SUSPEND THE RULES AND PASS THE BILL, S. 467, WITH AN AMENDMENT

(THE AMENDMENT STRIKES ALL AFTER THE ENACTING CLAUSE AND INSERTS A NEW TEXT)

109TH CONGRESS
1ST SESSION

S. 467

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 18, 2005

Mr. DODD (for himself, Mr. BENNETT, Mr. SCHUMER, Mr. HAGEL, Mr. CORZINE, Mr. BUNNING, Mr. REED, Mr. LUGAR, Mrs. CLINTON, Mr. NELSON of Nebraska, Mr. CARPER, Mrs. DOLE, Mr. CHAMBLISS, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Terrorism Risk Insurance Revision Act of 2005".

SEC. 2. EXTENSION OF PROGRAM AND PROGRAM CHANGES.

(a) IN GENERAL.—Title I of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) is amended—

(1) by striking sections 101 through 107 and inserting the following new sections:

"SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds that—

"(1) the ability of businesses and individuals to obtain property, casualty, group life, and NBCR insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

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

"(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

"(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

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

"(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

"(b) PURPOSE.—The purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

"(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property, casualty, group life, and NBCR insurance for terrorism risk; and

"(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

"SEC. 102. DEFINITIONS.

"In this title, the following definitions shall apply:

"(1) ACT OF TERRORISM.—

"(A) CERTIFICATION.—The term 'act of terrorism' means any act that is certified by the Secretary, in concurrence with the Secretary of

State, and the Attorney General of the United States—

"(i) to be an act of terrorism;

"(ii) to be a violent act or an act that is dangerous to—

"(I) human life;

"(II) property; or

"(III) infrastructure;

"(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

"(I) an air carrier or vessel described in paragraph (5)(B); or

"(II) the premises of a United States mission; and

"(iv) to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"(B) LIMITATION.—No act shall be certified by the Secretary as an act of terrorism if the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation or group life insurance.

"(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final.

"(D) NONDELEGATION.—The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

"(2) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any insurer that owns, is owned by, or is under common ownership with another insurer.

"(3) CASUALTY INSURANCE.—The term 'casualty insurance' means—

"(A) insurance, including excess insurance and surety insurance, against legal liability for losses caused by the death, injury, or disability of any person or for damage to property, with provision for medical, hospital and surgical benefits to the injured persons; and

"(B) for the purposes of this Act, does not include any type of commercial automobile or workers' compensation insurance.

"(4) COVERED LINE OF INSURANCE.—The term 'covered line of insurance' means—

"(A) commercial property insurance, commercial casualty insurance, workers' compensation insurance and group life insurance; and

"(B) does not include—

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

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

"(iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;

"(iv) insurance for medical malpractice;

"(v) health or life insurance, except group life insurance;

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

"(vii) reinsurance or retrocessional reinsurance; or

"(viii) commercial automobile insurance.

"(5) DIRECT EARNED PREMIUM.—The term 'direct earned premium' means a direct earned premium for commercial property, commercial casualty, workers' compensation, or group life insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraphs (A) and (B) of paragraph (10).

"(6) EXEMPT COMMERCIAL PURCHASER.—The term 'exempt commercial purchaser' means any person purchasing commercial insurance that meets the following requirements:

"(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

"(B) The person pays annual aggregate nationwide insurance premiums in excess of $100,000 for covered lines of insurance.

"(C) The person meets at least one of the following criteria:

"(i) The person possesses a net worth in excess of $10,000,000.

"(ii) The person generates annual revenues in excess of $10,000,000.

"(iii) The person employs more than 100 full-time or full-time equivalent employees per individual insured or is a member of affiliated group employing more than 250 employees in the aggregate.

"(iv) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $25,000,000.

"(v) The person is a municipality with a population in excess of 40,000 persons.

"(7) EXEMPT COMMERCIAL PURCHASER CERTIFICATION.—The term 'exempt commercial purchaser certification' means a written certification that the insurer offering a policy to an exempt commercial purchaser has obtained, at least within the previous 12 months, a certification signed by the qualified risk manager, the chief executive officer, or the chief financial officer of the exempt commercial purchaser, certifying with respect to the insurance to which the requirements of section 103(c)(1) apply to that insurer that—

"(A) the purchaser has an employee that meets the definition of a qualified risk manager under this section;

"(B) the purchaser meets the definition of an exempt commercial purchaser in accordance with this section;

"(C) the purchaser is aware that the policy being considered for purchase contains forms and rates that are not subject to State regulatory review or approval;

"(D) the purchaser has or has retained the necessary expertise to negotiate its own policy language and rates; and

"(E) the purchaser agrees to the use of exempted rates and forms by its insurer or insurers.

"(8) GROUP LIFE INSURANCE.—The term 'group life insurance' means an insurance contract that provides term life insurance coverage, accidental death coverage, or a combination thereof, for a number of individuals under a single contract, on the basis of a group selection of risks, but does not include 'Corporate Owned Life Insurance' or 'Business Owned Life Insurance,' each as defined under the Internal Revenue Code of 1986, or any similar product.

"(9) HOME STATE.—The term 'home State' means as follows:

"(A) In the case of a policy written for commercial risks that are primarily located in a State, such term means such State.

"(B) If subparagraph (A) does not apply, such term means the State where the commercial policyholder has its principal place of business (such as where the policyholder's headquarters are located, as determined by the predominant physical location in the United States of the officers and senior management of the policyholder).

"(10) INSURED LOSS.—The term 'insured loss' means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation and group life insurance) that is covered by primary or excess property, casualty, workers' compensation, or group life insurance issued by an insurer if such loss—

"(A) occurs within the United States; or

"(B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

"(11) INSURER.—The term 'insurer' means any entity, including any affiliate thereof—

"(A) that is—

"(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;

"(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

"(iii) approved for the purpose of offering a covered line of insurance by a Federal agency in connection with maritime, energy, or aviation activity;

"(iv) a State residual market insurance entity or State workers' compensation fund; or

"(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

"(B) that receives direct earned premiums for any type of covered line of insurance coverage, other than in the case of entities described in subsections (d) and (f) of section 103; and

"(C) that meets any other criteria that the Secretary may reasonably prescribe.

"(12) INSURER DEDUCTIBLE.—The term 'insurer deductible' means—

"(A) for the Transition Period, the value of an insurer's direct earned premiums over the calendar year immediately preceding the date of enactment of this Act, multiplied by 1 percent;

"(B) for Program Year 1, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 1, multiplied by 7 percent;

"(C) for Program Year 2, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 2, multiplied by 10 percent;

"(D) for Program Year 3, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 3, multiplied by 15 percent;

"(E) for Program Year 4—

"(i) except as provided in clause (ii), the value of an insurer's direct earned premium for a covered line of insurance over the calendar year immediately preceding Program Year 4, multiplied by—

"(I) for workers' compensation insurance, 16 percent;

"(II) for group life insurance, 21.5 percent;

"(III) for property insurance, 20 percent; and

"(IV) for casualty insurance, 25 percent; and

"(ii) with respect to NBCR terrorism coverage, the value of an insurer's direct earned premium for a covered line of insurance over the calendar year immediately preceding Program Year 4, multiplied by the following percentages which shall be treated as sub-deductibles that apply in lieu of the deductibles set forth in clause (i) for NBCR terrorism losses—

"(I) for workers' compensation insurance, 7.5 percent;

"(II) for group life insurance, 7.5 percent;

"(III) for property insurance, 7.5 percent; and

"(IV) for casualty insurance, 7.5 percent; and

"(iii) if, for any covered line of insurance, an insurer incurs insured losses caused by NBCR terrorism, such NBCR insured losses shall be applied against both the deductible set forth in clause (i) and the NBCR terrorism deductible set forth in clause (ii) for that covered line of insurance;

"(F) for any Additional Program Years—

"(i) except as provided in clause (ii), the value of an insurer's direct earned premium for a covered line of insurance over the calendar year immediately preceding that year, multiplied by the insurer deductible for each covered line of insurance for the preceding calendar year plus an additional percentage, as follows—

"(I) for workers' compensation insurance, 2.0 percent;

"(II) for group life insurance, 2.5 percent;

"(III) for property insurance, 2.5 percent; and

"(IV) for casualty insurance, 5.0 percent; and

"(ii) with respect to NBCR terrorism coverage, the value of an insurer's direct earned premium for a covered line of insurance over the calendar year immediately preceding that year, multiplied by the NBCR terrorism deductible for the preceding year for that covered line of insurance plus the following additional percentages, all of which shall be treated as subdeductibles that apply in lieu of the deductibles listed in clause (i) for NBCR terrorism insured losses—

"(I) for workers' compensation insurance, 0.75 percent;

"(II) for group life insurance, 0.75 percent;

"(III) for property insurance, 0.75 percent; and

"(IV) for casualty insurance, 0.75 percent; and

"(iii) if, for any covered line of insurance, an insurer incurs insured losses caused by NBCR terrorism, such NBCR insured losses shall be applied against both the deductible set forth in clause (i) and the NBCR terrorism deductible set forth in clause (ii) for that covered line of insurance;

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

"(H) if, in any calendar year, aggregate industry insured losses exceed $1,000,000,000, the insurer deductibles for the next calendar year shall be reduced by 0.1 percent for each $1,000,000,000 in insured losses that have occurred during the preceding calendar year, except that no insurer deductible shall be reduced below 5 percent.

"(13) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners.

"(14) OWNERSHIP.—An insurer 'owns' another insurer if the insurer, directly or indirectly or acting through one or more other persons, owns 25 percent or more of any class of voting securities of the other insurer.

"(15) NBCR TERRORISM.—The term 'NBCR terrorism' means an act of terrorism involving nuclear, biological, chemical, or radioactive reactions, releases, or contaminations, to the extent any insured losses are caused by any such reactions, releases, or contaminations.

"(16) PERSON.—The term 'person' means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

"(17) PROGRAM.—The term 'Program' means the Terrorism Insurance Program established by this title.

"(18) PROGRAM YEARS.—

"(A) TRANSITION PERIOD.—The term 'Transition Period' means the period beginning on the date of enactment of this Act and ending on December 31, 2002.

"(B) PROGRAM YEAR 1.—The term 'Program Year 1' means the period beginning on January 1, 2003 and ending on December 31, 2003.

"(C) PROGRAM YEAR 2.—The term 'Program Year 2' means the period beginning on January 1, 2004 and ending on December 31, 2004.

"(D) PROGRAM YEAR 3.—The term 'Program Year 3' means the period beginning on

January 1, 2005 and ending on December 31, 2005.

"(E) PROGRAM YEAR 4.—The term 'Program Year 4' means the period beginning on January 1, 2006 and ending on December 31, 2006.

"(F) ADDITIONAL PROGRAM YEARS.—The term 'Additional Program Year' means any additional one-year period after Program Year 4 during which the Program is in effect, which period shall begin on January 1 and end on December 31 of the same calendar year.

"(19) PROPERTY INSURANCE.—The term 'property insurance' means—

"(A) except as provided in subparagraph (B), insurance on real or personal property of every kind, including excess insurance, against loss or damage from any and all hazard or cause and against loss consequential upon such loss or damage, including business interruption insurance, other than non-contractual legal liability for such loss or damage; and

"(B) does not include any type of commercial automobile or workers' compensation insurance.

"(20) QUALIFIED RISK MANAGER.—The term 'qualified risk manager' means any person who meets all of the following criteria:

"(A) The person is an employee of, or third party consultant retained by, the commercial policyholder.

"(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

"(C) The person possesses at least 2 of the following credentials:

"(i) An advanced degree in risk management issued by an accredited college or university.

"(ii) At least 5 years of experience in one or more of the following areas of commercial property insurance or commercial casualty insurance:

"(I) Risk financing.

"(II) Claims administration.

"(III) Loss prevention.

"(IV) Risk and insurance coverage analysis.

"(iii) Any one of the following designations:

"(I) A designation as a Chartered Property and Casualty Underwriter (in this clause referred to as 'CPCU') issued by the American Institute for CPCU/Insurance Institute of America.

"(II) A designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America.

"(III) A designation as a Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research.

"(IV) A designation as RIMS Fellow (RF) issued by the Global Risk Management Institute.

"(V) Any other designation, certification, or license determined by the insurance regulatory agency for a State to demonstrate minimum competency in risk management.

"(21) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(22) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

"(23) UNITED STATES.—The term 'United States' means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

"(24) WORKERS' COMPENSATION.—The term 'workers' compensation' means insurance against loss from liability imposed by law upon employers to compensate employees and their dependents for injury sustained by the employees arising out of and in the course of the employment, irrespective of negligence or of the fault of either party.

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

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

"(B) to end at midnight on that date.

"SEC. 103. TERRORISM INSURANCE PROGRAM.

"(a) ESTABLISHMENT OF PROGRAM.—

"(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insurance Program.

"(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

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

"(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under this section with respect to an insured loss that is covered by an insurer, unless—

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

"(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the program and the Federal share of compensation for insured losses under the Program—

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

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

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

"(3) the insurer processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe; and

"(4) the insurer submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

"(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

"(B) written certification—

"(i) of the underlying claim; and

"(ii) of all payments made for insured losses; and

"(C) certification of its compliance with the provisions of this subsection.

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

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

"(2) shall make available, in any of its covered lines of insurance policies that exclude coverage for losses resulting from NBCR terrorism, coverage for losses resulting from NBCR terrorism that may differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than NBCR terrorism; and

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

"(d) STATE RESIDUAL MARKET INSURANCE ENTITIES.—

"(1) IN GENERAL.—The Secretary shall issue regulations, as soon as practicable after the date of enactment of this Act, that apply the provisions of this title to State residual market insurance entities, State workers' compensation funds, and State workers' compensation reinsurance pools.

"(2) TREATMENT OF CERTAIN ENTITIES.—For purposes of the regulations issued pursuant to paragraph (1)—

"(A) a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer; and

"(B) a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.

"(3) TREATMENT OF PARTICIPATION IN CERTAIN ENTITIES.—Any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.

"(e) INSURED LOSS SHARED COMPENSATION.—

"(1) FEDERAL SHARE.—

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during each Program Year shall be equal to that portion of the amount of such insured losses for each covered line of insurance that exceeds the applicable insurer deductible required to be paid during such Program Year, multiplied by a percentage based on aggregate industry insured losses for a Program Year, which shall be as follows:

"(i) 80 percent of the aggregate industry insured losses of less than $10,000,000,000;

"(ii) 85 percent of the aggregate industry insured losses between $10,000,000,000 and $20,000,000,000;

"(iii) 90 percent of the aggregate industry insured losses between $20,000,000,000 and $40,000,000,000; and

"(iv) 95 percent of the aggregate industry insured losses above industry losses above $40,000,000,000;

and shall be prorated by insurer based on each insurer's percentage of the aggregate industry insured losses for that Program Year.

"(B) PROGRAM TRIGGER.—No compensation shall be paid by the Secretary under subsection (a) unless the aggregate industry insured losses exceed—

"(i) $50,000,000, with respect to insured losses occurring in Program Year 4;

"(ii) $100,000,000, with respect to insured losses occurring in the Additional

Program Year beginning on January 1, 2007;

"(iii) with respect to each Additional Program Year thereafter that coverage is provided under the Program, the amount that is equal to the sum of (I) the dollar amount applicable under this subparagraph for the Program Year preceding such Additional Program Year, and (II) $50,000,000;

except that the applicable Program Trigger amount shall be reduced by $10,000,000 for each $1,000,000,000 in insured losses occurring in any preceding year, provided that the Program Trigger shall not be reduced below $50,000,000 for any year.

"(C) PROHIBITION ON DUPLICATIVE COMPENSATION.—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses.

"(2) TRIA CAPITAL RESERVE FUNDS.—

"(A) ESTABLISHMENT.—Any insurer may establish a TRIA Capital Reserve Fund (in this section referred to as a 'CRF') in which it may hold funds in a fiduciary capacity on behalf of the Secretary.

"(B) FUNDING.—An insurer may fund a CRF by making an election, in advance, to treat some or all of the premiums it has disclosed pursuant to section 103(b)(2) as TRIA program fee charges imposed by the Secretary. Any such premiums for which such an election has been made must be maintained in segregated accounts in a fiduciary capacity on behalf of the Secretary. Such funds may be invested in any otherwise legally permissible manner but all interest, dividends, and capital accumulations also shall be retained in such segregated accounts on behalf of the Secretary.

"(C) USE.—Funds from a CRF shall be collected and used by the Secretary to offset, in whole or in part, the Federal share of compensation provided to all insurers under the Program as provided for in paragraph (1), except that an insurer may first use the funds in a CRF of that insurer to satisfy any one or more of the following:

"(i) The applicable insurer deductibles for the insurer.

"(ii) The portion of the insurer's losses that exceed the insurer deductible but are not compensated by the Federal share pursuant to paragraph (1).

"(iii) The insurer's obligations to pay for insured losses if the program trigger established in paragraph (1)(B) is not satisfied.

"(iv) Any risk sharing obligations the insurer may have under any agreements made pursuant to or in accordance with paragraph (3).

"(D) TERMINATION.—

"(i) TERMINATION OF PROGRAM.—Upon termination of the Program under section 108(a), and subject to the Secretary's continuing authority under section 108(b) to adjust claims in satisfaction of the Federal share of compensation under the Program as provided in paragraph (1) of this subsection, 10 percent of each insurer's CRF funds shall be remitted to the Secretary and the remainder shall be remitted to the insurer. The Secretary shall determine the manner in which the remittance of such income to the insurer shall be made.

"(ii) ELIMINATION OF FEDERAL SHARE OF COMPENSATION.—If the Program remains in effect but the Federal share of compensation for insured losses under the Program is eliminated from the Program, the CRF funds shall be retained and used for the purposes set forth in subparagraph (C) of this paragraph. At such time as an insurer's liability for insured losses under the Program terminates, as a consequence of the insurer's termination of its business or otherwise, the insurer shall remit any remaining CRF funds to the Secretary.

"(3) RISK-SHARING MECHANISMS.—

"(A) FINDING; RULE OF CONSTRUCTION.—Congress finds that it is desirable to encourage the growth of nongovernmental, private market reinsurance capacity for protection against losses arising from acts of terrorism. Therefore, nothing in this title shall prohibit insurers from developing risk-sharing mechanisms (including mutual reinsurance facilities and agreements) to voluntarily reinsure terrorism losses between and among themselves that are not subject to reimbursement under this section 103.

"(B) ESTABLISHMENT OF ADVISORY COMMITTEE.—The Secretary shall appoint an Advisory Committee to—

"(i) encourage the creation and development of such mechanisms;

"(ii) assist the Secretary and be available to administer such mechanisms; and

"(iii) develop articles of incorporation, bylaws, and a plan of operation for any long-term reinsurance facility authorized or created in the future.

"(C) MEMBERSHIP.—The Advisory Committee shall be composed of nine members who are directors, officers, or other employees of insurers that are participating or that desire to participate in such mechanisms, and who are representative of the affected sectors of the insurance industry. In making these appointments, the Secretary shall solicit major trade associations of the insurance industry to nominate lists of qualified individuals representative of the commercial property insurance, commercial casualty insurance, group life insurance, and reinsurance industries.

"(4) CAP ON ANNUAL LIABILITY.—

"(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed $100,000,000,000 during any Program Year (until such time as the Congress may act otherwise with respect to such losses)—

"(i) the Secretary shall not make any payment under this title for any portion of the amount of such losses that exceeds $100,000,000,000; and

"(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of that amount that exceeds $100,000,000,000.

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

"(5) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during any Program Year and the Congress shall determine the procedures for and the source of any payments for such excess insured losses.

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

"(7) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, unless expressly provided otherwise.

"(8) FULL RECOUPMENT OF FEDERAL SHARE.—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers' compensation and group life insurance), terrorism loss risk-spreading premiums in an amount equal to the total amount paid by the Secretary in accordance with this section.

"(9) POLICY SURCHARGE FOR TERRORISM LOSS RISK-SPREADING PREMIUMS.—

"(A) POLICYHOLDER PREMIUM.—Any amount established by the Secretary as a terrorism loss risk-spreading premium shall—

"(i) be imposed as a policyholder premium surcharge on all covered lines of insurance policies in force after the date of such establishment;

"(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and

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

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

"(C) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for covered lines of insurance coverage under the policy.

"(D) ADJUSTMENT FOR URBAN AND SMALLER COMMERCIAL AND RURAL AREAS AND DIFFERENT LINES OF INSURANCE.—

"(i) ADJUSTMENTS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—

"(I) the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

"(II) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

"(III) the various exposures to terrorism risk for different lines of insurance.

"(ii) RECOUPMENT OF ADJUSTMENTS.—Any recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums.

"(E) TIMING OF PREMIUMS.—The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.

"(F) REPLENISHMENT OF TRIA CAPITAL RESERVE FUNDS.—After any funds expended directly from the United States Treasury are fully repaid, the balance of the amounts collected under this paragraph shall be used to fully replenish all insurer CRFs used by the Secretary in accordance with the provisions of paragraph (2)(C) that were not used by the insurer to satisfy its obligations in accordance with clauses (i) through (iv) of paragraph (2)(C).

"(f) CAPTIVE INSURERS AND OTHER SELF-INSURANCE ARRANGEMENTS.—The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.

"(g) REINSURANCE TO COVER EXPOSURE.—

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

"(2) LIMITATION ON FINANCIAL ASSISTANCE.—The amount of financial assistance provided pursuant to this section, including amounts from a CRF used pursuant to subsection (e)(2)(C), shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the Transition Period or a Program Year provided pursuant to this section, may not exceed the aggregate amount of the insurer's insured losses for such period. If such recoveries and financial assistance for the Transition Period or a Program Year exceed such aggregate amount of insured losses for that period and there is no agreement between the insurer and any reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

"(h) PERSONAL LINES STUDY.—

"(1) IN GENERAL.—The Comptroller General of the United States, after consultation with the NAIC, representatives of the insurance industry, including a cross-section of insurers, independent insurance agents and brokers, policyholders, and other experts in the insurance field, shall conduct a study concerning the exposure of personal lines (including homeowners insurance) to terrorism risk, the coverage currently available, and potential policy responses.

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

"(i) STUDY OF RISKS STEMMING FROM NUCLEAR, BIOLOGICAL, CHEMICAL AND RADIOACTIVE EVENTS.—

"(1) IN GENERAL.—The Comptroller General of the United States, after consultation with the NAIC, representatives of the insurance industry, including a cross-section of insurers, independent insurance agents and brokers, and policyholders, and other experts in the insurance field, shall conduct a study to determine the extent to which risks associated with nuclear, biological, chemical, or radioactive events are measuable and insurable at the Federal or private sector level, or both.

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

"(j) STUDY OF NEED FOR FEDERAL NATURAL DISASTER CATASTROPHE PROGRAM.—

"(1) IN GENERAL.—The Comptroller General of the United States, after consultation with the NAIC, representatives of the insurance industry, including a cross-section of insurers, independent insurance agents and brokers, and policyholders, and other experts in the insurance field, shall conduct a study concerning the need for a Federal program that provides for a system of shared public and private compensation for insured losses resulting from natural disaster.

"(2) ISSUES.—The study under this section shall include an analysis of whether, and in what manner, such a Federal program should incorporate any or all of the following concepts: tax-free capital reserves; voluntary mutual reinsurance pools; a distinction between sophisticated and non-sophisticated commercial purchasers for the purposes of exemption from regulation; or Federal support for the purchase of reinsurance by State disaster insurance programs.

"(3) REPORT.—Not later than September 1, 2006, the Comptroller General shall submit a report to the Congress on the results of the study conducted under this subsection together with specific policy recommendations.

"SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

"(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the program, including authority—

"(1) to investigate and audit all claims under the Program; and

"(2) to prescribe regulations and procedures to effectively administer and implement the Program, and to ensure that all insurers and self-insured entities that participate in the Program are treated comparably under the Program.

"(b) INTERIM RULES AND PROCEDURES.—The Secretary may issue interim final rules or procedures specifying the manner in which—

"(1) insurers may file and certify claims under the Program;

"(2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;

"(3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and

"(4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

"(c) CONSULTATION.—The Secretary shall consult with the NAIC, as the Secretary determines appropriate, concerning the Program.

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

"(e) CIVIL PENALTIES.—

"(1) IN GENERAL.—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any insurer that the Secretary determines, on the record after opportunity for a hearing——

"(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

"(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

"(C) submits to the Secretary fraudulent claims under the Program for insured losses;

"(D) has failed to provide the disclosures required under subsection (f); or

"(E) has otherwise failed to comply with the provisions of, or the regulations issued under, this title.

"(2) AMOUNT.—The amount under this paragraph is the greater of $1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

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

"(f) SUBMISSION OF PREMIUM INFORMATION.—

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

"(2) ACCESS TO INFORMATION.—To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

"(3) AVAILABILITY TO CONGRESS.—The Secretary shall make information compiled under this subsection available to the Congress, upon request.

"(g) FUNDING.—

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

"(2) ADMINISTRATIVE EXPENSES.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay reasonable costs of administering the Program.

"SEC. 105. ESTABLISHMENT OF COMMISSION ON TERRORISM RISK INSURANCE.

"(a) IN GENERAL.—There is hereby established the Commission on Terrorism Risk Insurance (in this section referred to as the 'Commission').

"(b) MEMBERSHIP.—

"(1) The Commission shall consist of 11 members, as follows:

"(A) The Secretary of the Treasury or his designee.

"(B) One State insurance commissioner designated by the members of the NAIC.

"(C) Nine members appointed by the President, who shall be—

"(i) a representative of group life insurers;

"(ii) a representative of property and casualty insurers with direct written premium of $1,000,000,000 or less;

"(iii) a representative of property and casualty insurers with direct written premium of more than $1,000,000,000;

"(iv) a representative of multiline insurers;

"(v) a representative of independent insurance agents;

"(vi) a representative of insurance brokers;

"(vii) a policyholder representative;

"(viii) a representative of the survivors of the victims of the attacks of September 11, 2001; and

"(ix) a representative of the reinsurance industry.

"(2) SECRETARY.—The Program Director of the Terrorism Risk Insurance Act shall serve as Secretary of the Commission. The Secretary of the Commission shall determine the manner in which the Commission shall operate, including funding and staffing.

"(c) DUTIES.—

"(1) IN GENERAL.—The Commission shall identify and make recommendations regarding—

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

"(B) possible actions or mechanisms to sustain or supplement the ability of the insurance industry in the United States to cover losses resulting from acts of terrorism in the event that—

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

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

"(C) significantly reducing the expected Federal role over time in any continuing Federal terrorism risk insurance program.

"(2) EVALUATIONS.—In identifying and making the recommendations required under paragraph (1), the Commission shall specifically evaluate the utility and viability of TRIA Capital Reserve Funds made available under section 103(e)(2), any risk sharing mechanism created or made available under section 103(e)(3), a Federally created or mandated reinsurance facility, empowering such a facility to issue pre-event financing bonds, post-event financing bonds, assessments, single or multiple pooling arrangements, and other risk sharing arrangements to accomplish, in whole or in part, the specified objectives, taking into consideration the studies and reports to the Congress pursuant to subsections (h) and (i) of section 103.

"(3) REPORT.—Not later than December 31, 2006, the Commission shall submit a report to Congress evaluating and making recommendations regarding whether there is a need for a Federal terrorism risk insurance program and, if so, shall make a specific, detailed recommendation for the replacement of the Program, including specific, detailed recommendations for the creation of a terrorism reinsurance facility or facilities or single or multiple pooling arrangements, or both.

"(d) EFFECT ON EXISTING PROGRAM.—For purposes of section 108(a), the Secretary shall make a determination not later than January 31, 2007, of whether the Commission has satisfied its obligations under subsection (c)(3).

"SEC. 106. PRESERVATION PROVISIONS.

"(a) STATE LAW.—Nothing in this title shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person—

"(1) except as specifically provided in this title; and

"(2) except that—

"(A) the definition of the term 'act of terrorism' in section 102 shall be the exclusive definition of that term for purposes of compensation for insured losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title; and

"(B) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 108, including authority in subsection 108(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access; and

"(3) except that with respect to coverage required to be made available under section 103(c)—

"(A) no laws or regulations of a State imposing a diligent search requirement for the placement of a surplus lines policy shall apply in connection with the purchase of such insurance by an exempt commercial purchaser; and

"(B) no laws or regulations of a State, except of the home State, imposing a diligent search requirement for the placement of a surplus lines policy shall apply with respect to the placement of a multi-State surplus lines commercial insurance policy, provided the contract of insurance insures risks in the home State.

"(b) STREAMLINED RATE AND FORM FILING.—The Congress intends that, by December 31, 2007, all States, with respect to submission of a commercial property insurance policy or commercial casualty insurance policy that includes coverage for acts of terrorism—

"(1) implement and fully utilize the System for Electronic Rate and Form Filing (in this section referred to as 'SERFF'), developed by the NAIC, without deviation to provide a single point for electronic filing of property insurance and casualty insurance forms for review;

"(2) update SERFF to provide a single coordinated checklist for inputting the required information used by various States for filing reviews and designating to which States the information will be submitted;

"(3) allow the option of filing of self-certified commercial property insurance and commercial casualty insurance forms through a substantially nationwide coordinated electronic filing system that—

"(A) includes a review checklist with uniform nomenclature clearly establishing what is required under the laws of such State for a compliant filing of such forms;

"(B) uses a single input system and transmittal document that allows the filer to submit such form for review without required format deviations to any combination of the States participating in the system;

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

"(D) keeps such filings confidential until they are implemented, deemed implemented, or disapproved; and

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

"(c) STREAMLINED SURPLUS LINES PLACEMENT.—The Congress intends that, by December 31, 2007, all States streamline their surplus lines diligent search rules with respect to the placement of surplus lines policies in any covered line of insurance that includes coverage for acts of terrorism by providing for—

"(1) automatic export for exempt commercial purchasers, under which a surplus lines broker seeking to obtain, provide, or place insurance in a State for an insured that qualifies as an exempt commercial purchaser may procure surplus lines insurance from or place surplus lines insurance with any nonadmitted insurer without making a diligent search to determine whether the full amount or type of insurance sought by the exempt commercial purchaser can be obtained from admitted insurers in such State.

"(2) home State regulation of diligent search requirements, that provides that, except as provided in paragraph (1), only the home State may impose a diligent search requirement for the placement of a multi-State surplus lines commercial insurance policy, provided the contract of insurance insures risks in the Home State.

"(d) EXISTING REINSURANCE AGREEMENTS.—Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act. The terms and conditions of such an agreement shall be determined by the language of that agreement.''; and

(2) in section 108—

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

``(a) TERMINATION OF PROGRAM.—

``(1) IN GENERAL.—Except as provided in paragraph (2), the Program shall terminate on December 31, 2008.

``(2) FAILURE OF COMMISSION TO SUBMIT REPORT.—If the Secretary determines pursuant to section 105(d) that the Commission on Terrorism Risk Insurance established under section 105 has not satisfied its obligations under section 105(c)(3), the Program shall terminate on December 31, 2007.''; and

(B) in subsection (c)(1), by striking ``paragraph (4), (5), (6), (7), or (8) of''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall take effect and apply beginning on January 1, 2006.