

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2761
OFFERED BY MR. KANJORSKI OF PENNSYLVANIA**

Strike all after the enacting clause and insert the following:

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

1 both routine and catastrophic loss, is critical to eco-
2 nomic growth, urban development, and the construc-
3 tion and maintenance of public and private housing,
4 as well as to the promotion of United States exports
5 and foreign trade in an increasingly interconnected
6 world;

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

14 “(3) the ability of the insurance industry to
15 cover the unprecedented financial risks presented by
16 potential acts of terrorism in the United States can
17 be a major factor in the recovery from terrorist at-
18 tacks, while maintaining the stability of the econ-
19 omy;

20 “(4) widespread financial market uncertainties
21 have arisen following the terrorist attacks of Sep-
22 tember 11, 2001, including the absence of informa-
23 tion from which financial institutions can make sta-
24 tistically valid estimates of the probability and cost
25 of future terrorist events, and therefore the size,

1 funding, and allocation of the risk of loss caused by
2 such acts of terrorism;

3 “(5) a decision by property and casualty insur-
4 ers to deal with such uncertainties, either by termi-
5 nating property and casualty coverage for losses
6 arising from terrorist events, or by radically esca-
7 lating premium coverage to compensate for risks of
8 loss that are not readily predictable, could seriously
9 hamper ongoing and planned construction, property
10 acquisition, and other business projects, generate a
11 dramatic increase in rents, and otherwise suppress
12 economic activity;

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

24 “(7) in addition to a terrorist attack on the
25 United States using conventional means or weapons,

1 there is and continues to be a potential threat of a
2 terrorist attack involving the use of unconventional
3 means or weapons, such as nuclear, biological, chem-
4 ical, or radiological agents;

5 “(8) as nuclear, biological, chemical or radio-
6 logical acts of terrorism (known as NBCR terrorism)
7 present a threat of loss of life, injury, disease and
8 property damage potentially unparalleled in scope
9 and complexity by any prior event, natural or man-
10 made, the Federal Government’s responsibility in
11 providing for and preserving national economic secu-
12 rity calls for a strong Federal role in ensuring finan-
13 cial compensation and economic recovery in the
14 event of such an attack;

15 “(9) a report issued by the Government Ac-
16 countability Office in September 2006 concluded
17 that ‘any purely market-driven expansion of cov-
18 erage’ for NBCR terrorism risk is ‘highly unlikely in
19 the foreseeable future’ and the September 2006 re-
20 port from the President’s Working Group on Finan-
21 cial Markets concluded that reinsurance for NBCR
22 terrorist events is virtually unavailable and that
23 ‘[g]iven the general reluctance of insurance compa-
24 nies to provide coverage for these types of risks,

1 there may be little potential for future market devel-
2 opment’;

3 “(10) group life insurance companies are im-
4 portant financial institutions whose products make
5 life insurance coverage affordable for millions of
6 Americans and often serve as their only life insur-
7 ance benefit;

8 “(11) the group life insurance industry, in the
9 event of a severe act of terrorism, is vulnerable to
10 insolvency because high concentrations of covered
11 employees work in the same locations, because pri-
12 mary life insurers do not exclude conventional and
13 NBCR terrorism risks while most catastrophic rein-
14 surance does exclude such terrorism risks, and be-
15 cause a large-scale loss of life would fall outside of
16 actuarial expectations of death; and

17 “(12) the United States Government should
18 provide temporary financial compensation to insured
19 parties, contributing to the stabilization of the
20 United States economy in a time of national crisis,
21 while the financial services industry develops the sys-
22 tems, mechanisms, products, and programs nec-
23 essary to create a viable financial services market for
24 private terrorism risk insurance.

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

6 “(1) protect consumers by addressing market
7 disruptions and ensure the continued widespread
8 availability and affordability of property and cas-
9 ualty insurance and group life insurance for all types
10 of terrorism risk, including conventional terrorism
11 risk and nuclear, biological, chemical, and radio-
12 logical terrorism risk;

13 “(2) allow for a transitional period for the pri-
14 vate markets to stabilize, resume pricing of such in-
15 surance, and build capacity to absorb any future
16 losses, while preserving State insurance regulation
17 and consumer protections (unless otherwise pre-
18 empted by this Act); and

19 “(3) provide finite liability limits for terrorism
20 insurance losses for insurers and the United States
21 Government.

22 **“SEC. 102. DEFINITIONS.**

23 “‘In this title, the following definitions shall apply:

24 “(1) ACT OF TERRORISM.—

1 “(A) CERTIFICATION.—The term ‘act of
2 terrorism’ means any act that is certified by the
3 Secretary, in concurrence with the Secretary of
4 State, and the Attorney General of the United
5 States—

6 “(i) to be an act of terrorism;

7 “(ii) to be a violent act or an act that
8 is dangerous to—

9 “(I) human life;

10 “(II) property; or

11 “(III) infrastructure;

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

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

17 “(II) the premises of a United
18 States mission; and

19 “(iv) to have been committed by an
20 individual or individuals as part of an ef-
21 fort to coerce the civilian population of the
22 United States or to influence the policy or
23 affect the conduct of the United States
24 Government by coercion.

1 “(B) LIMITATION.—No act shall be cer-
2 tified by the Secretary as an act of terrorism
3 if—

4 “(i) the act is committed as part of
5 the course of a war declared by the Con-
6 gress, except that this clause shall not
7 apply with respect to any coverage for
8 workers’ compensation; or

9 “(ii) property and casualty insurance
10 and group life insurance losses resulting
11 from the act, in the aggregate, do not ex-
12 ceed \$5,000,000.

13 “(C) CERTIFICATION OF ACTS OF NBCR
14 TERRORISM.—Upon certification of an act of
15 terrorism, the Secretary, in concurrence with
16 the Secretary of State, and the Attorney Gen-
17 eral of the United States, shall determine
18 whether the act of terrorism meets the defini-
19 tion of NBCR terrorism in this section. If such
20 determination is that the act does meet such
21 definition, the Secretary shall further certify
22 such act of terrorism as an act of NBCR ter-
23 rorism.

24 “(D) DETERMINATIONS FINAL.—Any cer-
25 tification of, or determination not to certify, an

1 act as an act of terrorism or as an act of
2 NBCR terrorism under this paragraph shall be
3 final, and shall not be subject to judicial review.

4 “(E) NONDELEGATION.—The Secretary
5 may not delegate or designate to any other offi-
6 cer, employee, or person, any determination
7 under this paragraph of whether, during the ef-
8 fective period of the Program, an act of ter-
9 rorism, including an act of NBCR terrorism,
10 has occurred.

11 “(2) AFFILIATE.—The term ‘affiliate’ means,
12 with respect to an insurer, any entity that controls,
13 is controlled by, or is under common control with the
14 insurer.

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

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

20 “(A) the entity directly or indirectly or act-
21 ing through 1 or more other persons owns, con-
22 trols, or has power to vote 25 percent or more
23 of any class of voting securities of the other en-
24 tity;

1 “(B) the entity controls in any manner the
2 election of a majority of the directors or trust-
3 ees of the other entity; or

4 “(C) the Secretary determines, after notice
5 and opportunity for hearing, that the entity di-
6 rectly or indirectly exercises a controlling influ-
7 ence over the management or policies of the
8 other entity; except that for purposes of any
9 proceeding under this subparagraph, there shall
10 be a presumption that any entity which directly
11 or indirectly owns, controls, or has power to
12 vote less than 5 percent of any class of voting
13 securities of another entity does not have con-
14 trol over that entity.

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

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

24 “(7) EXCESS INSURED LOSS.—The term ‘excess
25 insured loss’ means, with respect to a Program

1 Year, any portion of the amount of insured losses
2 during such Program Year that exceeds the cap on
3 annual liability under section 103(e)(2)(A).

4 “(8) GROUP LIFE INSURANCE.—The term
5 ‘group life insurance’ means an insurance contract
6 that provides life insurance coverage, including term
7 life insurance coverage, universal life insurance cov-
8 erage, variable universal life insurance coverage and
9 accidental death coverage, or a combination thereof,
10 for a number of individuals under a single contract,
11 on the basis of a group selection of risks, but does
12 not include ‘Corporate Owned Life Insurance’ or
13 ‘Business Owned Life Insurance,’ each as defined
14 under the Internal Revenue Code of 1986, or any
15 similar product, or group life reinsurance or
16 retrocessional reinsurance.

17 “(9) INSURED LOSS.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), the term ‘insured loss’
20 means any loss resulting from an act of ter-
21 rorism (including an act of war, in the case of
22 workers’ compensation) that is covered by pri-
23 mary or excess property and casualty insurance
24 or group life insurance to the extent of the

1 amount at risk issued by an insurer, if such
2 loss—

3 “(i) occurs within the United States;

4 or

5 “(ii) occurs to an air carrier (as de-
6 fined in section 40102 of title 49, United
7 States Code), to a United States flag ves-
8 sel (or a vessel based principally in the
9 United States, on which United States in-
10 come tax is paid and whose insurance cov-
11 erage is subject to regulation in the United
12 States), regardless of where the loss oc-
13 curs, or at the premises of any United
14 States mission.

15 “(B) LIMITATION FOR GROUP LIFE INSUR-
16 ANCE.—Such term shall not include any losses
17 of an insurer resulting from coverage of any
18 single certificate holder under any group life in-
19 surance coverages of the insurer to the extent
20 such losses are not compensated under the Pro-
21 gram by reason of section 103(e)(1)(D).

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

24 “(A) that is—

1 “(i) licensed or admitted to engage in
2 the business of providing primary or excess
3 insurance, or group life insurance, in any
4 State;

5 “(ii) not licensed or admitted as de-
6 scribed in clause (i), if it is an eligible sur-
7 plus line carrier listed on the Quarterly
8 Listing of Alien Insurers of the NAIC, or
9 any successor thereto;

10 “(iii) approved for the purpose of of-
11 fering property and casualty insurance by
12 a Federal agency in connection with mari-
13 time, energy, or aviation activity;

14 “(iv) a State residual market insur-
15 ance entity or State workers’ compensation
16 fund; or

17 “(v) any other entity described in sec-
18 tion 103(f), to the extent provided in the
19 rules of the Secretary issued under section
20 103(f);

21 “(B) that receives direct earned premiums
22 for any type of commercial property and cas-
23 ualty insurance coverage, or, in the case of
24 group life insurance, that receives premiums,

1 other than in the case of entities described in
2 sections 103(d) and 103(f); and

3 “(C) that meets any other criteria that the
4 Secretary may reasonably prescribe.

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

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

11 “(B) for Program Year 1, the value of an
12 insurer’s direct earned premiums over the cal-
13 endar year immediately preceding Program
14 Year 1, multiplied by 7 percent;

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

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

23 “(E) for Program Year 4, the value of an
24 insurer’s direct earned premiums over the cal-

1 endar year immediately preceding Program
2 Year 4, multiplied by 17.5 percent;

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

7 “(G) for each additional Program Year—

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

13 “(ii) with respect to group life insur-
14 ance, the value of an insurer’s amount at
15 risk over the calendar year immediately
16 preceding such Program Year, multiplied
17 by 0.0351 percent;

18 “(H) notwithstanding subparagraphs (A)
19 through (G), for the Transition Period or any
20 Program Year, if an insurer has not had a full
21 year of operations during the calendar year im-
22 mediately preceding such Period or Program
23 Year, such portion of the direct earned pre-
24 miums with respect to property and casualty in-
25 surance, and such portion of the amounts at

1 risk with respect to group life insurance, of the
2 insurer as the Secretary determines appro-
3 priate, subject to appropriate methodologies es-
4 tablished by the Secretary for measuring such
5 direct earned premiums and amounts at risk;

6 “(I) notwithstanding subparagraphs (A)
7 through (H), in the case of any act of NBCR
8 terrorism, for any additional Program Year—

9 “(i) with respect to property and cas-
10 ualty insurance, the value of an insurer’s
11 direct earned premiums over the calendar
12 year immediately preceding such Program
13 Year, multiplied by a percentage, which—

14 “(I) for the second additional
15 Program Year, shall be 3.5 percent;
16 and

17 “(II) for each succeeding Pro-
18 gram Year thereafter, shall be 0.5
19 percentage point greater than the per-
20 centage applicable to the preceding
21 additional Program Year; and

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

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

3 “(I) for the first additional Pro-
4 gram Year, shall be 0.00614 percent;
5 and

6 “(II) for each succeeding Pro-
7 gram Year thereafter, shall be
8 0.00088 percentage point greater than
9 the percentage applicable to the pre-
10 ceding additional Program Year;

11 “(J) if aggregate industry insured losses
12 arising from an act of terrorism in a previously
13 impacted area exceed \$1,000,000,000, the in-
14 surer deductibles otherwise applicable under
15 this paragraph of any insurers that sustain in-
16 sured losses arising from any subsequent act of
17 terrorism in the same previously impacted area
18 shall be reduced for the Program Year in which
19 such subsequent act of terrorism occurred and
20 each Program Year thereafter by 1 percent for
21 each \$1,000,000,000 in aggregate industry in-
22 sured losses as a result of the previous act of
23 terrorism in such previously impacted area, ex-
24 cept that no insurer deductible for any Program
25 Year shall be reduced below 5 percent.

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

3 “(13) NBCR TERRORISM.—The term ‘NBCR
4 terrorism’ means an act of terrorism that involves
5 nuclear, biological, chemical, or radiological reac-
6 tions, releases, or contaminations, to the extent any
7 insured losses result from any such reactions, re-
8 leases, or contaminations.

9 “(14) PERSON.—The term ‘person’ means any
10 individual, business or nonprofit entity (including
11 those organized in the form of a partnership, limited
12 liability company, corporation, or association), trust
13 or estate, or a State or political subdivision of a
14 State or other governmental unit.

15 “(15) PREVIOUSLY IMPACTED AREA.—

16 “(A) IN GENERAL.—The term ‘previously
17 impacted area’ means a geographic area that,
18 after an act of terrorism, the Secretary deter-
19 mines has suffered a substantial and direct eco-
20 nomic impact as a result of such act of ter-
21 rorism. In designating such an area the Sec-
22 retary shall use postal zip codes, census tracts,
23 or such other geographic determinates as the
24 Secretary finds appropriate to provide a clear
25 delineation of the previously impacted area.

1 “(B) PREVIOUS ACTS OF TERRORISM.—
2 Notwithstanding subparagraph (A), the Sec-
3 retary shall designate as a previously impacted
4 area any area within the United States that
5 has, during the 15-year period ending upon the
6 date of the enactment of the Terrorism Risk In-
7 surance Revision and Extension Act of 2007,
8 been subject to an act of violence that—

9 “(i) would have been an act of ter-
10 rorism for purposes of this Act if this Act
11 had been in effect at the time of such act
12 of violence; and

13 “(ii) resulted in insured losses (as
14 such term is defined in this Act) of at least
15 \$1,000,000,000 at the time of the event.

16 Any such previous acts of violence shall be con-
17 sidered acts of terrorism for purposes of para-
18 graph (11) of this section (relating to insurer
19 deductible) and section 103(e)(1)(C) (relating
20 to program trigger).

21 “(16) PROGRAM.—The term ‘Program’ means
22 the Terrorism Insurance Program established by
23 this title.

24 “(17) PROGRAM YEARS.—

1 “(A) TRANSITION PERIOD.—The term
2 ‘Transition Period’ means the period beginning
3 on the date of enactment of this Act and ending
4 on December 31, 2002.

5 “(B) PROGRAM YEAR 1.—The term ‘Pro-
6 gram Year 1’ means the period beginning on
7 January 1, 2003 and ending on December 31,
8 2003.

9 “(C) PROGRAM YEAR 2.—The term ‘Pro-
10 gram Year 2’ means the period beginning on
11 January 1, 2004 and ending on December 31,
12 2004.

13 “(D) PROGRAM YEAR 3.—The term ‘Pro-
14 gram Year 3’ means the period beginning on
15 January 1, 2005 and ending on December 31,
16 2005.

17 “(E) PROGRAM YEAR 4.—The term ‘Pro-
18 gram Year 4’ means the period beginning on
19 January 1, 2006 and ending on December 31,
20 2006.

21 “(F) PROGRAM YEAR 5.—The term ‘Pro-
22 gram Year 5’ means the period beginning on
23 January 1, 2007 and ending on December 31,
24 2007.

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

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

9 “(A) means commercial lines of property
10 and casualty insurance, including excess insur-
11 ance, workers’ compensation insurance, and di-
12 rectors and officers liability insurance; and

13 “(B) does not include—

14 “(i) Federal crop insurance issued or
15 reinsured under the Federal Crop Insur-
16 ance Act (7 U.S.C. 1501 et seq.), or any
17 other type of crop or livestock insurance
18 that is privately issued or reinsured;

19 “(ii) private mortgage insurance (as
20 that term is defined in section 2 of the
21 Homeowners Protection Act of 1998 (12
22 U.S.C. 4901)) or title insurance;

23 “(iii) financial guaranty insurance
24 issued by monoline financial guaranty in-
25 surance corporations;

1 “(iv) insurance for medical mal-
2 practice;

3 “(v) health or life insurance, including
4 group life insurance;

5 “(vi) flood insurance provided under
6 the National Flood Insurance Act of 1968
7 (42 U.S.C. 4001 et seq.);

8 “(vii) reinsurance or retrocessional re-
9 insurance;

10 “(viii) commercial automobile insur-
11 ance;

12 “(ix) burglary and theft insurance;

13 “(x) surety insurance;

14 “(xi) professional liability insurance;

15 or

16 “(xii) farm owners multiple peril in-
17 surance.

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

20 “(20) STATE.—The term ‘State’ means any
21 State of the United States, the District of Columbia,
22 the Commonwealth of Puerto Rico, the Common-
23 wealth of the Northern Mariana Islands, American
24 Samoa, Guam, each of the United States Virgin Is-

1 lands, and any territory or possession of the United
2 States.

3 “(21) UNITED STATES.—The term ‘United
4 States’ means the several States, and includes the
5 territorial sea and the continental shelf of the
6 United States, as those terms are defined in the Vio-
7 lent Crime Control and Law Enforcement Act of
8 1994 (18 U.S.C. 2280, 2281).

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

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

13 and

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

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

16 “(a) ESTABLISHMENT OF PROGRAM.—

17 “(1) IN GENERAL.—There is established in the
18 Department of the Treasury the Terrorism Insur-
19 ance Program.

20 “(2) AUTHORITY OF THE SECRETARY.—Not-
21 withstanding any other provision of State or Federal
22 law, the Secretary shall administer the Program,
23 and shall pay the Federal share of compensation for
24 insured losses in accordance with subsection (e).

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

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

8 “(1) the person that suffers the insured loss, or
9 a person acting on behalf of that person, files a
10 claim with the insurer;

11 “(2) the insurer provides clear and conspicuous
12 disclosure to the policyholder of the premium
13 charged for insured losses covered by the Program
14 (including the additional premium, if any, charged
15 for the coverage for insured losses resulting from
16 acts of NBCR terrorism as made available pursuant
17 to subsection (c)(1)(B)) and the Federal share of
18 compensation for insured losses under the Pro-
19 gram—

20 “(A) in the case of any policy that is
21 issued before the date of enactment of this Act,
22 not later than 90 days after that date of enact-
23 ment;

24 “(B) in the case of any policy that is
25 issued within 90 days of the date of enactment

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

3 “(C) in the case of any policy that is
4 issued more than 90 days after the date of en-
5 actment of this Act, on a separate line item in
6 the policy, at the time of offer, purchase, and
7 renewal of the policy;

8 “(3) the insurer processes the claim for the in-
9 sured loss in accordance with appropriate business
10 practices, and any reasonable procedures that the
11 Secretary may prescribe; and

12 “(4) the insurer submits to the Secretary, in ac-
13 cordance with such reasonable procedures as the
14 Secretary may establish—

15 “(A) a claim for payment of the Federal
16 share of compensation for insured losses under
17 the Program;

18 “(B) written certification—

19 “(i) of the underlying claim; and

20 “(ii) of all payments made for insured
21 losses; and

22 “(C) certification of its compliance with
23 the provisions of this subsection.

24 “(c) MANDATORY AVAILABILITY.—

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

6 “(A) in all of its insurance policies for cov-
7 ered lines, coverage for insured losses that does
8 not differ materially from the terms, amounts,
9 and other coverage limitations applicable to
10 losses arising from events other than acts of
11 terrorism; and

12 “(B) in insurance policies for covered lines
13 for which the coverage described in subpara-
14 graph (A) is provided, exceptions to the pollu-
15 tion and nuclear hazard exclusions of such poli-
16 cies that render such exclusions inapplicable
17 only as to insured losses arising from acts of
18 NBCR terrorism.

19 “(2) ALLOWABLE EXCLUSIONS IN OTHER COV-
20 ERAGE.—Subject to paragraph (3) and notwith-
21 standing any other provision of Federal or State
22 law, including any State workers’ compensation and
23 other compulsory insurance law, if a person elects
24 not to purchase the insurance described in para-
25 graph (1)—

1 “(A) an insurer may exclude coverage for
2 all losses from acts of terrorism, including acts
3 of NBCR terrorism except for State workers’
4 compensation and other compulsory insurance
5 law (unless permitted by State law), or as de-
6 scribed in paragraph (4); or

7 “(B) an insurer may offer other options
8 for coverage that differ materially from the
9 terms, amounts, and other coverage limitations
10 applicable to losses arising from events other
11 than acts of terrorism.

12 “(3) APPLICABILITY FOR NBCR TERRORISM.—
13 Notwithstanding any other provision of this Act,
14 paragraphs (1) and (2) shall apply, beginning upon
15 January 1, 2009, with respect to coverage for acts
16 of NBCR terrorism, that is purchased or renewed on
17 or after such date, and to insured losses covered by
18 such coverage resulting from such acts.

19 “(4) AVAILABILITY OF LIFE INSURANCE WITH-
20 OUT REGARD TO LAWFUL FOREIGN TRAVEL.—Dur-
21 ing each Program Year, each entity that meets the
22 definition of an insurer under section 102 shall
23 make available, in all of its life insurance policies
24 issued after the date of the enactment of the Ter-
25 rorism Risk Insurance Revision and Extension Act

1 of 2007 under which the insured person is a citizen
2 of the United States or an alien lawfully admitted
3 for permanent residence in the United States, cov-
4 erage that neither considers past, nor precludes fu-
5 ture, lawful foreign travel by the person insured, and
6 shall not decline such coverage based on past or fu-
7 ture, lawful foreign travel by the person insured or
8 charge a premium for such coverage that is excessive
9 and not based on a good faith actuarial analysis, ex-
10 cept that an insurer may decline or, upon inception
11 or renewal of a policy, limit the amount of coverage
12 provided under any life insurance policy based on
13 plans to engage in future lawful foreign travel to
14 occur within 12 months of such inception or renewal
15 of the policy but only if, at time of application—

16 “(A) such declination is based on, or such
17 limitation applies only with respect to, travel to
18 a foreign destination—

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

1 “(ii) in which there is an ongoing
2 military conflict involving the armed forces
3 of a sovereign nation other than the nation
4 to which the insured person is traveling; or

5 “(iii)(I) that the insurer has specifi-
6 cally designated in the terms of the life in-
7 surance policy at the inception of the pol-
8 icy or at renewal, as applicable; and

9 “(II) with respect to which the insurer
10 has made a good-faith determination
11 that—

12 “(aa) a serious unlawful situation
13 exists which is ongoing; and

14 “(bb) the credibility of informa-
15 tion by which the insurer can verify
16 the death of the insured person is
17 compromised; and

18 “(B) in the case of any limitation of cov-
19 erage, such limitation is specifically stated in
20 the terms of the life insurance policy at the in-
21 ception of the policy or at renewal, as applica-
22 ble.

23 “(d) STATE RESIDUAL MARKET INSURANCE ENTI-
24 TIES.—

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

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

9 “(A) a State residual market insurance en-
10 tity that does not share its profits and losses
11 with private sector insurers shall be treated as
12 a separate insurer; and

13 “(B) a State residual market insurance en-
14 tity that shares its profits and losses with pri-
15 vate sector insurers shall not be treated as a
16 separate insurer, and shall report to each pri-
17 vate sector insurance participant its share of
18 the insured losses of the entity, which shall be
19 included in each private sector insurer’s insured
20 losses.

21 “(3) TREATMENT OF PARTICIPATION IN CER-
22 TAIN ENTITIES.—Any insurer that participates in
23 sharing profits and losses of a State residual market
24 insurance entity shall include in its calculations of

1 premiums any premiums distributed to the insurer
2 by the State residual market insurance entity.

3 “(e) INSURED LOSS SHARED COMPENSATION.—

4 “(1) FEDERAL SHARE.—

5 “(A) CONVENTIONAL TERRORISM.—Except
6 as provided in subparagraph (B), the Federal
7 share of compensation under the Program to be
8 paid by the Secretary for insured losses of an
9 insurer during any additional Program Year
10 shall be equal to the sum of—

11 “(i) 85 percent of that portion of the
12 amount of such insured losses that—

13 “(I) exceeds the applicable in-
14 surer deductible required to be paid
15 during such Program Year; and

16 “(II) based upon pro rata deter-
17 minations pursuant to paragraph
18 (2)(B), does not result in aggregate
19 industry insured losses during such
20 Program Year exceeding
21 \$100,000,000,000; and

22 “(ii) 100 percent of the insured losses
23 of the insurer that, based upon pro rata
24 determinations pursuant to paragraph
25 (2)(B), result in aggregate industry in-

1 sured losses during such Program Year ex-
2 ceeding \$100,000,000,000, up to the limit
3 under paragraph (2)(A).

4 “(B) NBCR TERRORISM.—

5 “ (i) AMOUNT OF COMPENSATION.—

6 The Federal share of compensation under
7 the Program to be paid by the Secretary
8 for insured losses of an insurer resulting
9 from NBCR terrorism during any addi-
10 tional Program Year shall be equal to the
11 sum of—

12 “(I) the amount of qualified
13 NBCR losses (as such term is defined
14 in clause (ii)) of the insurer, multi-
15 plied by a percentage based on the ag-
16 gregate industry qualified NBCR
17 losses for the Program Year, which
18 percentage shall be—

19 “(aa) 85 percent of such ag-
20 gregate industry qualified NBCR
21 losses of less than
22 \$10,000,000,000;

23 “(bb) 87.5 percent of such
24 aggregate industry qualified
25 NBCR losses between

1 \$10,000,000,000 and

2 \$20,000,000,000;

3 “(cc) 90 percent of such ag-

4 gregate industry qualified NBCR

5 losses between \$20,000,000,000

6 and \$40,000,000,000;

7 “(dd) 92.5 percent of such

8 aggregate industry qualified

9 NBCR losses of between

10 \$40,000,000,000 and

11 \$60,000,000,000; and

12 “(ee) 95 percent of such ag-

13 gregate industry qualified NBCR

14 losses of more than

15 \$60,000,000,000;

16 and shall be prorated per insurer

17 based on each insurer’s percentage of

18 the aggregate industry qualified

19 NBCR losses for such additional Pro-

20 gram Year; and

21 “(II) 100 percent of the insured

22 losses of the insurer resulting from

23 NBCR terrorism that, based upon pro

24 rata determinations pursuant to para-

25 graph (2)(B), result in aggregate in-

1 industry insured losses during such Pro-
2 gram Year exceeding
3 \$100,000,000,000, up to the limit
4 under paragraph (2)(A).

5 “(ii) QUALIFIED NBCR LOSSES.—For
6 purposes of this subparagraph, the term
7 ‘qualified NBCR losses’ means, with re-
8 spect to insured losses of an insurer result-
9 ing from NBCR terrorism during an addi-
10 tional Program Year, that portion of the
11 amount of such insured losses that—

12 “(I) exceeds the applicable in-
13 surer deductible required to be paid
14 during such Program Year; and

15 “(II) based upon pro rata deter-
16 minations pursuant to paragraph
17 (2)(B), does not result in aggregate
18 industry insured losses during such
19 Program Year exceeding
20 \$100,000,000,000.

21 “(C) PROGRAM TRIGGER.—In the case of a
22 certified act of terrorism occurring after March
23 31, 2006, no compensation shall be paid by the
24 Secretary under subsection (a), unless the ag-

1 aggregate industry insured losses resulting from
2 such certified act of terrorism exceed—

3 “(i) \$50,000,000, with respect to such
4 insured losses occurring in any additional
5 Program Year; or

6 “(ii) in the case of any certified act of
7 terrorism in any previously impacted area,
8 the amount in effect at such time under
9 clause (i), as reduced by \$10,000,000 for
10 each \$1,000,000,000 in aggregate industry
11 insured losses that were sustained as a re-
12 sult of a previous act of terrorism in the
13 same impacted area, except that in no case
14 may such amount be reduced below the
15 amount specified in section 102(1)(B)(ii).

16 “(D) LIMITATION ON COMPENSATION FOR
17 GROUP LIFE INSURANCE.—Notwithstanding any
18 other provision of this Act, the Federal share of
19 compensation under the Program paid by the
20 Secretary for insured losses of an insurer re-
21 sulting from coverage of any single certificate
22 holder under any group life insurance coverages
23 of the insurer may not during any additional
24 Program Year exceed \$1,000,000.

1 “(E) PROHIBITION ON DUPLICATIVE COM-
2 PENSATION.—The Federal share of compensa-
3 tion for insured losses under the Program shall
4 be reduced by the amount of compensation pro-
5 vided by the Federal Government to any person
6 under any other Federal program for those in-
7 sured losses.

8 “(2) CAP ON ANNUAL LIABILITY.—

9 “(A) IN GENERAL.—Notwithstanding para-
10 graph (1) or any other provision of Federal or
11 State law, including any State workers’ com-
12 pensation or other compulsory insurance law, if
13 the aggregate amount of the Federal share of
14 compensation to be paid to all insurers pursu-
15 ant to paragraph (1) exceeds
16 \$100,000,000,000, during any additional Pro-
17 gram Year (until such time as the Congress
18 may act otherwise with respect to such
19 losses)—

20 “(i) the Secretary shall not make any
21 payment under this title for any portion of
22 the amount of the aggregate insured losses
23 during such Program Year for which the
24 Federal share exceeds \$100,000,000,000;
25 and

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

6 “(B) INSURER SHARE.—For purposes of
7 subparagraph (A), the Secretary shall deter-
8 mine the pro rata share of insured losses to be
9 paid by each insurer that incurs insured losses
10 under the Program.

11 “(C) CLAIMS ALLOCATIONS.—The Sec-
12 retary shall, by regulation, provide for insurers
13 to allocate claims payments for insured losses
14 under applicable insurance policies in any case
15 described in subparagraph (A). Such regula-
16 tions shall include provisions for payment, for
17 the purpose of addressing emergency needs of
18 applicable individuals affected by an act of ter-
19 rorism, of a portion of claims for insured losses
20 promptly upon filing of such claims.

21 “(3) LIMITATION ON INSURER FINANCIAL RE-
22 SPONSIBILITY.—

23 “(A) LIMITATION.—Notwithstanding any
24 other provision of Federal or State law, includ-
25 ing any State workers’ compensation or other

1 compulsory insurance law, an insurer's financial
2 responsibility for insured losses from acts of
3 terrorism shall be limited to its applicable in-
4 surer deductible and its applicable share of in-
5 sured losses that exceed its applicable insurer
6 deductible but are not compensated pursuant to
7 paragraph (1), subject to the requirements of
8 paragraph (2)(B).

9 “(B) FEDERAL REIMBURSEMENT.—Not-
10 withstanding any other provision of Federal or
11 State law, the Secretary shall—

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

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

21 “(I) such payment is ordered by
22 a court pursuant to subparagraph (C)
23 of this paragraph or is directed by
24 State law, notwithstanding this para-
25 graph, or by Federal law;

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

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

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

12 “(C) FEDERAL COURT JURISDICTION.—

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

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

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

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

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

1 trict court or, if necessary, multiple district
2 courts of the United States that shall have
3 original and exclusive jurisdiction over all ac-
4 tions for any claim relating to or arising out of
5 an insurer's financial responsibility for insured
6 losses from acts of terrorism under this section.

7 “(4) NOTICES REGARDING LOSSES AND AN-
8 NUAL LIABILITY CAP.—

9 “(A) APPROACHING CAP.—If the Secretary
10 determines estimated or actual aggregate Fed-
11 eral compensation to be paid pursuant to para-
12 graph (1) equals or exceeds \$80,000,000,000
13 during any Program Year, the Secretary shall
14 promptly provide notification in accordance with
15 subparagraph (D)—

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

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

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

1 “(B) EVENT LIKELY TO CAUSE LOSSES TO
2 EXCEED CAP.—If any act of terrorism occurs
3 that the Secretary determines is likely to cause
4 estimated or actual aggregate Federal com-
5 pensation to be paid pursuant to paragraph (1)
6 to exceed \$100,000,000,000 during any Pro-
7 gram Year, the Secretary shall, not later than
8 10 days after such act, provide notification in
9 accordance with subparagraph (D)—

10 “(i) of such estimated or actual aggre-
11 gate Federal compensation to be paid; and

12 “(ii) that, pursuant to paragraph
13 (2)(A)(ii), insurers are not required to
14 make payments for excess insured losses.

15 “(C) EXCEEDING CAP.—If the Secretary
16 determines estimated or actual aggregate Fed-
17 eral compensation to be paid pursuant to para-
18 graph (1) equals or exceeds \$100,000,000,000
19 during any Program Year—

20 “(i) the Secretary shall promptly pro-
21 vide notification in accordance with sub-
22 paragraph (D)—

23 “(I) of such estimated or actual
24 aggregate Federal compensation to be
25 paid; and

1 “(II) that, pursuant to paragraph
2 (2)(A)(ii), insurers are not required to
3 make payments for excess insured
4 losses unless the Congress provides
5 for payments for excess insured losses
6 pursuant to clause (ii) of this sub-
7 paragraph; and

8 “(ii) the Congress shall determine the
9 procedures for and the source of any pay-
10 ments for such excess insured losses.

11 “(D) PARTIES NOTIFIED.—Notification is
12 provided in accordance with this subparagraph
13 only if notification is provided—

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

15 “(ii) to insurers, by causing such no-
16 tice to be published in the Federal Reg-
17 ister.

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

24 “(F) MANDATORY DISCLOSURE FOR IN-
25 SURANCE CONTRACTS.—All policies for property

1 and casualty insurance and group life insurance
2 shall be deemed to contain a provision to the ef-
3 fect that no insurer that has met its applicable
4 insurer deductible and its applicable share of
5 insured losses that exceed its applicable insurer
6 deductible but are not compensated pursuant to
7 paragraph (1), shall be obligated to pay for any
8 portion of excess insured loss. Notwithstanding
9 the preceding sentence, insurers shall include a
10 disclosure in their policies detailing the max-
11 imum level of Government assistance and the
12 applicable insurer share.

13 “(5) FINAL NETTING.—The Secretary shall
14 have sole discretion to determine the time at which
15 claims relating to any insured loss or act of ter-
16 rorism shall become final.

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

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

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

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

4 “(F) for each additional Program Year—
5 “(i) for property and casualty insur-
6 ance, the lesser of—

7 “(I) \$27,500,000,000; and

8 “(II) the aggregate amount, for
9 all such insurance, of insured losses
10 during such Program Year; and

11 “(ii) for group life insurance, the less-
12 er of—

13 “(I) \$5,000,000,000; and

14 “(II) the aggregate amount, for
15 all such insurance, of insured losses
16 during such Program Year.

17 “(8) RECOUPMENT OF FEDERAL SHARE.—

18 “(A) MANDATORY RECOUPMENT
19 AMOUNT.—For purposes of this paragraph, the
20 mandatory recoupment amount for each of the
21 Program Years referred to in subparagraphs
22 (A) through (F) of paragraph (7) shall be the
23 difference between—

1 “(i) the applicable insurance market-
2 place aggregate retention amount under
3 paragraph (7) for such Program Year; and

4 “(ii) the aggregate amount, for all ap-
5 plicable insurers (pursuant to subpara-
6 graph (E)), of insured losses during such
7 Program Year that are not compensated
8 by the Federal Government because such
9 losses—

10 “(I) are within the insurer de-
11 ductible for the insurer subject to the
12 losses; or

13 “(II) are within the portion of
14 losses of the insurer that exceed the
15 insurer deductible, but are not com-
16 pensated pursuant to paragraph (1).

17 “(B) NO MANDATORY RECOUPMENT IF UN-
18 COMPENSATED LOSSES EXCEED APPLICABLE
19 INSURANCE MARKETPLACE RETENTION.—Not-
20 withstanding subparagraph (A), if the aggre-
21 gate amount of uncompensated insured losses
22 referred to in clause (ii) of such subparagraph
23 for any Program Year referred to in any of sub-
24 paragraphs (A) through (F) of paragraph (7) is
25 greater than the applicable insurance market-

1 place aggregate retention amount under para-
2 graph (7) for such Program Year, the manda-
3 tory recoupment amount shall be \$0.

4 “(C) MANDATORY ESTABLISHMENT OF
5 SURCHARGES TO RECOUP MANDATORY
6 RECOUPMENT AMOUNT.—The Secretary shall
7 collect, for repayment of the Federal financial
8 assistance provided in connection with all acts
9 of terrorism (or acts of war, in the case of
10 workers’ compensation) occurring during any of
11 the Program Years referred to in any of sub-
12 paragraphs (A) through (F) of paragraph (7),
13 terrorism loss risk-spreading premiums in an
14 amount equal to any mandatory recoupment
15 amount for such Program Year.

16 “(D) DISCRETIONARY RECOUPMENT OF
17 REMAINDER OF FINANCIAL ASSISTANCE.—To
18 the extent that the amount of Federal financial
19 assistance provided exceeds any mandatory
20 recoupment amount, the Secretary may recoup,
21 through terrorism loss risk-spreading pre-
22 miums, such additional amounts that the Sec-
23 retary believes can be recouped, based on—

24 “(i) the ultimate costs to taxpayers of
25 no additional recoupment;

1 “(ii) the economic conditions in the
2 commercial marketplace, including the cap-
3 italization, profitability, and investment re-
4 turns of the insurance industry and the
5 current cycle of the insurance markets;

6 “(iii) the affordability of commercial
7 insurance for small- and medium-sized
8 businesses; and

9 “(iv) such other factors as the Sec-
10 retary considers appropriate.

11 “(E) SEPARATE RECOUPMENT.—“The Sec-
12 retary shall provide that—

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

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

24 “(9) POLICY SURCHARGE FOR TERRORISM LOSS
25 RISK-SPREADING PREMIUMS.—

1 “(A) POLICYHOLDER PREMIUM.—Subject
2 to paragraph (8)(E), any amount established by
3 the Secretary as a terrorism loss risk-spreading
4 premium shall—

5 “(i) be imposed as a policyholder pre-
6 mium surcharge on property and casualty
7 insurance policies and group life insurance
8 policies in force after the date of such es-
9 tablishment;

10 “(ii) begin with such period of cov-
11 erage during the year as the Secretary de-
12 termines appropriate; and

13 “(iii) be based on—

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

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

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

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

4 “(i) with respect to property and cas-
5 ualty insurance, the amount equal to 3
6 percent of the premium charged under the
7 policy; and

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

11 “(D) ADJUSTMENT FOR URBAN AND
12 SMALLER COMMERCIAL AND RURAL AREAS AND
13 DIFFERENT LINES OF INSURANCE.—

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

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

1 ability of lease space and commercial
2 insurance within urban areas;

3 “(II) the risk factors related to
4 rural areas and smaller commercial
5 centers, including the potential expo-
6 sure to loss and the likely magnitude
7 of such loss, as well as any resulting
8 cross-subsidization that might result;
9 and

10 “(III) the various exposures to
11 terrorism risk for different lines of in-
12 surance.

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

19 “(E) TIMING OF PREMIUMS.—The Sec-
20 retary may adjust the timing of terrorism loss
21 risk-spreading premiums to provide for equiva-
22 lent application of the provisions of this title to
23 policies that are not based on a calendar year,
24 or to apply such provisions on a daily, monthly,
25 or quarterly basis, as appropriate.

1 “(f) CAPTIVE INSURERS AND OTHER SELF-INSUR-
2 ANCE ARRANGEMENTS.—The Secretary may, in consulta-
3 tion with the NAIC or the appropriate State regulatory
4 authority, apply the provisions of this title, as appropriate,
5 to other classes or types of captive insurers and other self-
6 insurance arrangements by municipalities and other enti-
7 ties (such as workers’ compensation self-insurance pro-
8 grams and State workers’ compensation reinsurance
9 pools), but only if such application is determined before
10 the occurrence of an act of terrorism in which such an
11 entity incurs an insured loss and all of the provisions of
12 this title are applied comparably to such entities.

13 “(g) REINSURANCE TO COVER EXPOSURE.—

14 “(1) OBTAINING COVERAGE.—This title may
15 not be construed to limit or prevent insurers from
16 obtaining reinsurance coverage for insurer
17 deductibles or insured losses retained by insurers
18 pursuant to this section, nor shall the obtaining of
19 such coverage affect the calculation of such
20 deductibles or retentions.

21 “(2) LIMITATION ON FINANCIAL ASSISTANCE.—

22 The amount of financial assistance provided pursu-
23 ant to this section shall not be reduced by reinsur-
24 ance paid or payable to an insurer from other
25 sources, except that recoveries from such other

1 sources, taken together with financial assistance for
2 the Transition Period or a Program Year provided
3 pursuant to this section, may not exceed the aggregate
4 amount of the insurer's insured losses for such
5 period. If such recoveries and financial assistance for
6 the Transition Period or a Program Year exceed
7 such aggregate amount of insured losses for that pe-
8 riod and there is no agreement between the insurer
9 and any reinsurer to the contrary, an amount in ex-
10 cess of such aggregate insured losses shall be re-
11 turned to the Secretary.”;

12 (2) in section 104(a)—

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

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

17 (C) by adding at the end the following new
18 paragraph:

19 “(3) during the 90-day period beginning upon
20 the certification of any act of terrorism, to issue
21 such regulations as the Secretary considers nec-
22 essary to carry out this Act without regard to the
23 notice and comment provisions of section 553 of title
24 5, United States Code.”;

25 (3) in section 106(a)(2)—

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

3 (B) by redesignating subparagraph (C) as
4 subparagraph (E); and

5 (C) by inserting after subparagraph (B)
6 the following new subparagraph:

7 “(C) during the period beginning on the
8 date of the enactment of the Terrorism Risk In-
9 surance Revision and Extension Act of 2007
10 and ending on December 31, 2008, rates and
11 forms for property and casualty insurance, and
12 group life insurance, required by this title that
13 are filed with any State shall not be subject to
14 prior approval or a waiting period under any
15 law of a State that would otherwise be applica-
16 ble, except that nothing in this title affects the
17 ability of any State to invalidate a rate as ex-
18 cessive, inadequate, or unfairly discriminatory,
19 and, with respect to forms, where a State has
20 prior approval authority, it shall apply to allow
21 subsequent review of such forms; and

22 “(D) during the period beginning on Janu-
23 ary 1, 2009, and ending on December 31, 2009,
24 rates and forms for property and casualty in-
25 surance, and group life insurance, covered by

1 this title and providing coverage for NBCR ter-
2 rorism that are filed with any State shall not be
3 subject to prior approval or a waiting period
4 under any law of a State that would otherwise
5 be applicable, except that nothing in this title
6 affects the ability of any State to invalidate a
7 rate as excessive, inadequate, or unfairly dis-
8 criminatory, and, with respect to forms, where
9 a State has prior approval authority, it shall
10 apply to allow subsequent review of such forms;
11 and”]; and

12 (4) in section 108(e)(1), by striking “paragraph
13 (4), (5), (6), (7), or (8)” and inserting “paragraph
14 (5), (6), (7), (8), or (9)”.

15 (b) REGULATIONS ON CLAIMS ALLOCATIONS.—The
16 Secretary of the Treasury shall issue the regulations re-
17 ferred to in subparagraph (C) of section 103(e)(2)(B) of
18 the Terrorism Risk Insurance Act of 2002, as amended
19 by subsection (a)(1) of this section, and to carry out sub-
20 paragraph (B) of such section 103(e)(2), not later than
21 the expiration of the 120-day period beginning upon the
22 date of the enactment of this Act.

23 **SEC. 4. ANALYSIS AND STUDY.**

24 (a) ANALYSIS OF MARKET CONDITIONS.—Section
25 108 of the Terrorism Risk Insurance Act of 2002 (15

1 U.S.C. 6701 note) is amended by striking subsection (e)
2 and inserting the following:

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

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

12 “(A) property and casualty insurance;

13 “(B) group life insurance;

14 “(C) workers’ compensation;

15 “(D) nuclear, biological, chemical, and ra-
16 diological events; and

17 “(E) commercial real estate.

18 “(2) BIENNIAL REPORTS.—The Secretary shall
19 submit biennial reports to the Committee on Finan-
20 cial Services of the House of Representatives and
21 the Committee on Banking, Housing, and Urban Af-
22 fairs of the Senate, on its findings pursuant to the
23 analysis conducted under paragraph (1). The first
24 such report shall be submitted not later than the ex-
25 piration of the 24-month period beginning on the

1 date of the enactment of the Terrorism Risk Insur-
2 ance Revision and Extension Act of 2007.

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

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

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

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

19 “(b) MEMBERSHIP.—

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

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

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

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

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

5 “(ii) a representative of property and
6 casualty insurers with direct 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
16 brokers;

17 “(vii) a policyholder representative;

18 “(viii) a representative of the sur-
19 vivors of the victims of the attacks of Sep-
20 tember 11, 2001;

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

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

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

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

7 “(xiii) a real estate developer;

8 “(xiv) a representative of workers’
9 compensation insurers created by State
10 legislatures, selected in consultation with
11 the American Association of State Com-
12 pensation Insurance Funds from among its
13 members; and

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

18 “(D) Four members, who shall serve as li-
19 aisons to the Congress, who shall include two
20 members jointly selected by the Chairman and
21 Ranking Member of the Committee on Finan-
22 cial Services of the House of Representatives
23 and two members jointly selected by the Chair-
24 man and Ranking Member of the Committee on

1 Banking, Housing, and Urban Affairs of the
2 Senate.

3 “(2) SECRETARY.—The Program Director of
4 the Terrorism Risk Insurance Act of the Depart-
5 ment of the Treasury shall serve as Secretary of the
6 Commission. The Secretary of the Commission shall
7 determine the manner in which the Commission
8 shall operate, including funding and staffing.

9 “(c) DUTIES.—

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

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

17 “(B) possible actions or mechanisms to
18 sustain or supplement the ability of the insur-
19 ance industry in the United States to cover
20 losses resulting from acts of terrorism in the
21 event that—

22 “(i) such losses jeopardize the capital
23 and surplus of the insurance industry in
24 the United States as a whole; or

1 “(ii) other consequences from such
2 acts occur, as determined by the Commis-
3 sion, that may significantly affect the abil-
4 ity of the insurance industry in the United
5 States to cover such losses independently;
6 and

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

10 “(2) EVALUATIONS.—In identifying and mak-
11 ing the recommendations required under paragraph
12 (1), the Commission shall specifically evaluate the
13 utility and viability of proposals aimed at improving
14 the availability of insurance against terrorism risk in
15 the private marketplace.

16 “(3) INITIAL MEETING.—The Commission shall
17 hold its first meeting during the 3-month period that
18 begins 15 months after the date of the enactment of
19 the Terrorism Risk Insurance Revision and Exten-
20 sion Act of 2007.

21 “(4) REPORTS.—

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

24 “(i) evaluate and make recommenda-
25 tions regarding whether there is a need for

1 a Federal terrorism risk insurance pro-
2 gram;

3 “(ii) if so, include a specific, detailed
4 recommendation for the replacement of the
5 Program under this title; and

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

9 “(B) TIMING.—The first report required
10 under subparagraph (A) shall be submitted be-
11 fore the expiration of the 60-month period be-
12 ginning on the date of the enactment of the
13 Terrorism Risk Insurance Revision and Exten-
14 sion Act of 2007. The second such report shall
15 be submitted before the expiration of the 96-
16 month period beginning upon such date of en-
17 actment.”.

18 **SEC. 5. APPLICABILITY.**

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