as the Secretary de-
25 termines appropriate; and

1 “(iii) be based on—

2 “(I) a percentage of the premium
3 amount charged for property and cas-
4 ualty insurance coverage under the
5 policy; and

6 “(II) a percentage of the amount
7 at risk for group life insurance cov-
8 erage under the policy.

9 “(B) COLLECTION.—The Secretary shall
10 provide for insurers to collect terrorism loss
11 risk-spreading premiums and remit such
12 amounts collected to the Secretary.

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

16 “(i) with respect to property and cas-
17 ualty insurance, the amount equal to 3
18 percent of the premium charged under the
19 policy; and

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

23 “(D) ADJUSTMENT FOR URBAN AND
24 SMALLER COMMERCIAL AND RURAL AREAS AND
25 DIFFERENT LINES OF INSURANCE.—

1 “(i) ADJUSTMENTS.—In determining
2 the method and manner of imposing ter-
3 rorism loss risk-spreading premiums, in-
4 cluding the amount of such premiums, the
5 Secretary shall take into consideration—

6 “(I) the economic impact on com-
7 mercial centers of urban areas, includ-
8 ing the effect on commercial rents and
9 commercial insurance premiums, par-
10 ticularly rents and premiums charged
11 to small businesses, and the avail-
12 ability of lease space and commercial
13 insurance within urban areas;

14 “(II) the risk factors related to
15 rural areas and smaller commercial
16 centers, including the potential expo-
17 sure to loss and the likely magnitude
18 of such loss, as well as any resulting
19 cross-subsidization that might result;
20 and

21 “(III) the various exposures to
22 terrorism risk for different lines of in-
23 surance.

24 “(ii) RECOUPMENT OF ADJUST-
25 MENTS.—Any mandatory recoupment

1 amounts not collected by the Secretary be-
2 cause of adjustments under this subpara-
3 graph shall be recouped through additional
4 terrorism loss risk-spreading premiums.

5 “(E) TIMING OF PREMIUMS.—The Sec-
6 retary may adjust the timing of terrorism loss
7 risk-spreading premiums to provide for equiva-
8 lent application of the provisions of this title to
9 policies that are not based on a calendar year,
10 or to apply such provisions on a daily, monthly,
11 or quarterly basis, as appropriate.

12 “(f) CAPTIVE INSURERS AND OTHER SELF-INSUR-
13 ANCE ARRANGEMENTS.—The Secretary may, in consulta-
14 tion with the NAIC or the appropriate State regulatory
15 authority, apply the provisions of this title, as appropriate,
16 to other classes or types of captive insurers and other self-
17 insurance arrangements by municipalities and other enti-
18 ties (such as workers’ compensation self-insurance pro-
19 grams and State workers’ compensation reinsurance
20 pools), but only if such application is determined before
21 the occurrence of an act of terrorism in which such an
22 entity incurs an insured loss and all of the provisions of
23 this title are applied comparably to such entities.

24 “(g) REINSURANCE TO COVER EXPOSURE.—

1 “(1) OBTAINING COVERAGE.—This title may
2 not be construed to limit or prevent insurers from
3 obtaining reinsurance coverage for insurer
4 deductibles or insured losses retained by insurers
5 pursuant to this section, nor shall the obtaining of
6 such coverage affect the calculation of such
7 deductibles or retentions.

8 “(2) LIMITATION ON FINANCIAL ASSISTANCE.—
9 The amount of financial assistance provided pursu-
10 ant to this section shall not be reduced by reinsur-
11 ance paid or payable to an insurer from other
12 sources, except that recoveries from such other
13 sources, taken together with financial assistance for
14 the Transition Period or a Program Year provided
15 pursuant to this section, may not exceed the aggre-
16 gate amount of the insurer’s insured losses for such
17 period. If such recoveries and financial assistance for
18 the Transition Period or a Program Year exceed
19 such aggregate amount of insured losses for that pe-
20 riod and there is no agreement between the insurer
21 and any reinsurer to the contrary, an amount in ex-
22 cess of such aggregate insured losses shall be re-
23 turned to the Secretary.”;

24 (2) in section 104(a)—

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

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

5 (C) by adding at the end the following new
6 paragraph:

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

13 (3) in section 106(a)(2)—

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

16 (B) by redesignating subparagraph (C) as
17 subparagraph (E); and

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

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

1 are filed with any State shall not be subject to
2 prior approval or a waiting period under any
3 law of a State that would otherwise be applica-
4 ble, except that nothing in this title affects the
5 ability of any State to invalidate a rate as ex-
6 cessive, inadequate, or unfairly discriminatory,
7 and, with respect to forms, where a State has
8 prior approval authority, it shall apply to allow
9 subsequent review of such forms; and

10 “(D) during the period beginning on Janu-
11 ary 1, 2009, and ending on December 31, 2009,
12 rates and forms for property and casualty in-
13 surance, and group life insurance, covered by
14 this title and providing coverage for NBCR ter-
15 rorism that are filed with any State shall not be
16 subject to prior approval or a waiting period
17 under any law of a State that would otherwise
18 be applicable, except that nothing in this title
19 affects the ability of any State to invalidate a
20 rate as excessive, inadequate, or unfairly dis-
21 criminatory, and, with respect to forms, where
22 a State has prior approval authority, it shall
23 apply to allow subsequent review of such forms;
24 and”;

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

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

12 **SEC. 4. ANALYSIS AND STUDY.**

13 (a) ANALYSIS OF MARKET CONDITIONS.—Section
14 108 of the Terrorism Risk Insurance Act of 2002 (15
15 U.S.C. 6701 note) is amended by striking subsection (e)
16 and inserting the following:

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

19 “(1) IN GENERAL.—The Secretary, in consulta-
20 tion with the NAIC, representatives of the insurance
21 industry, representatives of the securities industry,
22 and representatives of policyholders, shall perform
23 an analysis regarding the long-term availability and
24 affordability of insurance for terrorism risk in the
25 private marketplace, including coverage for—

1 “(A) property and casualty insurance;

2 “(B) group life insurance;

3 “(C) workers’ compensation;

4 “(D) nuclear, biological, chemical, and ra-
5 diological events; and

6 “(E) commercial real estate.

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

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

1 (b) COMMISSION ON TERRORISM RISK INSURANCE.—
2 Title I of the Terrorism Risk Insurance Act of 2002 (15
3 U.S.C. 6701 note) is amended by adding at the end the
4 following new section:

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

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

9 “(b) MEMBERSHIP.—

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

12 “(A) The Secretary of the Treasury or the
13 designee of the Secretary.

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

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

18 “(i) a representative of group life in-
19 surers;

20 “(ii) a representative of property and
21 casualty insurers with direct written pre-
22 mium of \$1,000,000,000 or less;

23 “(iii) a representative of property and
24 casualty insurers with direct written pre-
25 mium of more than \$1,000,000,000;

1 “(iv) a representative of multiline in-
2 surers;

3 “(v) a representative of independent
4 insurance agents;

5 “(vi) a representative of insurance
6 brokers;

7 “(vii) a policyholder representative;

8 “(viii) a representative of the sur-
9 vivors of the victims of the attacks of Sep-
10 tember 11, 2001;

11 “(ix) a representative of the reinsur-
12 ance industry;

13 “(x) a representative of workers’ com-
14 pensation insurers;

15 “(xi) a representative from the com-
16 mercial mortgage-backed securities indus-
17 try;

18 “(xii) a representative from a nation-
19 ally recognized statistical rating organiza-
20 tion;

21 “(xiii) a real estate developer;

22 “(xiv) a representative of workers’
23 compensation insurers created by State
24 legislatures, selected in consultation with
25 the American Association of State Com-

1 pensation Insurance Funds from among its
2 members; and

3 “(xv) a representative from the com-
4 mercial real estate brokerage industry or
5 the commercial property management in-
6 dustry.

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

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

22 “(c) DUTIES.—

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

1 “(A) possible actions to encourage, facili-
2 tate, and sustain provision by the private insur-
3 ance industry in the United States of affordable
4 coverage for losses due to an act or acts of ter-
5 rorism;

6 “(B) possible actions or mechanisms to
7 sustain or supplement the ability of the insur-
8 ance industry in the United States to cover
9 losses resulting from acts of terrorism in the
10 event that—

11 “(i) such losses jeopardize the capital
12 and surplus of the insurance industry in
13 the United States as a whole; or

14 “(ii) other consequences from such
15 acts occur, as determined by the Commis-
16 sion, that may significantly affect the abil-
17 ity of the insurance industry in the United
18 States to cover such losses independently;
19 and

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

23 “(2) EVALUATIONS.—In identifying and mak-
24 ing the recommendations required under paragraph
25 (1), the Commission shall specifically evaluate the

1 utility and viability of proposals aimed at improving
2 the availability of insurance against terrorism risk in
3 the private marketplace.

4 “(3) INITIAL MEETING.—The Commission shall
5 hold its first meeting during the 3-month period that
6 begins 15 months after the date of the enactment of
7 the Terrorism Risk Insurance Revision and Extension
8 Act of 2007.

9 “(4) REPORTS.—

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

12 “(i) evaluate and make recommenda-
13 tions regarding whether there is a need for
14 a Federal terrorism risk insurance pro-
15 gram;

16 “(ii) if so, include a specific, detailed
17 recommendation for the replacement of the
18 Program under this title; and

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

22 “(B) TIMING.—The first report required
23 under subparagraph (A) shall be submitted be-
24 fore the expiration of the 60-month period be-
25 ginning on the date of the enactment of the

1 Terrorism Risk Insurance Revision and Exten-
2 sion Act of 2007. The second such report shall
3 be submitted before the expiration of the 96-
4 month period beginning upon such date of en-
5 actment.”.

6 **SEC. 5. APPLICABILITY.**

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