

[DISCUSSION DRAFT]116TH CONGRESS
2^D SESSION**H. R.** _____

To establish a Pandemic Risk Reinsurance Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M____. _____ introduced the following bill; which was referred
to the Committee on _____

A BILL

To establish a Pandemic Risk Reinsurance Program, and
for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pandemic Risk Insur-
5 ance Act of 2020”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds **[To be added.]**

8 (b) PURPOSE.—The purpose of this title is to estab-
9 lish a Federal program that provides for a transparent
10 system of shared public and private compensation for busi-

1 ness interruption losses resulting from a pandemic or out-
2 break of communicative disease, in order to—

3 (1) protect consumers by addressing market
4 disruptions and ensure the continued widespread
5 availability and affordability of business interruption
6 coverage for losses resulting from a pandemic or
7 outbreak of communicative disease; and

8 (2) allow for a transitional period for the pri-
9 vate markets to stabilize, resume pricing of such in-
10 surance, and build capacity to absorb any future
11 losses, while preserving State insurance regulation
12 and consumer protections.

13 **SEC. 3. DEFINITIONS.**

14 In this title, the following definitions shall apply:

15 (1) COVERED PUBLIC HEALTH EMERGENCY.—

16 (A) IN GENERAL.—The term “covered
17 public health emergency” means any outbreak
18 of infectious disease or pandemic [for which an
19 emergency is declared under the Public Health
20 Service Act/ for which an emergency or major
21 disaster is declared by the President under the
22 Robert T. Stafford Disaster Relief and Emer-
23 gency Assistance Act/ that is certified by the
24 Secretary, as a public health emergency?].

1 **[(B) DETERMINATIONS FINAL.—**Any cer-
2 tification of, or determination not to certify, an
3 act as a covered public health emergency under
4 this paragraph shall be final, and shall not be
5 subject to judicial review.]

6 **[(C) TIMING OF CERTIFICATION.—**Not
7 later than **[9 months after the report required**
8 under **[—?]]** is submitted to the appropriate
9 committees of Congress, the Secretary shall
10 issue final rules governing the certification
11 process, including establishing a timeline for
12 which an outbreak of infectious disease or pan-
13 demic is eligible for certification by the Sec-
14 retary on whether it is a covered public health
15 emergency under this paragraph.]

16 **[(D) NONDELEGATION.—**The Secretary
17 may not delegate or designate to any other offi-
18 cer, employee, or person, any determination
19 under this paragraph of whether, during the ef-
20 fective period of the Program, a covered public
21 health emergency has occurred.]

22 **(2) AFFILIATE.—**The term “affiliate” means,
23 with respect to an participating insurer, any entity
24 that controls, is controlled by, or is under common
25 control with the insurer.

1 **[(3) BUSINESS INTERRUPTION INSURANCE.—**

2 The term “business interruption insurance” means
3 commercial lines of property and casualty insurance
4 coverage provided or made available for losses result-
5 ing from periods of suspended business operations,
6 whether provided under broader coverage for prop-
7 erty losses or separately.]

8 **(4) CONTROL.—**

9 **(A) IN GENERAL.—**An entity has “control”
10 over another entity, if—

11 (i) the entity directly or indirectly or
12 acting through 1 or more other persons
13 owns, controls, or has power to vote 25
14 percent or more of any class of voting se-
15 curities of the other entity;

16 (ii) the entity controls in any manner
17 the election of a majority of the directors
18 or trustees of the other entity; or

19 (iii) the Secretary determines, after
20 notice and opportunity for hearing, that
21 the entity directly or indirectly exercises a
22 controlling influence over the management
23 or policies of the other entity.

24 **(B) RULE OF CONSTRUCTION.—**An entity,
25 including any affiliate thereof, does not have

1 “control” over another entity, if, as of the date
2 of enactment of the , the entity is acting as an
3 attorney-in-fact, as defined by the Secretary,
4 for the other entity and such other entity is a
5 reciprocal insurer, provided that the entity is
6 not, for reasons other than the attorney-in-fact
7 relationship, defined as having “control” under
8 subparagraph (A).

9 (5) DIRECT EARNED PREMIUM.—The term “di-
10 rect earned premium” means a direct earned pre-
11 mium for property and casualty insurance issued by
12 any **[participating?]** insurer for insurance against
13 losses occurring in the United States.

14 (6) INSURED LOSS.—The term “insured loss”
15 means any loss resulting from a covered public
16 health emergency that is covered by primary or ex-
17 cess business interruption insurance issued by a par-
18 ticipating insurer if such loss occurs—

19 (A) within the United States;

20 (B) within an area for to which a covered
21 public health emergency applies; and

22 (C) during the period that the covered
23 public health emergency for such area is in ef-
24 fect.

1 (7) INSURER.—The term “insurer” means any
2 entity, including any affiliate thereof—

3 (A) that is—

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

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

12 (iii) approved for the purpose of offer-
13 ing property and casualty insurance by a
14 Federal agency in connection with mari-
15 time, energy, or aviation activity;

16 (iv) a State residual market insurance
17 entity or State workers’ compensation
18 fund; or

19 (v) any other entity described in sec-
20 tion 4(f), to the extent provided in the
21 rules of the Secretary issued under section
22 4(f);

23 (B) that receives direct earned premiums
24 for any type of commercial property and cas-
25 ualty insurance coverage, other than in the case

1 of entities described in subsections (d) and (f)
2 of section 4; and

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

5 (8) INSURER DEDUCTIBLE.—The term “insurer
6 deductible” means, with respect to a participating
7 insurer—

8 (A) the value of the participating insurer’s
9 direct earned premiums during the immediately
10 preceding calendar year, multiplied by **5** per-
11 cent**];** and

12 (B) notwithstanding subparagraph (A), for
13 any calendar year, if a participating insurer has
14 not had a full year of operations during the cal-
15 endar year immediately preceding such calendar
16 year, such portion of the direct earned pre-
17 miums of the participating insurer as the Sec-
18 retary determines appropriate, subject to appro-
19 priate methodologies established by the Sec-
20 retary for measuring such direct earned pre-
21 miums.

22 (9) NAIC.—The term “NAIC” means the Na-
23 tional Association of Insurance Commissioners.

1 (10) PARTICIPATING INSURER.—The term
2 “participating insurer” means, with respect to a cal-
3 endar year, an insurer that has—

4 (A) elected pursuant to section 4(a)(3) to
5 participate in the Pandemic Risk Reinsurance
6 Program under this title for such calendar year;
7 and

8 (B) paid the applicable premium under
9 section 4(a)(3)(C) for reinsurance coverage for
10 such calendar year under the Pandemic Risk
11 Reinsurance Program under this title.

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

18 (12) PROGRAM.—The term “Program” means
19 the Pandemic Risk Reinsurance Program established
20 by this title.

21 (13) PROPERTY AND CASUALTY INSURANCE.—
22 The term “property and casualty insurance”—

23 (A) means commercial lines of property
24 and casualty insurance, including excess insur-

1 ance, workers' compensation insurance, and di-
2 rectors and officers liability insurance; and

3 (B) does not include—

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

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

13 (iii) financial guaranty insurance
14 issued by monoline financial guaranty in-
15 surance corporations;

16 (iv) insurance for medical malpractice;

17 (v) health or life insurance, including
18 group life insurance;

19 (vi) flood insurance provided under
20 the National Flood Insurance Act of 1968
21 (42 U.S.C. 4001 et seq.);

22 (vii) reinsurance or retrocessional re-
23 insurance;

24 (viii) commercial automobile insur-
25 ance;

- 1 (ix) burglary and theft insurance;
2 (x) surety insurance;
3 (xi) professional liability insurance; or
4 (xii) farm owners multiple peril insur-
5 ance.

6 (14) SECRETARY.—The term “Secretary”
7 means the Secretary of the Treasury.

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

15 (16) UNITED STATES.—The term “United
16 States” means the several States.

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

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

21 and

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

23 **SEC. 4. PANDEMIC RISK REINSURANCE PROGRAM.**

24 (a) ESTABLISHMENT OF PROGRAM.—

1 (1) IN GENERAL.—There is established in the
2 Department of the Treasury the Pandemic Risk Re-
3 insurance Program.

4 (2) AUTHORITY OF THE SECRETARY.—Notwith-
5 standing any other provision of State or Federal
6 law, the Secretary shall administer the Program,
7 and shall pay the Federal share of compensation for
8 insured losses in accordance with subsection (e).

9 (3) VOLUNTARY PARTICIPATION; PREMIUMS.—

10 (A) ELIGIBILITY.—Each entity that meets
11 the definition of an insurer under this title may
12 participate in the Program.

13 (B) ELECTION.—The Secretary shall pro-
14 vide a process by which insurers may elect to
15 participate in the Program, with respect to a
16 calendar year.

17 (C) PREMIUMS.—For each calendar year
18 that an insurer participates in the Program, the
19 Secretary shall charge the insurer a premium
20 for reinsurance coverage under subsection (e)
21 under the Program for the calendar year. Such
22 premium rates shall be based on the actuarial
23 cost of providing such reinsurance coverage, in-
24 cluding costs of administering the Program.

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

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

8 (2) the participating insurer provides clear and
9 conspicuous disclosure to the policyholder of the pre-
10 mium charged for insured losses covered by the Pro-
11 gram and the Federal share of compensation for in-
12 sured losses under the Program—

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

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

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

1 (3) in the case of any policy that is issued after
2 the date of enactment of this Act, the participating
3 insurer provides clear and conspicuous disclosure to
4 the policyholder of the existence of the
5 **【\$500,000,000,000】** cap under subsection (e)(2), at
6 the time of offer, purchase, and renewal of the pol-
7 icy;

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

12 (5) the participating insurer submits to the Sec-
13 retary, in accordance with such reasonable proce-
14 dures as the 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 the
23 provisions of this subsection.

24 (c) MANDATORY AVAILABILITY OF COVERAGE FOR
25 COVERED PUBLIC HEALTH EMERGENCIES UNDER BUSI-

1 NESS INTERRUPTION COVERAGE.—During each calendar
2 year, each participating insurer shall, with respect to such
3 year—

4 (1) make available, in all of its business inter-
5 ruption insurance policies, coverage for insured
6 losses; and

7 (2) make available business interruption insur-
8 ance coverage for insured losses that does not differ
9 materially from the terms, amounts, and other cov-
10 erage limitations applicable to losses arising from
11 events other than public health emergencies.

12 (d) STATE RESIDUAL MARKET INSURANCE ENTI-
13 TIES.—

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

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

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

1 (B) a State residual market insurance enti-
2 ty that shares its profits and losses with private
3 sector insurers shall not be treated as a sepa-
4 rate insurer, and shall report to each private
5 sector insurance participant its share of the in-
6 sured losses of the entity, which shall be in-
7 cluded in each private sector participating in-
8 surer's insured losses.

9 (3) TREATMENT OF PARTICIPATION IN CERTAIN
10 ENTITIES.—Any participating insurer that partici-
11 pates in sharing profits and losses of a State resid-
12 ual market insurance entity shall include in its cal-
13 culations of premiums any premiums distributed to
14 the participating insurer by the State residual mar-
15 ket insurance entity.

16 (e) REINSURANCE FOR INSURED LOSSES.—

17 (1) FEDERAL SHARE OF COMPENSATION.—

18 (A) IN GENERAL.—The Federal share of
19 compensation under the Program to be paid by
20 the Secretary for insured losses of an partici-
21 pating insurer during each calendar year shall
22 be equal to 95 percent of that portion of the
23 amount of such insured losses that exceeds the
24 applicable insurer deductible required to be paid
25 during such calendar year.

1 (B) PROGRAM TRIGGER.—In the case of a
2 covered public health emergency commencing
3 after **【——?】**, no compensation shall be paid
4 by the Secretary under subsection (a) unless
5 the aggregate industry insured losses **【for par-**
6 **ticipating insurers?】** resulting from such cov-
7 ered public health emergency exceed
8 **【\$250,000,000】**.

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

16 (2) CAP ON ANNUAL LIABILITY.—

17 (A) IN GENERAL.—Notwithstanding para-
18 graph (1) or any other provision of Federal or
19 State law, if the aggregate insured losses exceed
20 **【\$500,000,000,000】**, during a calendar year—

21 (i) the Secretary shall not make any
22 payment under this title for any portion of
23 the amount of such losses that exceeds
24 **【\$500,000,000,000】**; and

1 (ii) no participating insurer that has
2 met its insurer deductible shall be liable
3 for the payment of any portion of the
4 amount of such losses that exceeds
5 **【\$500,000,000,000】**.

6 (B) INSURER SHARE.—

7 (i) IN GENERAL.—For purposes of
8 subparagraph (A), the Secretary shall de-
9 termine the pro rata share of insured
10 losses to be paid by each participating in-
11 surer that incurs insured losses under the
12 Program, except that, notwithstanding
13 paragraph (1) or any other provision of
14 Federal or State law, no participating in-
15 surer may be required to make any pay-
16 ment for insured losses in excess of its de-
17 ductible under section 3(8) combined with
18 its share of insured losses under paragraph
19 (1)(A) of this subsection.

20 (ii) REGULATIONS.—Not later than
21 240 days after the date of enactment of
22 this Act, the Secretary shall issue final
23 regulations for determining the pro rata
24 share of insured losses under the Program
25 when insured losses exceed

1 **【\$500,000,000,000】**, in accordance with
2 clause (i).

3 (iii) REPORT TO CONGRESS.—Not
4 later than 120 days after the date of en-
5 actment of this Act, the Secretary shall
6 provide a report to the Committee on
7 Banking, Housing, and Urban Affairs of
8 the Senate and the Committee on Finan-
9 cial Services of the House of Representa-
10 tives describing the process to be used by
11 the Secretary for determining the alloca-
12 tion of pro rata payments for insured
13 losses under the Program when such losses
14 exceed **【\$500,000,000,000】**.

15 (3) NOTICE TO CONGRESS.—The Secretary
16 shall notify the Congress if estimated or actual ag-
17 gregate insured losses exceed **【\$500,000,000,000】**
18 during any calendar year. The Secretary shall pro-
19 vide an initial notice to Congress not later than 15
20 days after the **【end of a covered public health emer-
21 gency?】**, stating whether the Secretary estimates
22 that aggregate insured losses will exceed
23 **【\$500,000,000,000】**.

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

1 relating to any insured loss or covered public health
2 emergency shall become final.

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

7 [(f) CAPTIVE INSURERS AND OTHER SELF-INSUR-
8 ANCE ARRANGEMENTS.—The Secretary may, in consulta-
9 tion with the NAIC or the appropriate State regulatory
10 authority, apply the provisions of this title, as appropriate,
11 to other classes or types of captive insurers and other self-
12 insurance arrangements by municipalities and other enti-
13 ties (such as workers' compensation self-insurance pro-
14 grams and State workers' compensation reinsurance
15 pools), but only if such application is determined before
16 the [commencement of a covered public health emer-
17 gency] in which such an entity incurs an insured loss and
18 all of the provisions of this title are applied comparably
19 to such entities.]

20 (g) REINSURANCE TO COVER EXPOSURE.—

21 (1) OBTAINING COVERAGE.—This title may not
22 be construed to limit or prevent insurers from ob-
23 taining reinsurance coverage for insurer deductibles
24 or insured losses retained by insurers pursuant to
25 this section, nor shall the obtaining of such coverage

1 affect the calculation of such deductibles or reten-
2 tions.

3 (2) LIMITATION ON FINANCIAL ASSISTANCE.—

4 The amount of financial assistance provided pursu-
5 ant to this section shall not be reduced by reinsur-
6 ance paid or payable to an insurer from other
7 sources, except that recoveries from such other
8 sources, taken together with financial assistance for
9 the calendar year provided pursuant to this section,
10 may not exceed the aggregate amount of the insur-
11 er's insured losses for the calendar year. If such re-
12 coveries and financial assistance for the calendar
13 year exceed such aggregate amount of insured losses
14 for the calendar year and there is no agreement be-
15 tween the insurer and any reinsurer to the contrary,
16 an amount in excess of such aggregate insured
17 losses shall be returned to the Secretary.

18 **SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF**
19 **CLAIMS.**

20 (a) GENERAL AUTHORITY.—The Secretary shall have
21 the powers and authorities necessary to carry out the Pro-
22 gram, including authority—

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

1 (2) to prescribe regulations and procedures to
2 effectively administer and implement the Program,
3 and to ensure that all participating insurers and
4 self-insured entities are treated comparably under
5 the Program.

6 (b) INTERIM RULES AND PROCEDURES.—The Sec-
7 retary may issue interim final rules or procedures speci-
8 fying the manner in which—

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

11 (2) the Federal share of compensation for in-
12 sured losses will be paid under the Program, includ-
13 ing payments based on estimates of or actual in-
14 sured losses;

15 【(3) the Secretary may, at any time, seek re-
16 payment from or reimburse any insurer, based on
17 estimates of insured losses under the Program, to ef-
18 fectuate the insured loss sharing provisions in sec-
19 tion 4; and】

20 【(4) the Secretary will determine any final net-
21 ting of payments under the Program, including pay-
22 ments owed to the Federal Government from any in-
23 surer and any Federal share of compensation for in-
24 sured losses owed to any insurer, to effectuate the
25 insured loss sharing provisions in section 4.】

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

4 (d) CONTRACTS FOR SERVICES.—The Secretary may
5 employ persons or contract for services as may be nec-
6 essary to implement the Program.

7 (e) CIVIL PENALTIES.—

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

13 (A) has intentionally provided to the Sec-
14 retary erroneous information regarding pre-
15 mium or loss amounts;

16 (B) submits to the Secretary fraudulent
17 claims under the Program for insured losses;

18 (C) has failed to provide the disclosures re-
19 quired under subsection (f); or

20 (D) has otherwise failed to comply with the
21 provisions of, or the regulations issued under,
22 this title.

23 (2) AMOUNT.—The amount under this para-
24 graph is the greater of **【\$1,000,000】** and, in the
25 case of any failure to pay, charge, collect, or remit

1 amounts in accordance with this title or the regula-
2 tions issued under this title, such amount in dispute.

3 (f) SUBMISSION OF PREMIUM INFORMATION.—

4 (1) IN GENERAL.—The Secretary shall annually
5 compile information on the business interruption in-
6 surance premium rates of insurers for the preceding
7 year.

8 (2) ACCESS TO INFORMATION.—To the extent
9 that such information is not otherwise available to
10 the Secretary, the Secretary may require each in-
11 surer to submit to the NAIC business interruption
12 insurance premium rates, as necessary to carry out
13 paragraph (1), and the NAIC shall make such infor-
14 mation available to the Secretary.

15 (3) AVAILABILITY TO CONGRESS.—The Sec-
16 retary shall make information compiled under this
17 subsection available to the Congress, upon request.

18 (g) PANDEMIC RISK REINSURANCE FUND.—

19 (1) ESTABLISHMENT.—There is hereby estab-
20 lished in the Treasury the Pandemic Risk Reinsur-
21 ance Fund, which shall be credited with all pre-
22 miums paid pursuant to section 4(a)(3)(C) for rein-
23 surance coverage under the program.

24 (2) AVAILABILITY.—Amounts in the Fund shall
25 be available, and are hereby appropriated, only for—

1 (A) providing the Federal share of com-
2 pensation under the Program to be paid by the
3 Secretary for insured losses of participating in-
4 surers pursuant to subsection (e); and

5 (B) reasonable costs of administering the
6 Program.

7 (h) REPORTING OF BUSINESS INTERRUPTION INSUR-
8 ANCE DATA.—

9 (1) AUTHORITY.—During the calendar year be-
10 ginning on January 1, **[2016]**, and in each calendar
11 year thereafter, the Secretary shall require partici-
12 pating insurers to submit to the Secretary such in-
13 formation regarding losses of such insurers, under
14 insurance coverage for business interruption, result-
15 ing from public health emergencies as the Secretary
16 considers appropriate to analyze the effectiveness of
17 the Program, which shall include information re-
18 garding—

19 (A) lines of insurance with exposure to
20 such losses;

21 (B) premiums earned on such coverage;

22 (C) geographical location of exposures;

23 (D) pricing of such coverage;

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

1 (F) the amount of private reinsurance for
2 losses resulting from public health emergencies
3 purchased; and

4 (G) such other matters as the Secretary
5 considers appropriate.

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

12 (A) an analysis of the overall effectiveness
13 of the Program;

14 (B) an evaluation of the availability and
15 affordability of business interruption insurance
16 for losses resulting from public health emer-
17 gencies;

18 (C) an evaluation of any changes or trends
19 in the data collected under paragraph (1);

20 (D) an evaluation of whether any aspects
21 of the Program have the effect of discouraging
22 or impeding insurers from providing business
23 interruption insurance coverage or coverage for
24 public health emergencies;

1 (E) an evaluation of the impact of the Pro-
2 gram on workers' compensation insurers; and

3 (F) in the case of the data reported in
4 paragraph (1)(B), an updated estimate of the
5 total amount earned since the first January 1
6 occurring after the date of the enactment of
7 this Act.

8 (3) PROTECTION OF DATA.—To the extent pos-
9 sible, the Secretary shall contract with an insurance
10 statistical aggregator to collect the information de-
11 scribed in paragraph (1), which shall keep any non-
12 public information confidential and provide it to the
13 Secretary in an aggregate form or in such other
14 form or manner that does not permit identification
15 of the insurer submitting such information.

16 (4) ADVANCE COORDINATION.—Before col-
17 lecting any data or information under paragraph (1)
18 from an insurer, or affiliate of an insurer, the Sec-
19 retary shall coordinate with the appropriate State in-
20 surance regulatory authorities and any relevant gov-
21 ernment agency or publicly available sources to de-
22 termine if the information to be collected is available
23 from, and may be obtained in a timely manner by,
24 individually or collectively, such entities. If the Sec-
25 retary determines that such data or information is

1 available, and may be obtained in a timely matter,
2 from such entities, the Secretary shall obtain the
3 data or information from such entities. If the Sec-
4 retary determines that such data or information is
5 not so available, the Secretary may collect such data
6 or information from an insurer and affiliates.

7 (5) CONFIDENTIALITY.—

8 (A) RETENTION OF PRIVILEGE.—The sub-
9 mission of any non-publicly available data and
10 information to the Secretary and the sharing of
11 any non-publicly available data with or by the
12 Secretary among other Federal agencies, the
13 State insurance regulatory authorities, or any
14 other entities under this subsection shall not
15 constitute a waiver of, or otherwise affect, any
16 privilege arising under Federal or State law (in-
17 cluding the rules of any Federal or State court)
18 to which the data or information is otherwise
19 subject.

20 (B) CONTINUED APPLICATION OF PRIOR
21 CONFIDENTIALITY AGREEMENTS.—Any require-
22 ment under Federal or State law to the extent
23 otherwise applicable, or any requirement pursu-
24 ant to a written agreement in effect between
25 the original source of any non-publicly available

1 data or information and the source of such data
2 or information to the Secretary, regarding the
3 privacy or confidentiality of any data or infor-
4 mation in the possession of the source to the
5 Secretary, shall continue to apply to such data
6 or information after the data or information
7 has been provided pursuant to this subsection.

8 (C) INFORMATION-SHARING AGREEMENT.—Any data or information obtained by
9 the Secretary under this subsection may be
10 made available to State insurance regulatory
11 authorities, individually or collectively, through
12 an information-sharing agreement that—
13

14 (i) shall comply with applicable Fed-
15 eral law; and

16 (ii) shall not constitute a waiver of, or
17 otherwise affect, any privilege under Fed-
18 eral or State law (including any privilege
19 referred to in subparagraph (A) and the
20 rules of any Federal or State court) to
21 which the data or information is otherwise
22 subject.

23 (D) AGENCY DISCLOSURE REQUIRE-
24 MENTS.—Section 552 of title 5, United States
25 Code, including any exceptions thereunder, shall

1 apply to any data or information submitted
2 under this subsection to the Secretary by an in-
3 surer or affiliate of an insurer.

4 **SEC. 6. PREEMPTION AND NULLIFICATION OF PRE-EXIST-**
5 **ING EXCLUSIONS.**

6 (a) GENERAL NULLIFICATION.—Any exclusion in a
7 contract of a participating insurer for business interrup-
8 tion insurance that is in force [on the date of enactment
9 of this Act/ as of [—?]] shall be void to the extent
10 that it excludes losses that would otherwise be insured
11 losses under the Program.

12 (b) GENERAL PREEMPTION.—Any State approval of
13 any exclusion from a contract of a participating insurer
14 for business interruption insurance that is in force [on
15 the date of enactment of this Act/ as of [—?]], shall
16 be void to the extent that it excludes losses that would
17 otherwise be insured losses under the Program.

18 (c) REINSTATEMENT OF EXCLUSIONS.—Notwith-
19 standing subsections (a) and (b) or any provision of State
20 law, a participating insurer may reinstate a preexisting
21 provision in a contract for business interruption insurance
22 that is in force [on the date of enactment of this Act/
23 as of [—?]] and that excludes coverage for loss result-
24 ing from a covered public health emergency only—

1 (1) if the participating insurer has received a
2 written statement from the insured that affirma-
3 tively authorizes such reinstatement; or

4 (2) if—

5 (A) the insured fails to pay any increased
6 premium charged by the participating insurer
7 for providing such coverage for covered public
8 health emergencies; and

9 (B) the participating insurer provided no-
10 tice, at least 30 days before any such reinstate-
11 ment, of—

12 (i) the increased premium for such
13 covered public health emergency coverage;
14 and

15 (ii) the rights of the insured with re-
16 spect to such coverage, including any date
17 upon which the exclusion would be rein-
18 stated if no payment is received.

19 **SEC. 7. PRESERVATION PROVISIONS.**

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

24 (1) except as specifically provided in this title;

25 and

1 (2) except that—

2 (A) the definition of the term “covered
3 public health emergency” in section 3 shall be
4 the exclusive definition of that term for pur-
5 poses of compensation for insured losses under
6 this title, and shall preempt any provision of
7 State law that is inconsistent with that defini-
8 tion, to the extent that such provision of law
9 would otherwise apply to any type of insurance
10 covered by this title;

11 (B) during the period [beginning on the
12 date of enactment of this Act and ending on
13 December 31, 2003], rates and forms for busi-
14 ness interruption insurance covered by this title
15 and filed with any State shall not be subject to
16 prior approval or a waiting period under any
17 law of a State that would otherwise be applica-
18 ble, except that nothing in this title affects the
19 ability of any State to invalidate a rate as ex-
20 cessive, inadequate, or unfairly discriminatory,
21 and, with respect to forms, where a State has
22 prior approval authority, it shall apply to allow
23 subsequent review of such forms; and

24 (C) during the period beginning on the
25 date of enactment of this Act and for so long

1 as the Program is in effect, as provided in sec-
2 tion 9, including authority in subsection 208(b),
3 books and records of any insurer that are rel-
4 evant to the Program shall be provided, or
5 caused to be provided, to the Secretary, upon
6 request by the Secretary, notwithstanding any
7 provision of the laws of any State prohibiting or
8 limiting such access.

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

15 **[SEC. 8. LITIGATION MANAGEMENT.**

16 **[(a) PROCEDURES AND DAMAGES.—]**

17 **[(1) IN GENERAL.—]**If the Secretary makes a
18 determination pursuant to section 3 that a covered
19 public health emergency has occurred, there shall
20 exist a Federal cause of action for property damage,
21 personal injury, or death arising out of or resulting
22 from such public health emergency, which shall be
23 the exclusive cause of action and remedy for claims
24 for property damage, personal injury, or death aris-

1 ing out of or relating to such public health emer-
2 gency, except as provided in subsection (b).】

3 【(2) PREEMPTION OF STATE ACTIONS.—All
4 State causes of action of any kind for property dam-
5 age, personal injury, or death arising out of or re-
6 sulting from a covered public health emergency that
7 are otherwise available under State law are hereby
8 preempted, except as provided in subsection (b).】

9 【(3) SUBSTANTIVE LAW.—The substantive law
10 for decision in any such action described in para-
11 graph (1) shall be derived from the law, including
12 choice of law principles, of the State in which 【——
13 ?】, unless such law is otherwise inconsistent with or
14 preempted by Federal law.】

15 【(4) JURISDICTION.—For each determination
16 described in paragraph (1), not later than 90 days
17 after the 【end of a covered public health emer-
18 gency】, the Judicial Panel on Multidistrict Litiga-
19 tion shall designate 1 district court or, if necessary,
20 multiple district courts of the United States that
21 shall have original and exclusive jurisdiction over all
22 actions for any claim (including any claim for loss
23 of property, personal injury, or death) relating to or
24 arising out of the covered public health emergency
25 subject to this section. The Judicial Panel on Multi-

1 district Litigation shall select and assign the district
2 court or courts based on the convenience of the par-
3 ties and the just and efficient conduct of the pro-
4 ceedings. For purposes of personal jurisdiction, the
5 district court or courts designated by the Judicial
6 Panel on Multidistrict Litigation shall be deemed to
7 sit in all judicial districts in the United States.】

8 【(5) PUNITIVE DAMAGES.—Any amounts
9 awarded in an action under paragraph (1) that are
10 attributable to punitive damages shall not count as
11 insured losses for purposes of this title.】

12 【(6) AUTHORITY OF THE SECRETARY.—Proce-
13 dures and requirements established by the Secretary
14 under section 50.82 of part 50 of title 31 of the
15 Code of Federal Regulations (as in effect on the
16 date of issuance of that section in final form) shall
17 apply to any cause of action described in paragraph
18 (1) of this subsection.】

19 【(b) EXCLUSION.—Nothing in this section shall in
20 any way limit the liability of any government, an organiza-
21 tion, or person who knowingly participates in, conspires
22 to commit, aids and abets, or commits any 【——?】 with
23 respect to which a determination described in subsection
24 (a)(1) was made.】

1 [(c) RIGHT OF SUBROGATION.—The United States
2 shall have the right of subrogation with respect to any
3 payment or claim paid by the United States under this
4 title.]

5 [(d) RIGHT TO ARBITRATE.—Nothing in this section
6 shall be construed to affect any party’s contractual right
7 to arbitrate a dispute.]

8 [(e) EFFECTIVE PERIOD.—This section shall apply
9 only to actions described in subsection (a)(1) that arise
10 out of or result from covered public health emergencies
11 that occur or occurred during the effective period of the
12 Program.]

13 **SEC. 9. STUDY AND ANALYSES.**

14 (a) STUDY AND REPORT ON THE PROGRAM.—

15 (1) STUDY.—The Secretary, in consultation
16 with the NAIC, representatives of the insurance in-
17 dustry and of policy holders, other experts in the in-
18 surance field, and other experts as needed, shall as-
19 sess the effectiveness of the Program and the likely
20 capacity of the property and casualty insurance in-
21 dustry to offer insurance for risk of public health
22 emergencies after termination of the Program, and
23 the availability and affordability of such insurance
24 for various policyholders.

1 (2) REPORT.—The Secretary shall submit a re-
2 port to the Congress on the results of the study con-
3 ducted under paragraph (1) not later than June 30,
4 **【2005】**.

5 (b) ANALYSIS OF MARKET CONDITIONS FOR PUBLIC
6 HEALTH EMERGENCY RISK INSURANCE.—

7 (1) IN GENERAL.—The President’s Working
8 Group on Financial Markets, in consultation with
9 the National Association of Insurance Commis-
10 sioners, representatives of the insurance industry,
11 representatives of the securities industry, and rep-
12 resentatives of policy holders, shall perform an ongo-
13 ing analysis regarding the long-term availability and
14 affordability of insurance for risk of public health
15 emergencies.

16 (2) REPORT.—Not later than September 30,
17 **【2006】**, and thereafter in **【2010 and 2013】**, the
18 President’s Working Group on Financial Markets
19 shall submit a report to the Committee on Banking,
20 Housing, and Urban Affairs of the Senate and the
21 Committee on Financial Services of the House of
22 Representatives on its findings pursuant to the anal-
23 ysis conducted under paragraph (1).

1 (c) AVAILABILITY AND AFFORDABILITY OF BUSI-
2 NESS INTERRUPTION INSURANCE IN SPECIFIC MAR-
3 KETS.—

4 (1) STUDY.—The Comptroller General of the
5 United States shall conduct a study to determine
6 whether there are specific markets in the United
7 States where there are unique capacity constraints
8 on the amount of business interruption insurance
9 available.

10 (2) ELEMENTS OF STUDY.—The study required
11 by paragraph (1) shall contain—

12 (A) an analysis of both insurance and rein-
13 surance capacity in specific markets, including
14 pricing and coverage limits in existing policies;

15 (B) an assessment of the factors contrib-
16 uting to any capacity constraints that are iden-
17 tified; and

18 (C) recommendations for addressing those
19 capacity constraints.

20 (3) REPORT.—Not later than 180 days after
21 the date of enactment of this Act, the Comptroller
22 General shall submit a report on the study required
23 by paragraph (1) to the Committee on Banking,
24 Housing, and Urban Affairs of the Senate and the

1 Committee on Financial Services of the House of
2 Representatives.

3 (d) STUDY OF SMALL INSURER MARKET COMPETI-
4 TIVENESS.—

5 (1) IN GENERAL.—Not later than June 30,
6 **【2017】**, and every other June 30 thereafter, the
7 Secretary shall conduct a study of small insurers (as
8 such term is defined by regulation by the Secretary)
9 participating in the Program, and identify any com-
10 petitive challenges small insurers face in the busi-
11 ness interruption insurance marketplace, including—

12 (A) changes to the market share, premium
13 volume, and policyholder surplus of small insur-
14 ers relative to large insurers;

15 (B) how the business interruption insur-
16 ance market for risk of public health emer-
17 gencies differs between small and large insur-
18 ers, and whether such a difference exists within
19 other perils;

20 (C) the impact of the Program's avail-
21 ability on small insurers;

22 (D) the effect of increasing the trigger
23 amount for the Program under section
24 4(e)(1)(B) on small insurers;

1 (E) the availability and cost of private re-
2 insurance for small insurers; and

3 **[(F) the impact that State workers com-
4 pensation laws have on small insurers and
5 workers compensation carriers in the business
6 interruption insurance marketplace.]**

7 (2) REPORT.—The Secretary shall submit a re-
8 port to the Congress setting forth the findings and
9 conclusions of each study required under paragraph
10 (1).