

Union Calendar No. 180

109TH CONGRESS
1ST SESSION

H. R. 4314

[Report No. 109-327]

To extend the applicability of the Terrorism Risk Insurance Act of 2002.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 2005

Mr. BAKER (for himself, Mr. OXLEY, Mrs. KELLY, Ms. PRYCE of Ohio, Mr. SESSIONS, Mr. FERGUSON, Mr. RENZI, Mr. FOSSELLA, and Mr. DAVIS of Kentucky) introduced the following bill; which was referred to the Committee on Financial Services

DECEMBER 6, 2005

Additional sponsor: Mr. KING of New York

DECEMBER 6, 2005

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

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

[For text of introduced bill, see copy of bill as introduced on November 14, 2005]

A BILL

To extend the applicability of the Terrorism Risk Insurance Act of 2002.

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 Act of 2005”.*

4 **SEC. 2. EXTENSION OF PROGRAM AND PROGRAM CHANGES.**

5 *(a) IN GENERAL.—Title I of the Terrorism Risk Insur-*
6 *ance Act of 2002 (15 U.S.C. 6701 note) is amended—*

7 *(1) by striking sections 101 through 106 and in-*
8 *serting the following new sections:*

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

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

11 *“(1) the ability of businesses and individuals to*
12 *obtain property, casualty, group life, and NBCR in-*
13 *surance at reasonable and predictable prices, in order*
14 *to spread the risk of both routine and catastrophic*
15 *loss, is critical to economic growth, urban develop-*
16 *ment, and the construction and maintenance of public*
17 *and private housing, as well as to the promotion of*
18 *United States exports and foreign trade in an in-*
19 *creasingly interconnected world;*

20 *“(2) property, casualty, and life insurance firms*
21 *are important financial institutions, the products of*
22 *which allow mutualization of risk and the efficient*
23 *use of financial resources and enhance the ability of*
24 *the economy to maintain stability, while responding*
25 *to a variety of economic, political, environmental,*
26 *and other risks with a minimum of disruption;*

1 “(3) the ability of the insurance industry to
2 cover the unprecedented financial risks presented by
3 potential acts of terrorism in the United States can
4 be a major factor in the recovery from terrorist at-
5 tacks, while maintaining the stability of the economy;

6 “(4) widespread financial market uncertainties
7 have arisen following the terrorist attacks of Sep-
8 tember 11, 2001, including the absence of information
9 from which financial institutions can make statis-
10 tically valid estimates of the probability and cost of
11 future terrorist events, and therefore the size, funding,
12 and allocation of the risk of loss caused by such acts
13 of terrorism;

14 “(5) a decision by property, casualty, group life,
15 and NBCR insurers to deal with such uncertainties,
16 either by terminating property, casualty, group life
17 and NBCR coverage for losses arising from terrorist
18 events, or by radically escalating premium coverage
19 to compensate for risks of loss that are not readily
20 predictable, could seriously hamper ongoing and
21 planned construction, property acquisition, and other
22 business projects, generate a dramatic increase in
23 rents, and otherwise suppress economic activity; and

24 “(6) the United States Government should pro-
25 vide temporary financial compensation to insured

1 *parties, contributing to the stabilization of the United*
2 *States economy in a time of national crisis, while the*
3 *financial services industry develops the systems,*
4 *mechanisms, products, and programs necessary to cre-*
5 *ate a viable financial services market for private ter-*
6 *rorism risk insurance.*

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

12 “(1) *protect consumers by addressing market dis-*
13 *ruptions and ensure the continued widespread avail-*
14 *ability and affordability of property, casualty, group*
15 *life, and NBCR insurance for terrorism risk; and*

16 “(2) *allow for a transitional period for the pri-*
17 *ivate markets to stabilize, resume pricing of such in-*
18 *surance, and build capacity to absorb any future*
19 *losses, while preserving State insurance regulation*
20 *and consumer protections.*

21 **“SEC. 102. DEFINITIONS.**

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

23 “(1) *ACT OF TERRORISM.*—

24 “(A) *CERTIFICATION.*—*The term ‘act of ter-*
25 *rorism’ means any act that is certified by the*

1 *Secretary, in concurrence with the Secretary of*
2 *State, and the Attorney General of the United*
3 *States—*

4 “(i) *to be an act of terrorism;*

5 “(ii) *to be a violent act or an act that*
6 *is dangerous to—*

7 “(I) *human life;*

8 “(II) *property; or*

9 “(III) *infrastructure;*

10 “(iii) *to have resulted in damage with-*
11 *in the United States, or outside of the*
12 *United States in the case of—*

13 “(I) *an air carrier or vessel de-*
14 *scribed in paragraph (5)(B); or*

15 “(II) *the premises of a United*
16 *States mission; and*

17 “(iv) *to have been committed by an in-*
18 *dividual or individuals as part of an effort*
19 *to coerce the civilian population of the*
20 *United States or to influence the policy or*
21 *affect the conduct of the United States Gov-*
22 *ernment by coercion.*

23 “(B) *LIMITATION.—No act shall be certified*
24 *by the Secretary as an act of terrorism if the act*
25 *is committed as part of the course of a war de-*

1 *clared by the Congress, except that this clause*
2 *shall not apply with respect to any coverage for*
3 *workers' compensation or group life insurance.*

4 “(C) *DETERMINATIONS FINAL.*—*Any certifi-*
5 *cation of, or determination not to certify, an act*
6 *as an act of terrorism under this paragraph*
7 *shall be final, and shall not be subject to judicial*
8 *review.*

9 “(D) *NONDELEGATION.*—*The Secretary may*
10 *not delegate or designate to any other officer, em-*
11 *ployee, or person, any determination under this*
12 *paragraph of whether, during the effective period*
13 *of the Program, an act of terrorism has occurred.*

14 “(2) *AFFILIATE.*—*The term ‘affiliate’ means,*
15 *with respect to an insurer, any insurer that owns, is*
16 *owned by, or is under common ownership with an-*
17 *other insurer.*

18 “(3) *CASUALTY INSURANCE.*—*The term ‘casualty*
19 *insurance’ means—*

20 “(A) *insurance, including excess insurance*
21 *and surety insurance, against legal liability for*
22 *losses caused by the death, injury, or disability*
23 *of any person or for damage to property, with*
24 *provision for medical, hospital and surgical ben-*
25 *efits to the injured persons; and*

1 “(B) for the purposes of this Act, does not
2 include any type of commercial automobile or
3 workers’ compensation insurance.

4 “(4) COVERED LINE OF INSURANCE.—The term
5 ‘covered line of insurance’ means—

6 “(A) commercial property insurance, com-
7 mercial casualty insurance, workers’ compensa-
8 tion insurance and group life insurance; and

9 “(B) does not include—

10 “(i) Federal crop insurance issued or
11 reinsured under the Federal Crop Insurance
12 Act (7 U.S.C. 1501 et seq.), or any other
13 type of crop or livestock insurance that is
14 privately issued or reinsured;

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

19 “(iii) financial guaranty insurance
20 issued by monoline financial guaranty in-
21 surance corporations;

22 “(iv) insurance for medical mal-
23 practice;

24 “(v) health or life insurance, except
25 group life insurance;

1 “(vi) flood insurance provided under
2 the National Flood Insurance Act of 1968
3 (42 U.S.C. 4001 et seq.);

4 “(vii) reinsurance or retrocessional re-
5 insurance; or

6 “(viii) commercial automobile insur-
7 ance.

8 “(5) *DIRECT EARNED PREMIUM*.—The term ‘di-
9 rect earned premium’ means a direct earned premium
10 for commercial property, commercial casualty, work-
11 ers’ compensation, or group life insurance issued by
12 any insurer for insurance against losses occurring at
13 the locations described in subparagraphs (A) and (B)
14 of paragraph (10).

15 “(6) *EXEMPT COMMERCIAL PURCHASER*.—The
16 term ‘exempt commercial purchaser’ means any per-
17 son purchasing commercial insurance that meets the
18 following requirements:

19 “(A) The person employs or retains a quali-
20 fied risk manager to negotiate insurance cov-
21 erage.

22 “(B) The person meets at least two of the
23 following criteria:

24 “(i) The person possesses a net worth
25 in excess of \$20,000,000.

1 “(ii) *The person generates annual reve-*
2 *nues in excess of \$50,000,000.*

3 “(iii) *The person employs more than*
4 *500 full time or full time equivalent em-*
5 *ployees per individual insured or is a mem-*
6 *ber of affiliated group employing more than*
7 *1,000 employees in the aggregate.*

8 “(iv) *The person pays annual aggre-*
9 *gate nationwide insurance premiums in ex-*
10 *cess of \$100,000 for covered lines of insur-*
11 *ance.*

12 “(v) *The person is a not-for-profit or-*
13 *ganization or public entity generating an-*
14 *ual budgeted expenditures of at least*
15 *\$30,000,000.*

16 “(vi) *The person is a municipality*
17 *with a population in excess of 50,000 per-*
18 *sons.*

19 “(7) *EXEMPT COMMERCIAL PURCHASER CERTIFI-*
20 *CATION.—The term ‘exempt commercial purchaser*
21 *certification’ means a written certification that the*
22 *insurer offering a policy to an exempt commercial*
23 *purchaser has obtained, at least within the previous*
24 *12 months, a certification signed by the qualified risk*
25 *manager, the chief executive officer, or the chief finan-*

1 *cial officer of the exempt commercial purchaser, certi-*
2 *fying with respect to the insurance to which the re-*
3 *quirements of section 103(c)(1) apply to that insurer*
4 *that—*

5 *“(A) the purchaser has an employee that*
6 *meets the definition of a qualified risk manager*
7 *under this section;*

8 *“(B) the purchaser meets the definition of*
9 *an exempt commercial purchaser in accordance*
10 *with this section;*

11 *“(C) the purchaser is aware that the policy*
12 *being considered for purchase contains forms and*
13 *rates that are not subject to State regulatory re-*
14 *view or approval;*

15 *“(D) the purchaser has or has retained the*
16 *necessary expertise to negotiate its own policy*
17 *language and rates; and*

18 *“(E) the purchaser agrees to the use of ex-*
19 *empted rates and forms by its insurer or insur-*
20 *ers.*

21 *“(8) GROUP LIFE INSURANCE.—The term ‘group*
22 *life insurance’ means an insurance contract that pro-*
23 *vides term life insurance coverage, accidental death*
24 *coverage, or a combination thereof, for a number of*
25 *individuals under a single contract, on the basis of a*

1 *group selection of risks, but does not include ‘Cor-*
2 *porate Owned Life Insurance’ or ‘Business Owned*
3 *Life Insurance,’ each as defined under the Internal*
4 *Revenue Code of 1986, or any similar product.*

5 “(9) *HOME STATE.*—*The term ‘home State’*
6 *means as follows:*

7 “(A) *In the case of a policy written for com-*
8 *mercial risks that are primarily located in a*
9 *State, such term means such State.*

10 “(B) *If subparagraph (A) does not apply,*
11 *such term means the State where the commercial*
12 *policyholder has its principal place of business*
13 *(such as where the policyholder’s headquarters*
14 *are located, as determined by the predominant*
15 *physical location in the United States of the offi-*
16 *cers and senior management of the policyholder).*

17 “(10) *INSURED LOSS.*—*The term ‘insured loss’*
18 *means any loss resulting from an act of terrorism (in-*
19 *cluding an act of war, in the case of workers’ com-*
20 *ensation and group life insurance) that is covered by*
21 *primary or excess property, casualty, workers’ com-*
22 *ensation, or group life insurance issued by an in-*
23 *surer if such loss—*

24 “(A) *occurs within the United States; or*

1 “(B) occurs to an air carrier (as defined in
2 section 40102 of title 49, United States Code), to
3 a United States flag vessel (or a vessel based
4 principally in the United States, on which
5 United States income tax is paid and whose in-
6 surance coverage is subject to regulation in the
7 United States), regardless of where the loss oc-
8 curs, or at the premises of any United States
9 mission.

10 “(11) 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 in any State;

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

21 “(iii) approved for the purpose of offer-
22 ing a covered line of insurance by a Federal
23 agency in connection with maritime, en-
24 ergy, 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 covered line of insurance cov-
10 erage, other than in the case of entities described
11 in subsections (d) and (f) of section 103; and

12 “(C) that meets any other criteria that the
13 Secretary may reasonably prescribe.

14 “(12) *INSURER DEDUCTIBLE*.—The term ‘insurer
15 deductible’ means—

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

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

24 “(C) for Program Year 2, the value of an
25 insurer’s direct earned premiums over the cal-

1 *endar year immediately preceding Program Year*
2 *2, multiplied by 10 percent;*

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

7 “(E) for Program Year 4—

8 “(i) except as provided in clause (ii),
9 the value of an insurer’s direct earned pre-
10 mium for a covered line of insurance over
11 the calendar year immediately preceding
12 Program Year 4, multiplied by—

13 “(I) for workers’ compensation in-
14 surance, 16 percent;

15 “(II) for group life insurance,
16 21.5 percent;

17 “(III) for property insurance, 20
18 percent; and

19 “(IV) for casualty insurance, 25
20 percent; and

21 “(ii) with respect to NBCR terrorism
22 coverage, the value of an insurer’s direct
23 earned premium for a covered line of insur-
24 ance over the calendar year immediately
25 preceding Program Year 4, multiplied by

1 the following percentages which shall be
2 treated as sub-deductibles that apply in lieu
3 of the deductibles set forth in clause (i) for
4 NBCR terrorism losses—

5 “(I) for workers’ compensation in-
6 surance, 7.5 percent;

7 “(II) for group life insurance, 7.5
8 percent;

9 “(III) for property insurance, 7.5
10 percent; and

11 “(IV) for casualty insurance, 7.5
12 percent; and

13 “(iii) if, for any covered line of insur-
14 ance, an insurer incurs insured losses
15 caused by NBCR terrorism, such NBCR in-
16 sured losses shall be applied against both
17 the deductible set forth in clause (i) and the
18 NBCR terrorism deductible set forth in
19 clause (ii) for that covered line of insurance;

20 “(F) for any Additional Program Years—

21 “(i) except as provided in clause (ii),
22 the value of an insurer’s direct earned pre-
23 mium for a covered line of insurance over
24 the calendar year immediately preceding
25 that year, multiplied by the insurer deduct-

1 *ible for each covered line of insurance for*
2 *the preceding calendar year plus an addi-*
3 *tional percentage, as follows—*

4 *“(I) for workers’ compensation in-*
5 *surance, 2.0 percent;*

6 *“(II) for group life insurance, 2.5*
7 *percent;*

8 *“(III) for property insurance, 2.5*
9 *percent; and*

10 *“(IV) for casualty insurance, 5.0*
11 *percent; and*

12 *“(ii) with respect to NBCR terrorism*
13 *coverage, the value of an insurer’s direct*
14 *earned premium for a covered line of insur-*
15 *ance over the calendar year immediately*
16 *preceding that year, multiplied by the*
17 *NBCR terrorism deductible for the pre-*
18 *ceding year for that covered line of insur-*
19 *ance plus the following additional percent-*
20 *ages, all of which shall be treated as*
21 *subdeductibles that apply in lieu of the*
22 *deductibles listed in clause (i) for NBCR*
23 *terrorism insured losses—*

24 *“(I) for workers’ compensation in-*
25 *surance, 0.75 percent;*

1 “(II) for group life insurance,
2 0.75 percent;

3 “(III) for property insurance,
4 0.75 percent; and

5 “(IV) for casualty insurance, 0.75
6 percent; and

7 “(iii) if, for any covered line of insur-
8 ance, an insurer incurs insured losses
9 caused by NBCR terrorism, such NBCR in-
10 sured losses shall be applied against both
11 the deductible set forth in clause (i) and the
12 NBCR terrorism deductible set forth in
13 clause (ii) for that covered line of insurance;

14 “(G) notwithstanding subparagraphs (A)
15 through (F), for the Transition Period and any
16 other Program Year or other calendar year, if an
17 insurer has not had a full year of operations
18 during the calendar year immediately preceding
19 such Period or year, such portion of the direct
20 earned premiums of the insurer as the Secretary
21 determines appropriate, subject to appropriate
22 methodologies established by the Secretary for
23 measuring such direct earned premiums; and

24 “(H) if, in any calendar year, aggregate in-
25 dustry insured losses exceed \$1,000,000,000, the

1 insurer deductibles for the next calendar year
2 shall be reduced by 0.1 percent for each
3 \$1,000,000,000 in insured losses that have oc-
4 curred during the preceding calendar year, ex-
5 cept that no insurer deductible shall be reduced
6 below 5 percent.

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

9 “(14) OWNERSHIP.—An insurer ‘owns’ another
10 insurer if the insurer, directly or indirectly or acting
11 through one or more other persons, owns 25 percent
12 or more of any class of voting securities of the other
13 insurer.

14 “(15) NBCR TERRORISM.—The term ‘NBCR ter-
15 rorism’ means an act of terrorism involving nuclear,
16 biological, chemical, or radioactive reactions, releases,
17 or contaminations, to the extent any insured losses
18 are caused by any such reactions, releases, or con-
19 taminations.

20 “(16) 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 State
25 or other governmental unit.

1 “(17) *PROGRAM*.—The term ‘Program’ means the
2 *Terrorism Insurance Program* established by this
3 *title*.

4 “(18) *PROGRAM YEARS*.—

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

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

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

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

21 “(E) *PROGRAM YEAR 4*.—The term ‘Pro-
22 gram Year 4’ means the period beginning on
23 January 1, 2006 and ending on December 31,
24 2006.

1 “(F) *ADDITIONAL PROGRAM YEARS.*—*The*
2 *term ‘Additional Program Year’ means any ad-*
3 *ditional one-year period after Program Year 4*
4 *during which the Program is in effect, which pe-*
5 *riod shall begin on January 1 and end on De-*
6 *cember 31 of the same calendar year.*

7 “(19) *PROPERTY INSURANCE.*—*The term ‘prop-*
8 *erty insurance’ means—*

9 “(A) *except as provided in subparagraph*
10 *(B), insurance on real or personal property of*
11 *every kind, including excess insurance, against*
12 *loss or damage from any and all hazard or cause*
13 *and against loss consequential upon such loss or*
14 *damage, including business interruption insur-*
15 *ance, other than non-contractual legal liability*
16 *for such loss or damage; and*

17 “(B) *does not include any type of commer-*
18 *cial automobile or workers’ compensation insur-*
19 *ance.*

20 “(20) *QUALIFIED RISK MANAGER.*—*The term*
21 *‘qualified risk manager’ means any person who meets*
22 *all of the following criteria:*

23 “(A) *The person is an employee of, or third*
24 *party consultant retained by, the commercial*
25 *policyholder.*

1 “(B) *The person provides skilled services in*
2 *loss prevention, loss reduction, or risk and insur-*
3 *ance coverage analysis, and purchase of insur-*
4 *ance.*

5 “(C) *The person possesses at least 1 of the*
6 *following credentials:*

7 “(i) *A bachelor’s or higher degree in*
8 *risk management issued by an accredited*
9 *college or university.*

10 “(ii) *A designation as a Chartered*
11 *Property and Casualty Underwriter (in this*
12 *subparagraph referred to as ‘CPCU’) issued*
13 *by the American Institute for CPCU/Insur-*
14 *ance Institute of America.*

15 “(iii) *A designation as an Associate in*
16 *Risk Management (ARM) issued by Amer-*
17 *ican Institute for CPCU/Insurance Institute*
18 *of America.*

19 “(iv) *A designation as a Certified Risk*
20 *Manager (CRM) issued by the National Al-*
21 *liance for Insurance Education & Research.*

22 “(v) *A designation as a RIMS Fellow*
23 *(RS) issued by the Global Risk Management*
24 *Institute.*

1 “(vi) *At least 5 years of experience in*
2 *1 or more of the following areas of commer-*
3 *cial property insurance or commercial cas-*
4 *ualty insurance:*

5 “(I) *Risk financing.*

6 “(II) *Claims administration.*

7 “(III) *Loss prevention.*

8 “(IV) *Risk and insurance cov-*
9 *erage analysis.*

10 “(21) *SECRETARY.*—*The term ‘Secretary’ means*
11 *the Secretary of the Treasury.*

12 “(22) *STATE.*—*The term ‘State’ means any*
13 *State of the United States, the District of Columbia,*
14 *the Commonwealth of Puerto Rico, the Commonwealth*
15 *of the Northern Mariana Islands, American Samoa,*
16 *Guam, each of the United States Virgin Islands, and*
17 *any territory or possession of the United States.*

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

24 “(24) *WORKERS’ COMPENSATION.*—*The term*
25 *‘workers’ compensation’ means insurance against loss*

1 *from liability imposed by law upon employers to*
2 *compensate employees and their dependents for injury*
3 *sustained by the employees arising out of and in the*
4 *course of the employment, irrespective of negligence or*
5 *of the fault of either party.*

6 “(25) *RULE OF CONSTRUCTION FOR DATES.—*

7 *With respect to any reference to a date in this title,*
8 *such day shall be construed—*

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

10 *and*

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

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

13 “(a) *ESTABLISHMENT OF PROGRAM.—*

14 “(1) *IN GENERAL.—There is established in the*
15 *Department of the Treasury the Terrorism Insurance*
16 *Program.*

17 “(2) *AUTHORITY OF THE SECRETARY.—Notwith-*
18 *standing any other provision of State or Federal law,*
19 *the Secretary shall administer the Program, and shall*
20 *pay the Federal share of compensation for insured*
21 *losses in accordance with subsection (e).*

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

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

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

8 “(2) *the insurer provides clear and conspicuous*
9 *disclosure to the policyholder of the premium charged*
10 *for insured losses covered by the program and the*
11 *Federal share of compensation for insured losses*
12 *under the Program—*

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

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

20 “(C) *in the case of any policy that is issued*
21 *more than 90 days after the date of enactment*
22 *of this Act, on a separate line item in the policy,*
23 *at the time of offer, purchase, and renewal of the*
24 *policy;*

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

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

8 “(A) a claim for payment of the Federal
9 share of compensation for insured losses under
10 the Program;

11 “(B) written certification—

12 “(i) of the underlying claim; and

13 “(ii) of all payments made for insured
14 losses; and

15 “(C) certification of its compliance with the
16 provisions of this subsection.

17 “(c) MANDATORY AVAILABILITY.—Each entity that
18 meets the definition of an insurer under section 102—

19 “(1) shall make available, in all of its covered
20 lines of insurance policies, coverage for insured losses
21 that does not differ materially from the terms,
22 amounts, and other coverage limitations applicable to
23 losses arising from events other than acts of terrorism;

24 “(2) shall make available, in any of its covered
25 lines of insurance policies that exclude coverage for

1 *losses resulting from NBCR terrorism, coverage for*
2 *losses resulting from NBCR terrorism that may differ*
3 *materially from the terms, amounts, and other cov-*
4 *erage limitations applicable to losses arising from*
5 *events other than NBCR terrorism; and*

6 *“(3) shall make available, in any life insurance*
7 *policy, coverage that does not preclude future lawful*
8 *foreign travel by the person insured, and shall not*
9 *charge a premium for such coverage that is excessive*
10 *and not based on a good faith actuarial analysis.*

11 *“(d) STATE RESIDUAL MARKET INSURANCE ENTI-*
12 *TIES.—*

13 *“(1) IN GENERAL.—The Secretary shall issue*
14 *regulations, as soon as practicable after the date of*
15 *enactment of this Act, that apply the provisions of*
16 *this title to State residual market insurance entities,*
17 *State workers’ compensation funds, and State work-*
18 *ers’ compensation reinsurance pools.*

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

22 *“(A) a State residual market insurance en-*
23 *tity that does not share its profits and losses*
24 *with private sector insurers shall be treated as a*
25 *separate insurer; and*

1 “(B) a State residual market insurance en-
2 tity that shares its profits and losses with pri-
3 vate sector insurers shall not be treated as a sep-
4 arate insurer, and shall report to each private
5 sector insurance participant its share of the in-
6 sured losses of the entity, which shall be included
7 in each private sector insurer’s insured losses.

8 “(3) TREATMENT OF PARTICIPATION IN CERTAIN
9 ENTITIES.—Any insurer that participates in sharing
10 profits and losses of a State residual market insur-
11 ance entity shall include in its calculations of pre-
12 miums any premiums distributed to the insurer by
13 the State residual market insurance entity.

14 “(e) INSURED LOSS SHARED COMPENSATION.—

15 “(1) FEDERAL SHARE.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graphs (B) and (C), the Federal share of com-
18 pensation under the Program to be paid by the
19 Secretary for insured losses of an insurer during
20 each Program Year shall be equal to that portion
21 of the amount of such insured losses for each cov-
22 ered line of insurance that exceeds the applicable
23 insurer deductible required to be paid during
24 such Program Year, multiplied by a percentage

1 based on aggregate industry insured losses for a
2 Program Year, which shall be as follows:

3 “(i) 80 percent of the aggregate indus-
4 try insured losses of less than
5 \$10,000,000,000;

6 “(ii) 85 percent of the aggregate indus-
7 try insured losses between \$10,000,000,000
8 and \$20,000,000,000;

9 “(iii) 90 percent of the aggregate in-
10 dustry insured losses between
11 \$20,000,000,000 and \$40,000,000,000; and

12 “(iv) 95 percent of the aggregate indus-
13 try insured losses above industry losses
14 above \$40,000,000,000;

15 and shall be prorated by insurer based on each
16 insurer’s percentage of the aggregate industry in-
17 sured losses for that Program Year.

18 “(B) PROGRAM TRIGGER.—No compensa-
19 tion shall be paid by the Secretary under sub-
20 section (a) unless the aggregate industry insured
21 losses exceed—

22 “(i) \$50,000,000, with respect to in-
23 sured losses occurring in Program Year 4;

24 “(ii) \$100,000,000, with respect to in-
25 sured losses occurring in the Additional

1 *Program Year beginning on January 1,*
2 *2007;*

3 *“(iii) with respect to each Additional*
4 *Program Year thereafter that coverage is*
5 *provided under the Program, the amount*
6 *that is equal to the sum of (I) the dollar*
7 *amount applicable under this subparagraph*
8 *for the Program Year preceding such Addi-*
9 *tional Program Year, and (II) \$50,000,000;*
10 *except that the applicable Program Trigger*
11 *amount shall be reduced by \$10,000,000 for each*
12 *\$1,000,000,000 in insured losses occurring in*
13 *any preceding year, provided that the Program*
14 *Trigger shall not be reduced below \$50,000,000*
15 *for any year.*

16 *“(C) PROHIBITION ON DUPLICATIVE COM-*
17 *PENSATION.—The Federal share of compensation*
18 *for insured losses under the Program shall be re-*
19 *duced by the amount of compensation provided*
20 *by the Federal Government to any person under*
21 *any other Federal program for those insured*
22 *losses.*

23 *“(2) TRIA CAPITAL RESERVE FUNDS.—*

24 *“(A) ESTABLISHMENT.—Any insurer may*
25 *establish a TRIA Capital Reserve Fund (in this*

1 *section referred to as a ‘CRF’) in which it may*
2 *hold funds in a fiduciary capacity on behalf of*
3 *the Secretary.*

4 “(B) *FUNDING.*—*An insurer may fund a*
5 *CRF by making an election, in advance, to treat*
6 *some or all of the premiums it has disclosed pur-*
7 *suant to section 103(b)(2) as TRIA program fee*
8 *charges imposed by the Secretary. Any such pre-*
9 *miums for which such an election has been made*
10 *must be maintained in segregated accounts in a*
11 *fiduciary capacity on behalf of the Secretary.*
12 *Such funds may be invested in any otherwise le-*
13 *gally permissible manner but all interest, divi-*
14 *dends, and capital accumulations also shall be*
15 *retained in such segregated accounts on behalf of*
16 *the Secretary.*

17 “(C) *USE.*—*Funds from a CRF shall be col-*
18 *lected and used by the Secretary to offset, in*
19 *whole or in part, the Federal share of compensa-*
20 *tion provided to all insurers under the Program*
21 *as provided for in paragraph (1), except that an*
22 *insurer may first use the funds in a CRF of that*
23 *insurer to satisfy any one or more of the fol-*
24 *lowing:*

1 “(i) *The applicable insurer deductibles*
2 *for the insurer.*

3 “(ii) *The portion of the insurer’s losses*
4 *that exceed the insurer deductible but are*
5 *not compensated by the Federal share pur-*
6 *suant to paragraph (1).*

7 “(iii) *The insurer’s obligations to pay*
8 *for insured losses if the program trigger es-*
9 *tablished in paragraph (1)(B) is not satis-*
10 *fied.*

11 “(iv) *Any risk sharing obligations the*
12 *insurer may have under any agreements*
13 *made pursuant to or in accordance with*
14 *paragraph (3).*

15 “(D) *TERMINATION.—*

16 “(i) *TERMINATION OF PROGRAM.—*
17 *Upon termination of the Program under*
18 *section 108(a), and subject to the Sec-*
19 *retary’s continuing authority under section*
20 *108(b) to adjust claims in satisfaction of the*
21 *Federal share of compensation under the*
22 *Program as provided in paragraph (1) of*
23 *this subsection, 10 percent of each insurer’s*
24 *CRF funds shall be remitted to the Sec-*
25 *retary and the remainder shall be remitted*

1 to the insurer. The Secretary shall deter-
2 mine the manner in which the remittance of
3 such income to the insurer shall be made.

4 “(i) *ELIMINATION OF FEDERAL SHARE*
5 *OF COMPENSATION.*—If the Program re-
6 mains in effect but the Federal share of
7 compensation for insured losses under the
8 Program is eliminated from the Program,
9 the CRF funds shall be retained and used
10 for the purposes set forth in subparagraph
11 (C) of this paragraph. At such time as an
12 insurer’s liability for insured losses under
13 the Program terminates, as a consequence of
14 the insurer’s termination of its business or
15 otherwise, the insurer shall remit any re-
16 maining CRF funds to the Secretary.

17 “(3) *RISK-SHARING MECHANISMS.*—

18 “(A) *FINDING; RULE OF CONSTRUCTION.*—
19 Congress finds that it is desirable to encourage
20 the growth of nongovernmental, private market
21 reinsurance capacity for protection against losses
22 arising from acts of terrorism. Therefore, nothing
23 in this title shall prohibit insurers from devel-
24 oping risk-sharing mechanisms (including mu-
25 tual reinsurance facilities and agreements) to

1 *voluntarily reinsure terrorism losses between and*
2 *among themselves that are not subject to reim-*
3 *bursement under this section 103.*

4 “(B) *ESTABLISHMENT OF ADVISORY COM-*
5 *MITTEE.—The Secretary shall appoint an Advi-*
6 *sory Committee to—*

7 “(i) *encourage the creation and devel-*
8 *opment of such mechanisms;*

9 “(ii) *assist the Secretary and be avail-*
10 *able to administer such mechanisms; and*

11 “(iii) *develop articles of incorporation,*
12 *bylaws, and a plan of operation for any*
13 *long-term reinsurance facility authorized or*
14 *created in the future.*

15 “(C) *MEMBERSHIP.—The Advisory Com-*
16 *mittee shall be composed of nine members who*
17 *are directors, officers, or other employees of in-*
18 *surers that are participating or that desire to*
19 *participate in such mechanisms, and who are*
20 *representative of the affected sectors of the insur-*
21 *ance industry. In making these appointments,*
22 *the Secretary shall solicit major trade associa-*
23 *tions of the insurance industry to nominate lists*
24 *of qualified individuals representative of the*
25 *commercial property insurance, commercial cas-*

1 ualty insurance, group life insurance, and rein-
2 surance industries.

3 “(4) *CAP ON ANNUAL LIABILITY.*—

4 “(A) *IN GENERAL.*—*Notwithstanding para-*
5 *graph (1) or any other provision of Federal or*
6 *State law, if the aggregate insured losses exceed*
7 *\$100,000,000,000 during any Program Year*
8 *(until such time as the Congress may act other-*
9 *wise with respect to such losses)—*

10 “(i) *the Secretary shall not make any*
11 *payment under this title for any portion of*
12 *the amount of such losses that exceeds*
13 *\$100,000,000,000; and*

14 “(ii) *no insurer that has met its in-*
15 *surer deductible shall be liable for the pay-*
16 *ment of any portion of that amount that ex-*
17 *ceeds \$100,000,000,000.*

18 “(B) *INSURER SHARE.*—*For purposes of*
19 *subparagraph (A), the Secretary shall determine*
20 *the pro rata share of insured losses to be paid by*
21 *each insurer that incurs insured losses under the*
22 *Program.*

23 “(5) *NOTICE TO CONGRESS.*—*The Secretary shall*
24 *notify the Congress if estimated or actual aggregate*
25 *insured losses exceed \$100,000,000,000 during during*

1 *any Program Year and the Congress shall determine*
2 *the procedures for and the source of any payments for*
3 *such excess insured losses.*

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

8 “(7) *DETERMINATIONS FINAL.*—*Any determina-*
9 *tion of the Secretary under this subsection shall be*
10 *final, unless expressly provided, and shall not be sub-*
11 *ject to judicial review.*

12 “(8) *FULL RECOUPMENT OF FEDERAL SHARE.*—
13 *The Secretary shall collect, for repayment of the Fed-*
14 *eral financial assistance provided in connection with*
15 *all acts of terrorism (or acts of war, in the case of*
16 *workers’ compensation and group life insurance), ter-*
17 *rorism loss risk-spreading premiums in an amount*
18 *equal to the total amount paid by the Secretary in*
19 *accordance with this section.*

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

22 “(A) *POLICYHOLDER PREMIUM.*—*Any*
23 *amount established by the Secretary as a ter-*
24 *rorism loss risk-spreading premium shall—*

1 “(i) be imposed as a policyholder pre-
2 mium surcharge on all covered lines of in-
3 surance policies in force after the date of
4 such establishment;

5 “(ii) begin with such period of coverage
6 during the year as the Secretary determines
7 appropriate; and

8 “(iii) be based on a percentage of the
9 premium amount charged for covered lines
10 of insurance coverage under the policy.

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

15 “(C) PERCENTAGE LIMITATION.—A ter-
16 rorism loss risk-spreading premium may not ex-
17 ceed, on an annual basis, the amount equal to 3
18 percent of the premium charged for covered lines
19 of insurance coverage under the policy.

20 “(D) ADJUSTMENT FOR URBAN AND SMALL-
21 ER COMMERCIAL AND RURAL AREAS AND DIF-
22 FERENT LINES OF INSURANCE.—

23 “(i) ADJUSTMENTS.—In determining
24 the method and manner of imposing ter-
25 rorism loss risk-spreading premiums, in-

1 cluding the amount of such premiums, the
2 Secretary shall take into consideration—

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

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

18 “(III) the various exposures to
19 terrorism risk for different lines of in-
20 surance.

21 “(ii) *RECOUPMENT OF ADJUST-*
22 *MENTS.—Any recoupment amounts not col-*
23 *lected by the Secretary because of adjust-*
24 *ments under this subparagraph shall be re-*

1 *couped through additional terrorism loss*
2 *risk-spreading premiums.*

3 “(E) *TIMING OF PREMIUMS.*—*The Secretary*
4 *may adjust the timing of terrorism loss risk-*
5 *spreading premiums to provide for equivalent*
6 *application of the provisions of this title to poli-*
7 *cies that are not based on a calendar year, or to*
8 *apply such provisions on a daily, monthly, or*
9 *quarterly basis, as appropriate.*

10 “(F) *REPLENISHMENT OF TRIA CAPITAL RE-*
11 *SERVE FUNDS.*—*After any funds expended di-*
12 *rectly from the United States Treasury are fully*
13 *repaid, the balance of the amounts collected*
14 *under this paragraph shall be used to fully re-*
15 *plenish all insurer CRFs used by the Secretary*
16 *in accordance with the provisions of paragraph*
17 *(2)(C) that were not used by the insurer to sat-*
18 *isfy its obligations in accordance with clauses (i)*
19 *through (iv) of paragraph (2)(C).*

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

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

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

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

14 “(2) *LIMITATION ON FINANCIAL ASSISTANCE.*—
15 *The amount of financial assistance provided pursuant*
16 *to this section, including amounts from a CRF used*
17 *pursuant to subsection (e)(2)(C), shall not be reduced*
18 *by reinsurance paid or payable to an insurer from*
19 *other sources, except that recoveries from such other*
20 *sources, taken together with financial assistance for*
21 *the Transition Period or a Program Year provided*
22 *pursuant to this section, may not exceed the aggregate*
23 *amount of the insurer's insured losses for such period.*
24 *If such recoveries and financial assistance for the*
25 *Transition Period or a Program Year exceed such ag-*

1 *gregate amount of insured losses for that period and*
2 *there is no agreement between the insurer and any re-*
3 *insurer to the contrary, an amount in excess of such*
4 *aggregate insured losses shall be returned to the Sec-*
5 *retary.*

6 *“(h) PERSONAL LINES STUDY.—*

7 *“(1) IN GENERAL.—The Comptroller General of*
8 *the United States, after consultation with the NAIC,*
9 *representatives of the insurance industry, and other*
10 *experts in the insurance field, including a cross-sec-*
11 *tion of insurers, independent insurance agents and*
12 *brokers, and policyholders, shall conduct a study con-*
13 *cerning the exposure of personal lines (including*
14 *homeowners insurance) to terrorism risk, the coverage*
15 *currently available, and potential policy responses.*

16 *“(2) REPORT.—Not later than September 1,*
17 *2006, the Comptroller General shall submit a report*
18 *to the Congress on the results of the study conducted*
19 *under subparagraph (1), together with specific policy*
20 *recommendations.*

21 *“(i) STUDY OF RISKS STEMMING FROM NUCLEAR, BI-*
22 *OLOGICAL, CHEMICAL AND RADIOACTIVE EVENTS.—*

23 *“(1) IN GENERAL.—The Comptroller General of*
24 *the United States, after consultation with the NAIC,*
25 *representatives of the insurance industry, including a*

1 *cross-section of insurers, independent insurance*
2 *agents and brokers, and policyholders, and other ex-*
3 *erts in the insurance field, shall conduct a study*
4 *concerning the risk of potential terrorist acts stem-*
5 *ming from the use of nuclear, biological, chemical,*
6 *and radioactive weapons.*

7 “(2) *REPORT.*—*Not later than September 1,*
8 *2006, the Comptroller General shall submit a report*
9 *to the Congress on the results of the study conducted*
10 *under paragraph (1), together with specific policy*
11 *recommendations.*

12 “(j) *STUDY OF NEED FOR FEDERAL NATURAL DIS-*
13 *ASTER CATASTROPHE PROGRAM.*—

14 “(1) *IN GENERAL.*—*The Comptroller General of*
15 *the United States, after consultation with the NAIC,*
16 *representatives of the insurance industry, including a*
17 *cross-section of insurers, independent insurance*
18 *agents and brokers, and policyholders, and other ex-*
19 *erts in the insurance field, shall conduct a study*
20 *concerning the need for a Federal program that pro-*
21 *vides for a system of shared public and private com-*
22 *ensation for insured losses resulting from natural*
23 *disaster.*

24 “(2) *ISSUES.*—*The study under this section shall*
25 *include an analysis of whether, and in what manner,*

1 *such a Federal program should incorporate any or all*
2 *of the following concepts: tax-free capital reserves; vol-*
3 *untary mutual reinsurance pools; a distinction be-*
4 *tween sophisticated and non-sophisticated commercial*
5 *purchasers for the purposes of exemption from regula-*
6 *tion; or Federal support for the purchase of reinsur-*
7 *ance by State disaster insurance programs.*

8 *“(3) REPORT.—Not later than September 1,*
9 *2006, the Comptroller General shall submit a report*
10 *to the Congress on the results of the study conducted*
11 *under this subsection together with specific policy rec-*
12 *ommendations.*

13 **“SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF**
14 **CLAIMS.**

15 *“(a) GENERAL AUTHORITY.—The Secretary shall have*
16 *the powers and authorities necessary to carry out the pro-*
17 *gram, including authority—*

18 *“(1) to investigate and audit all claims under*
19 *the Program; and*

20 *“(2) to prescribe regulations and procedures to*
21 *effectively administer and implement the Program,*
22 *and to ensure that all insurers and self-insured enti-*
23 *ties that participate in the Program are treated com-*
24 *parably under the Program.*

1 “(b) *INTERIM RULES AND PROCEDURES.*—*The Sec-*
2 *retary may issue interim final rules or procedures speci-*
3 *fying the manner in which—*

4 “(1) *insurers may file and certify claims under*
5 *the Program;*

6 “(2) *the Federal share of compensation for in-*
7 *sured losses will be paid under the Program, includ-*
8 *ing payments based on estimates of or actual insured*
9 *losses;*

10 “(3) *the Secretary may, at any time, seek repay-*
11 *ment from or reimburse any insurer, based on esti-*
12 *mates of insured losses under the Program, to effec-*
13 *tuate the insured loss sharing provisions in section*
14 *103; and*

15 “(4) *the Secretary will determine any final net-*
16 *ting of payments under the Program, including pay-*
17 *ments owed to the Federal Government from any in-*
18 *surer and any Federal share of compensation for in-*
19 *sured losses owed to any insurer, to effectuate the in-*
20 *sured loss sharing provisions in section 103.*

21 “(c) *CONSULTATION.*—*The Secretary shall consult*
22 *with the NAIC, as the Secretary determines appropriate,*
23 *concerning the Program.*

1 “(d) *CONTRACTS FOR SERVICES.*—*The Secretary may*
2 *employ persons or contract for services as may be necessary*
3 *to implement the Program.*

4 “(e) *CIVIL PENALTIES.*—

5 “(1) *IN GENERAL.*—*The Secretary may assess a*
6 *civil monetary penalty in an amount not exceeding*
7 *the amount under paragraph (2) against any insurer*
8 *that the Secretary determines, on the record after op-*
9 *portunity for a hearing—*

10 “(A) *has failed to charge, collect, or remit*
11 *terrorism loss risk-spreading premiums under*
12 *section 103(e) in accordance with the require-*
13 *ments of, or regulations issued under, this title;*

14 “(B) *has intentionally provided to the Sec-*
15 *retary erroneous information regarding premium*
16 *or loss amounts;*

17 “(C) *submits to the Secretary fraudulent*
18 *claims under the Program for insured losses;*

19 “(D) *has failed to provide the disclosures re-*
20 *quired under subsection (f); or*

21 “(E) *has otherwise failed to comply with the*
22 *provisions of, or the regulations issued under,*
23 *this title.*

24 “(2) *AMOUNT.*—*The amount under this para-*
25 *graph is the greater of \$1,000,000 and, in the case of*

1 *any failure to pay, charge, collect, or remit amounts*
2 *in accordance with this title or the regulations issued*
3 *under this title, such amount in dispute.*

4 “(3) *RECOVERY OF AMOUNT IN DISPUTE.—A*
5 *penalty under this subsection for any failure to pay,*
6 *charge, collect, or remit amounts in accordance with*
7 *this title or the regulations under this title shall be*
8 *in addition to any such amounts recovered by the*
9 *Secretary.*

10 “(f) *SUBMISSION OF PREMIUM INFORMATION.—*

11 “(1) *IN GENERAL.—The Secretary shall annually*
12 *compile information on the terrorism risk insurance*
13 *premium rates of insurers for the preceding year.*

14 “(2) *ACCESS TO INFORMATION.—To the extent*
15 *that such information is not otherwise available to the*
16 *Secretary, the Secretary may require each insurer to*
17 *submit to the NAIC terrorism risk insurance pre-*
18 *mium rates, as necessary to carry out paragraph (1),*
19 *and the NAIC shall make such information available*
20 *to the Secretary.*

21 “(3) *AVAILABILITY TO CONGRESS.—The Sec-*
22 *retary shall make information compiled under this*
23 *subsection available to the Congress, upon request.*

24 “(g) *FUNDING.—*

1 “(1) *FEDERAL PAYMENTS.*—*There are hereby ap-*
2 *propriated, out of funds in the Treasury not otherwise*
3 *appropriated, such sums as may be necessary to pay*
4 *the Federal share of compensation for insured losses*
5 *under the Program to the extent such Federal share*
6 *exceeds funds collected by the Secretary pursuant to*
7 *section 103(e)(2).*

8 “(2) *ADMINISTRATIVE EXPENSES.*—*There are*
9 *hereby appropriated, out of funds in the Treasury not*
10 *otherwise appropriated, such sums as may be nec-*
11 *essary to pay reasonable costs of administering the*
12 *Program.*

13 **“SEC. 105. ESTABLISHMENT OF COMMISSION ON TER-**
14 **RORISM RISK INSURANCE.**

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

18 “(b) *MEMBERSHIP.*—

19 “(1) *The Commission shall consist of 11 mem-*
20 *bers, as follows:*

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

23 “(B) *One State insurance commissioner*
24 *designated by the members of the NAIC.*

1 “(C) *Nine members appointed by the Presi-*
2 *dent, who shall be—*

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

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

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

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

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

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

17 “(vii) *a policyholder representative;*

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

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

23 “(2) *SECRETARY.—The Program Director of the*
24 *Terrorism Risk Insurance Act shall serve as Secretary*
25 *of the Commission. The Secretary of the Commission*

1 *shall determine the manner in which the Commission*
2 *shall operate, including funding and staffing.*

3 “(c) *DUTIES.—*

4 “(1) *IN GENERAL.—The Commission shall identify*
5 *and make recommendations regarding—*

6 “(A) *possible actions to encourage, facilitate,*
7 *and sustain provision by the private insurance*
8 *industry in the United States of affordable*
9 *coverage for losses due to an act or acts of terrorism;*
10

11 “(B) *possible actions or mechanisms to sustain*
12 *or supplement the ability of the insurance*
13 *industry in the United States to cover losses resulting*
14 *from acts of terrorism in the event that—*

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

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

23 “(C) *significantly reducing the expected*
24 *Federal role over time in any continuing Federal*
25 *terrorism risk insurance program.*

1 “(2) *EVALUATIONS.*—*In identifying and making*
2 *the recommendations required under paragraph (1),*
3 *the Commission shall specifically evaluate the utility*
4 *and viability of TRIA Capital Reserve Funds made*
5 *available under section 103(e)(2), any risk sharing*
6 *mechanism created or made available under section*
7 *103(e)(3), a Federally created or mandated reinsur-*
8 *ance facility, empowering such a facility to issue pre-*
9 *event financing bonds, post-event financing bonds, as-*
10 *essments, single or multiple pooling arrangements,*
11 *and other risk sharing arrangements to accomplish,*
12 *in whole or in part, the specified objectives, taking*
13 *into consideration the studies and reports to the Con-*
14 *gress pursuant to subsections (h) and (i) of section*
15 *103.*

16 “(3) *REPORT.*—*Not later than December 31,*
17 *2006, the Commission shall submit a report to Con-*
18 *gress evaluating and making recommendations re-*
19 *garding whether there is a need for a Federal ter-*
20 *rorism risk insurance program and, if so, shall make*
21 *a specific, detailed recommendation for the replace-*
22 *ment of the Program, including specific, detailed rec-*
23 *ommendations for the creation of a terrorism reinsur-*
24 *ance facility or facilities or single or multiple pooling*
25 *arrangements, or both.*

1 “(d) *EFFECT ON EXISTING PROGRAM.*—For purposes
2 of section 108(a), the Secretary shall make a determination
3 not later than January 31, 2007, of whether the Commis-
4 sion has satisfied its obligations under subsection (c)(3).

5 **“SEC. 106. PRESERVATION PROVISIONS.**

6 “(a) *STATE LAW.*—Nothing in this title shall affect the
7 jurisdiction or regulatory authority of the insurance com-
8 missioner (or any agency or office performing like func-
9 tions) of any State over any insurer or other person—

10 “(1) except as specifically provided in this title;

11 and

12 “(2) except that—

13 “(A) the definition of the term ‘act of ter-
14 rorism’ in section 102 shall be the exclusive defi-
15 nition of that term for purposes of compensation
16 for insured losses under this title, and shall pre-
17 empt any provision of State law that is incon-
18 sistent with that definition, to the extent that
19 such provision of law would otherwise apply to
20 any type of insurance covered by this title; and

21 “(B) during the period beginning on the
22 date of enactment of this Act and for so long as
23 the Program is in effect, as provided in section
24 108, including authority in subsection 108(b),
25 books and records of any insurer that are rel-

1 *evant to the Program shall be provided, or*
2 *caused to be provided, to the Secretary, upon re-*
3 *quest by the Secretary, notwithstanding any pro-*
4 *vision of the laws of any State prohibiting or*
5 *limiting such access; and*

6 *“(3) except that with respect to coverage required*
7 *to be made available under section 103(c)—*

8 *“(A) no laws or regulations of a State im-*
9 *posing a diligent search requirement for the*
10 *placement of a surplus lines policy shall apply*
11 *in connection with the purchase of such insur-*
12 *ance by an exempt commercial policyholder; and*

13 *“(B) no laws or regulations of a State, ex-*
14 *cept of the home State, imposing a diligent*
15 *search requirement for the placement of a sur-*
16 *plus lines policy shall apply with respect to the*
17 *placement of a multi-State surplus lines com-*
18 *mmercial insurance policy, provided the contract*
19 *of insurance insures risks in the home State.*

20 *“(b) STREAMLINED RATE AND FORM FILING.—The*
21 *Congress intends that, by December 31, 2007, all States,*
22 *with respect to submission of a commercial property insur-*
23 *ance policy or commercial casualty insurance policy that*
24 *includes coverage for acts of terrorism—*

1 “(1) implement and fully utilize the System for
2 *Electronic Rate and Form Filing* (in this section re-
3 ferred to as ‘SERFF’), developed by the NAIC, with-
4 out deviation to provide a single point for electronic
5 filing of property insurance and casualty insurance
6 forms for review;

7 “(2) update SERFF to provide a single coordi-
8 nated checklist for inputting the required information
9 used by various States for filing reviews and desig-
10 nating to which States the information will be sub-
11 mitted;

12 “(3) allow the option of filing of self-certified
13 commercial property insurance and commercial cas-
14 ualty insurance forms through a substantially nation-
15 wide coordinated electronic filing system that—

16 “(A) includes a review checklist with uni-
17 form nomenclature clearly establishing what is
18 required under the laws of such State for a com-
19 pliant filing of such forms;

20 “(B) uses a single input system and trans-
21 mittal document that allows the filer to submit
22 such form for review without required format de-
23 viations to any combination of the States par-
24 ticipating in the system;

1 “(C) does not require prior approval for
2 such self-certified form filing;

3 “(D) keeps such filings confidential until
4 they are implemented, deemed implemented, or
5 disapproved; and

6 “(E) only allows disapproval of such filings
7 in writing based on specific standards that are
8 published in statute, rule, or regulation.

9 “(c) *STREAMLINED SURPLUS LINES PLACEMENT.*—
10 *The Congress intends that, by December 31, 2007, all States*
11 *streamline their surplus lines diligent search rules with re-*
12 *spect to the placement of surplus lines policies in any cov-*
13 *ered line of insurance that includes coverage for acts of ter-*
14 *rorism by providing for—*

15 “(1) *automatic export for exempt commercial*
16 *purchasers, under which a surplus lines broker seek-*
17 *ing to obtain, provide, or place insurance in a State*
18 *for an insured that qualifies as an exempt commer-*
19 *cial purchaser may procure surplus lines insurance*
20 *from or place surplus lines insurance with any non-*
21 *admitted insurer without making a diligent search to*
22 *determine whether the full amount or type of insur-*
23 *ance sought by the exempt commercial purchaser can*
24 *be obtained from admitted insurers in such State.*

1 “(2) *home State regulation of diligent search re-*
2 *quirements, that provides that, except as provided in*
3 *paragraph (1), only the home State may impose a*
4 *diligent search requirement for the placement of a*
5 *multi-State surplus lines commercial insurance pol-*
6 *icy, provided the contract of insurance insures risks*
7 *in the Home State.*

8 “(d) *EXISTING REINSURANCE AGREEMENTS.—Noth-*
9 *ing in this title shall be construed to alter, amend, or ex-*
10 *pand the terms of coverage under any reinsurance agree-*
11 *ment in effect on the date of enactment of this Act. The*
12 *terms and conditions of such an agreement shall be deter-*
13 *mined by the language of that agreement.”; and*

14 (2) *in section 108—*

15 (A) *by striking subsection (a) and inserting*
16 *the following new subsection:*

17 “(a) *TERMINATION OF PROGRAM.—*

18 “(1) *IN GENERAL.—Except as provided in para-*
19 *graph (2), the Program shall terminate on December*
20 *31, 2008.*

21 “(2) *FAILURE OF COMMISSION TO SUBMIT RE-*
22 *PORT.—If the Secretary determines pursuant to sec-*
23 *tion 105(d) that the Commission on Terrorism Risk*
24 *Insurance established under section 105 has not satis-*

1 *fied its obligations under section 105(c)(3), the Pro-*
2 *gram shall terminate on December 31, 2007.”; and*

3 *(B) in subsection (c)(1), by striking “para-*
4 *graph (4), (5), (6), (7), or (8) of”.*

5 *(b) APPLICABILITY.—The amendments made by sub-*
6 *section (a) shall apply beginning on January 1, 2006. The*
7 *provisions of the Terrorism Risk Insurance Act of 2002, as*
8 *in effect on the day before the date of the enactment of this*
9 *Act, shall apply through the end of December 31, 2005.*

Union Calendar No. 180

109TH CONGRESS
1ST Session

H. R. 4314

[Report No. 109-327]

A BILL

To extend the applicability of the Terrorism Risk
Insurance Act of 2002.

DECEMBER 6, 2005

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