

116TH CONGRESS  
2D SESSION

# H. R. 7011

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

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## IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2020

Mrs. CAROLYN B. MALONEY of New York (for herself, Mr. THOMPSON of California, Ms. NORTON, Ms. DELAURO, Ms. JACKSON LEE, Ms. PINGREE, Mr. COURTNEY, Mr. ROSE of New York, Mr. CISNEROS, Mr. GONZALEZ of Texas, Ms. PORTER, Mr. TED LIEU of California, Miss RICE of New York, Mr. GREEN of Texas, Mr. MORELLE, Mr. MEEKS, Ms. WILD, Mr. RYAN, Ms. TITUS, Ms. MENG, and Mr. DANNY K. DAVIS of Illinois) introduced the following bill; which was referred to the Committee on Financial Services

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## 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. PURPOSE.**

7 The purpose of this Act is to establish a Federal pro-  
8 gram that provides for a transparent system of shared

1 public and private compensation for business interruption  
2 losses resulting from a pandemic or outbreak of commu-  
3 nicable disease, in order to—

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

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

14 **SEC. 3. DEFINITIONS.**

15 In this Act, the following definitions shall apply:

16 (1) COVERED PUBLIC HEALTH EMERGENCY.—

17 (A) IN GENERAL.—The term “covered  
18 public health emergency” means any outbreak  
19 of infectious disease or pandemic—

20 (i) for which an emergency is de-  
21 clared, on or after January 1, 2021, under  
22 the Public Health Service Act; and

23 (ii) that is certified by the Secretary  
24 of Health and Human Services, as a public  
25 health emergency.

1           (B) NONDELEGATION.—The Secretary  
2           may not delegate or designate to any other offi-  
3           cer, employee, or person, any determination  
4           under this paragraph of whether, during the ef-  
5           fective period of the Program, a covered public  
6           health emergency has occurred.

7           (2) AFFILIATE.—The term “affiliate” means,  
8           with respect to an participating insurer, any entity  
9           that controls, is controlled by, or is under common  
10          control with the insurer.

11          (3) BUSINESS INTERRUPTION INSURANCE.—  
12          The term “business interruption insurance” means  
13          commercial lines of property and casualty insurance  
14          coverage, including event cancellation insurance or  
15          other non-property contingent business interruption  
16          insurance, provided or made available for losses re-  
17          sulting from periods of suspended business oper-  
18          ations, including losses from a covered public health  
19          emergency, or a civil order related to a covered pub-  
20          lic health emergency, whether provided under broad-  
21          er coverage for property and casualty losses or sepa-  
22          rately.

23          (4) CONTROL.—

24                 (A) IN GENERAL.—An entity has “control”  
25                 over another entity, if—

1 (i) the entity directly or indirectly or  
2 acting through 1 or more other persons  
3 owns, controls, or has power to vote 25  
4 percent or more of any class of voting se-  
5 curities of the other entity;

6 (ii) the entity controls in any manner  
7 the election of a majority of the directors  
8 or trustees of the other entity; or

9 (iii) the Secretary determines, after  
10 notice and opportunity for hearing, that  
11 the entity directly or indirectly exercises a  
12 controlling influence over the management  
13 or policies of the other entity.

14 (B) RULE OF CONSTRUCTION.—An entity,  
15 including any affiliate thereof, does not have  
16 “control” over another entity, if, as of January  
17 1, 2021, the entity is acting as an attorney-in-  
18 fact, as defined by the Secretary, for the other  
19 entity and such other entity is a reciprocal in-  
20 surer, provided that the entity is not, for rea-  
21 sons other than the attorney-in-fact relation-  
22 ship, defined as having “control” under sub-  
23 paragraph (A).

24 (5) DIRECT EARNED PREMIUM.—The term “di-  
25 rect earned premium” means a direct earned pre-

1 mium for property and casualty insurance issued by  
2 any participating insurer for insurance against  
3 losses occurring in the United States.

4 (6) EVENT.—The term “event” means a trade  
5 show, consumer show, exhibition, fair, conference,  
6 convention, meeting, seminar, charity event, auction,  
7 gala dinner, competition, sporting event, film or tele-  
8 vision production, award show, or other similar  
9 event.

10 (7) EVENT CANCELLATION INSURANCE.—The  
11 term “event cancellation insurance” means insur-  
12 ance that indemnifies an insured for losses that  
13 occur as a consequence of—

14 (A) cancellation, abandonment, or resched-  
15 uling of an event; or

16 (B) non-appearance at an event of a prin-  
17 cipal speaker.

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

23 (A) within the United States; and

(B) during the period that the covered public health emergency for such area is in effect.

(9) 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 property and casualty 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 4(f), to the extent provided in the rules of the Secretary issued under section 4(f);

1 (B) that receives direct earned premiums  
2 for any type of commercial property and cas-  
3 ualty insurance coverage, other than in the case  
4 of entities described in subsections (d) and (f)  
5 of section 4; and

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

8 Such term includes captive insurers and other self-  
9 insurance arrangements by municipalities and other  
10 entities (such as workers' compensation self-insur-  
11 ance programs and State workers' compensation re-  
12 insurance pools).

13 (10) INSURER DEDUCTIBLE.—The term “in-  
14 surer deductible” means, with respect to a partici-  
15 pating insurer—

16 (A) the value of the participating insurer's  
17 direct earned premiums during the immediately  
18 preceding calendar year, multiplied by 5 per-  
19 cent; and

20 (B) notwithstanding subparagraph (A), for  
21 any calendar year, if a participating insurer has  
22 not had a full year of operations during the cal-  
23 endar year immediately preceding such calendar  
24 year, such portion of the direct earned pre-  
25 miums of the participating insurer as the Sec-

1           retary determines appropriate, subject to appro-  
2           priate methodologies established by the Sec-  
3           retary for measuring such direct earned pre-  
4           miums.

5           (11) NAIC.—The term “NAIC” means the Na-  
6           tional Association of Insurance Commissioners.

7           (12) PARTICIPATING INSURER.—The term  
8           “participating insurer” means, with respect to a cal-  
9           endar year, an insurer that has elected pursuant to  
10          section 4(a)(3) to participate in the Pandemic Risk  
11          Reinsurance Program under this Act for such cal-  
12          endar year.

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

19          (14) PROGRAM.—The term “Program” means  
20          the Pandemic Risk Reinsurance Program established  
21          by this Act.

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

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

1           ance, workers' compensation insurance, and  
2           event cancellation 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 (16) SECRETARY.—The term “Secretary”  
7 means the Secretary of the Treasury.

8 (17) 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 (18) UNITED STATES.—The term “United  
16 States” means the several States.

17 (19) RULE OF CONSTRUCTION FOR DATES.—  
18 With respect to any reference to a date in this Act,  
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.—

10           (A) ELIGIBILITY.—Each entity that meets  
11     the definition of an insurer under this Act 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           (4) TREATMENT OF EXISTING POLICIES.—This  
18     Act may not be construed to affect any policy for  
19     business interruption insurance in force on the date  
20     of the enactment of this Act.

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

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

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

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

12                  (B) in the case of any policy that is issued  
13                  within 90 days of the date of enactment of this  
14                  Act, at the time of offer and renewal of the pol-  
15                  icy; and

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

21           (3) in the case of any policy that is issued after  
22           the date of enactment of this Act, the participating  
23           insurer provides clear and conspicuous disclosure to  
24           the policyholder of the existence of the  
25           \$750,000,000,000 cap under subsection (e)(2), at

1 the time of offer, purchase, and renewal of the pol-  
2 icy;

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

7 (5) the participating insurer submits to the Sec-  
8 retary, in accordance with such reasonable proce-  
9 dures as the Secretary may establish—

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

13 (B) written certification—

14 (i) of the underlying claim; and

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

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

19 (c) MANDATORY AVAILABILITY OF COVERAGE FOR  
20 COVERED PUBLIC HEALTH EMERGENCIES UNDER BUSI-  
21 NESS INTERRUPTION COVERAGE.—During each calendar  
22 year, each participating insurer shall, with respect to such  
23 year—

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

4           (2) make available business interruption insur-  
5           ance coverage for insured losses that does not differ  
6           materially from the terms, conditions, amounts, lim-  
7           its, deductibles, or self-insured retentions and other  
8           coverage grants, limitations, and exclusions applica-  
9           ble to losses arising from events other than public  
10          health emergencies.

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

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

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

21           (A) a State residual market insurance enti-  
22           ty that does not share its profits and losses  
23           with private sector insurers shall be treated as  
24           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 the date on which the Secretary issues  
4 final regulations pursuant to paragraph  
5 (2)(B)(ii), no compensation shall be paid by the  
6 Secretary under subsection (a) unless the ag-  
7 gregate industry insured losses for participating  
8 insurers resulting from such covered public  
9 health emergency exceed \$250,000,000.

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

17 (2) CAP ON ANNUAL LIABILITY.—

18 (A) IN GENERAL.—Notwithstanding para-  
19 graph (1) or any other provision of Federal or  
20 State law, if the aggregate insured losses exceed  
21 \$750,000,000,000, during a calendar year—

22 (i) the Secretary shall not make any  
23 payment under this Act for any portion of  
24 the amount of such losses that exceeds  
25 \$750,000,000,000; and

1           (ii) no participating insurer that has  
2 met its insurer deductible shall be liable  
3 for the payment of any amounts under  
4 subparagraph (B).

5       (B) INSURER SHARE.—

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

19          (ii) REGULATIONS.—Not later than  
20 90 days after the date of enactment of this  
21 Act, the Secretary shall issue final regula-  
22 tions for determining the pro rata share of  
23 insured losses under the Program when in-  
24 sured losses exceed \$750,000,000,000, in  
25 accordance with clause (i).

1                   (iii) REPORT TO CONGRESS.—Not  
2                   later than 120 days after the date of en-  
3                   actment of this Act, the Secretary shall  
4                   provide a report to the Committee on  
5                   Banking, Housing, and Urban Affairs of  
6                   the Senate and the Committee on Finan-  
7                   cial Services of the House of Representa-  
8                   tives describing the process to be used by  
9                   the Secretary for determining the alloca-  
10                  tion of pro rata payments for insured  
11                  losses under the Program when such losses  
12                  exceed \$750,000,000,000.

13               (3) NOTICE TO CONGRESS.—The Secretary  
14               shall notify the Congress if estimated or actual ag-  
15               gregate insured losses exceed \$750,000,000,000 dur-  
16               ing any calendar year. The Secretary shall provide  
17               an initial notice to Congress not later than 15 days  
18               after the end of a covered public health emergency,  
19               stating whether the Secretary estimates that aggre-  
20               gate insured losses will exceed \$750,000,000,000.

21               (4) FINAL NETTING.—The Secretary shall have  
22               sole discretion to determine the time at which claims  
23               relating to any insured loss or covered public health  
24               emergency shall become final.

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

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

18          (g) REINSURANCE TO COVER EXPOSURE.—

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

1           (2) LIMITATION ON FINANCIAL ASSISTANCE.—

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

16 **SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF**  
17 **CLAIMS.**

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

- 21               (1) to investigate and audit all claims under the  
22          Program; and  
23               (2) to prescribe regulations and procedures to  
24          effectively administer and implement the Program,  
25          and to ensure that all participating insurers and

1 self-insured entities are treated comparably under  
2 the Program.

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

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

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

12 (3) the Secretary may, at any time, seek repay-  
13 ment from or reimburse any insurer, based on esti-  
14 mates of insured losses under the Program, to effec-  
15 tuate the insured loss sharing provisions in section  
16 4; and

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

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

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

4 (e) SUBMISSION OF PREMIUM INFORMATION.—

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

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

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

19 (f) REPORTING OF BUSINESS INTERRUPTION INSUR-  
20 ANCE DATA.—

21 (1) AUTHORITY.—Beginning upon the date of  
22 the enactment of this Act, in each calendar year, the  
23 Secretary shall require participating insurers to sub-  
24 mit to the Secretary such information regarding  
25 losses of such insurers, under insurance coverage for

1 business interruption, resulting from public health  
2 emergencies as the Secretary considers appropriate  
3 to analyze the effectiveness of the Program, which  
4 shall include information regarding—

5 (A) lines of insurance with exposure to  
6 such losses;

7 (B) premiums earned on such coverage;

8 (C) geographical location of exposures;

9 (D) pricing of such coverage;

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

11 (F) the amount of private reinsurance for  
12 losses resulting from public health emergencies  
13 purchased; and

14 (G) such other matters as the Secretary  
15 considers appropriate.

16 (2) REPORTS.—Not later than one year after  
17 the date of the enactment of this Act and annually  
18 thereafter, the Secretary shall submit a report to the  
19 Committee on Financial Services of the House of  
20 Representatives and the Committee on Banking,  
21 Housing, and Urban Affairs of the Senate that in-  
22 cludes—

23 (A) an analysis of the overall effectiveness  
24 of the Program;

1 (B) an evaluation of the availability and  
2 affordability of business interruption insurance  
3 for losses resulting from public health emer-  
4 gencies;

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

7 (D) an evaluation of whether any aspects  
8 of the Program have the effect of discouraging  
9 or impeding insurers from providing business  
10 interruption insurance coverage or coverage for  
11 public health emergencies;

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

14 (F) in the case of the data reported in  
15 paragraph (1)(B), an updated estimate of the  
16 total amount earned since the first January 1  
17 occurring after the date of the enactment of  
18 this Act.

19 (3) PROTECTION OF DATA.—To the extent pos-  
20 sible, the Secretary shall contract with an insurance  
21 statistical aggregator to collect the information de-  
22 scribed in paragraph (1), which shall keep any non-  
23 public information confidential and provide it to the  
24 Secretary in an aggregate form or in such other

1 form or manner that does not permit identification  
2 of the insurer submitting such information.

3 (4) ADVANCE COORDINATION.—Before col-  
4 lecting any data or information under paragraph (1)  
5 from an insurer, or affiliate of an insurer, the Sec-  
6 retary shall coordinate with the appropriate State in-  
7 surance regulatory authorities and any relevant gov-  
8 ernment agency or publicly available sources to de-  
9 termine if the information to be collected is available  
10 from, and may be obtained in a timely manner by,  
11 individually or collectively, such entities. If the Sec-  
12 retary determines that such data or information is  
13 available, and may be obtained in a timely matter,  
14 from such entities, the Secretary shall obtain the  
15 data or information from such entities. If the Sec-  
16 retary determines that such data or information is  
17 not so available, the Secretary may collect such data  
18 or information from an insurer and affiliates.

19 (5) CONFIDENTIALITY.—

20 (A) RETENTION OF PRIVILEGE.—The sub-  
21 mission of any non-publicly available data and  
22 information to the Secretary and the sharing of  
23 any non-publicly available data with or by the  
24 Secretary among other Federal agencies, the  
25 State insurance regulatory authorities, or any

1 other entities under this subsection shall not  
2 constitute a waiver of, or otherwise affect, any  
3 privilege arising under Federal or State law (in-  
4 cluding the rules of any Federal or State court)  
5 to which the data or information is otherwise  
6 subject.

7 (B) CONTINUED APPLICATION OF PRIOR  
8 CONFIDENTIALITY AGREEMENTS.—Any require-  
9 ment under Federal or State law to the extent  
10 otherwise applicable, or any requirement pursu-  
11 ant to a written agreement in effect between  
12 the original source of any non-publicly available  
13 data or information and the source of such data  
14 or information to the Secretary, regarding the  
15 privacy or confidentiality of any data or infor-  
16 mation in the possession of the source to the  
17 Secretary, shall continue to apply to such data  
18 or information after the data or information  
19 has been provided pursuant to this subsection.

20 (C) INFORMATION-SHARING AGREE-  
21 MENT.—Any data or information obtained by  
22 the Secretary under this subsection may be  
23 made available to State insurance regulatory  
24 authorities, individually or collectively, through  
25 an information-sharing agreement that—

1 (i) shall comply with applicable Fed-  
2 eral law; and

3 (ii) shall not constitute a waiver of, or  
4 otherwise affect, any privilege under Fed-  
5 eral or State law (including any privilege  
6 referred to in subparagraph (A) and the  
7 rules of any Federal or State court) to  
8 which the data or information is otherwise  
9 subject.

10 (D) AGENCY DISCLOSURE REQUIRE-  
11 MENTS.—Section 552 of title 5, United States  
12 Code, including any exceptions thereunder, shall  
13 apply to any data or information submitted  
14 under this subsection to the Secretary by an in-  
15 surer or affiliate of an insurer.

16 (g) FUNDING.—

17 (1) FEDERAL PAYMENTS.—There are hereby  
18 appropriated, out of funds in the Treasury not oth-  
19 erwise appropriated, such sums as may be necessary  
20 to pay the Federal share of compensation for in-  
21 sured losses under the Program.

22 (2) ADMINISTRATIVE EXPENSES.—There are  
23 hereby appropriated, out of funds in the Treasury  
24 not otherwise appropriated, such sums as may be

1        necessary to pay reasonable costs of administering  
2        the Program.

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

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

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

17       (c) REINSTATEMENT OF EXCLUSIONS.—Notwith-  
18       standing subsections (a) and (b) or any provision of State  
19       law, a participating insurer may reinstate a preexisting  
20       provision in a contract for business interruption insurance  
21       that is in force on the date of enactment of this Act and  
22       that excludes coverage for loss resulting from a covered  
23       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) for contracts in effect for less than 5  
5       months—

6           (A) the insured fails to pay any increased  
7       premium charged by the participating insurer  
8       for providing such coverage for covered public  
9       health emergencies, but only if such premium  
10      does not increase by more than 15 percent; and

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

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

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

21   **SEC. 7. PRESERVATION PROVISIONS.**

22          (a) STATE LAW.—Nothing in this Act shall affect the  
23      jurisdiction or regulatory authority of the insurance com-  
24      missioner (or any agency or office performing like func-  
25      tions) of any State over any insurer or other person—

1           (1) except as specifically provided in this Act;  
2       and

3           (2) except that—

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

13              (B) during the period beginning on the  
14      date of enactment of this Act and ending on  
15      December 31, 2020, rates and forms for busi-  
16      ness interruption insurance covered by this Act  
17      and filed with any State shall not be subject to  
18      prior approval or a waiting period under any  
19      law of a State that would otherwise be applica-  
20      ble, except that nothing in this Act affects the  
21      ability of any State to invalidate a rate as ex-  
22      cessive, inadequate, or unfairly discriminatory,  
23      and, with respect to forms, where a State has  
24      prior approval authority, it shall apply to allow  
25      subsequent review of such forms; and

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

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

17 **SEC. 8. STUDY AND ANALYSES.**

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

19 (1) STUDY.—The Secretary, in consultation  
20 with the NAIC, representatives of the insurance in-  
21 dustry and of policy holders, other experts in the in-  
22 surance field, and other experts as needed, shall as-  
23 sess the effectiveness of the Program and the likely  
24 capacity of the property and casualty insurance in-  
25 dustry to offer insurance for risk of public health

1 emergencies after termination of the Program, and  
2 the availability and affordability of such insurance  
3 for various policyholders.

4 (2) REPORT.—The Secretary shall submit a re-  
5 port to the Congress on the results of the study con-  
6 ducted under paragraph (1) not later than the expi-  
7 ration of the 12-month period beginning on the date  
8 of the enactment of this Act.

9 (b) ANALYSIS OF MARKET CONDITIONS FOR PUBLIC  
10 HEALTH EMERGENCY RISK INSURANCE.—

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

20 (2) REPORT.—Not later than the expiration of  
21 the 12-month period beginning on the date of the  
22 enactment of this Act and every two years there-  
23 after, the President’s Working Group on Financial  
24 Markets shall submit a report to the Committee on  
25 Banking, Housing, and Urban Affairs of the Senate

1 and the Committee on Financial Services of the  
2 House of Representatives on its findings pursuant to  
3 the analysis conducted under paragraph (1).

4 (c) AVAILABILITY AND AFFORDABILITY OF BUSI-  
5 NESS INTERRUPTION INSURANCE IN SPECIFIC MAR-  
6 KETS.—

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

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

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

18 (B) an assessment of the factors contrib-  
19 uting to any capacity constraints that are iden-  
20 tified; and

21 (C) recommendations for addressing those  
22 capacity constraints.

23 (3) REPORT.—Not later than 180 days after  
24 the date of enactment of this Act, the Comptroller  
25 General shall submit a report on the study required

1 by paragraph (1) to the Committee on Banking,  
2 Housing, and Urban Affairs of the Senate and the  
3 Committee on Financial Services of the House of  
4 Representatives.

5 (d) STUDY OF SMALL INSURER MARKET COMPETI-  
6 TIVENESS.—

7 (1) IN GENERAL.—Not later than the expira-  
8 tion of the 12-month period beginning on the date  
9 of the enactment of this Act and every two years  
10 thereafter, the Secretary shall conduct a study of  
11 small insurers (as such term is defined by regulation  
12 by the Secretary) participating in the Program, and  
13 identify any competitive challenges small insurers  
14 face in the business interruption insurance market-  
15 place, including—

16 (A) changes to the market share, premium  
17 volume, and policyholder surplus of small insur-  
18 ers relative to large insurers;

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

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

1 (D) the effect of increasing the trigger  
2 amount for the Program under section  
3 4(e)(1)(B) on small insurers;

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

6 (F) the impact that State workers com-  
7 pensation laws have on small insurers and  
8 workers compensation carriers in the business  
9 interruption insurance marketplace.

10 (2) REPORT.—The Secretary shall submit a re-  
11 port to the Congress setting forth the findings and  
12 conclusions of each study required under paragraph  
13 (1).

14 **SEC. 9. TERMINATION OF PROGRAM.**

15 (a) TERMINATION.—The Program shall terminate on  
16 December 31, 2027.

17 (b) CONTINUING AUTHORITY TO PAY OR ADJUST  
18 COMPENSATION.—Following the termination of the Pro-  
19 gram, the Secretary may take such actions as may be nec-  
20 essary to ensure payment, recoupment, reimbursement, or  
21 adjustment of compensation for insured losses arising out  
22 of any covered public health emergency occurring during  
23 the period in which the Program was in effect under this  
24 Act, in accordance with the provisions of section 4 and  
25 regulations promulgated thereunder.

1       (c) REPEAL; SAVINGS CLAUSE.—This Act is repealed  
2 on the final termination date of the Program under sub-  
3 section (a), except that such repeal shall not be con-  
4 strued—

5           (1) to prevent the Secretary from taking, or  
6 causing to be taken, such actions under subsection  
7 (b) of this section, paragraph (4) or (5) of section  
8 4(e), or subsection (a)(1), (c), (d), or (e) of section  
9 5, as in effect on the day before the date of such re-  
10 peal, or applicable regulations promulgated there-  
11 under, during any period in which the authority of  
12 the Secretary under subsection (b) of this section is  
13 in effect; or

14           (2) to prevent the availability of funding under  
15 section 5(g) during any period in which the author-  
16 ity of the Secretary under subsection (b) of this sec-  
17 tion is in effect.

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