

[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 Act 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 communicable 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 Act, 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—

19 (i) [for which an emergency is de-
20 clared, after [the expiration of the
21 [____]-month period beginning upon] the
22 date of the enactment of this Act, under
23 the Public Health Service Act; and]

1 (ii) that is certified by the Secretary
2 of Health and Human Services, as a public
3 health emergency.

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

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

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

1 (4) CONTROL.—

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

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

9 (ii) the entity controls in any manner
10 the election of a majority of the directors
11 or trustees of the other entity; or

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

17 (B) RULE OF CONSTRUCTION.—An entity,
18 including any affiliate thereof, does not have
19 “control” over another entity, if, as of the date
20 of enactment of the , the entity is acting as an
21 attorney-in-fact, as defined by the Secretary,
22 for the other entity and such other entity is a
23 reciprocal insurer, provided that the entity is
24 not, for reasons other than the attorney-in-fact

1 relationship, defined as having “control” under
2 subparagraph (A).

3 (5) DIRECT EARNED PREMIUM.—The term “di-
4 rect earned premium” means a direct earned pre-
5 mium for property and casualty insurance issued by
6 any participating insurer for insurance against
7 losses occurring in the United States.

8 (6) EVENT.—The term “event” means a trade
9 show, consumer show, exhibition, fair, conference,
10 convention, meeting, seminar, charity event, auction,
11 gala dinner, or other similar event.

12 (7) EVENT CANCELLATION INSURANCE.—The
13 term “event cancellation insurance” means insur-
14 ance that indemnifies an insured for their losses in-
15 curred in consequence of—

16 (A) cancellation, abandonment, or resched-
17 uling of an event; **[and/or?]**

18 (B) non-appearance at an event of a prin-
19 cipal speaker.

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

25 (A) within the United States; and

1 (B) during the period that the covered
2 public health emergency for such area is in ef-
3 fect.

4 (9) INSURER.—The term “insurer” means any
5 entity, including any affiliate thereof—

6 (A) that is—

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

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

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

19 (iv) a State residual market insurance
20 entity or State workers’ compensation
21 fund; or

22 (v) any other entity described in sec-
23 tion 4(f), to the extent provided in the
24 rules of the Secretary issued under section
25 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 (b) CONDITIONS FOR FEDERAL PAYMENTS.—No
18 payment may be made by the Secretary under this section
19 with respect to an insured loss that is covered by a partici-
20 pating insurer, unless—

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

24 (2) the participating insurer provides clear and
25 conspicuous disclosure to the policyholder of the pre-

1 mium charged for insured losses covered by the Pro-
2 gram and the Federal share of compensation for in-
3 sured losses under the Program—

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

7 (B) in the case of any policy that is issued
8 within 90 days of the date of enactment of this
9 Act, at the time of offer and renewal of the pol-
10 icy; and

11 (C) in the case of any policy that is issued
12 more than 90 days after the date of enactment
13 of this Act, on a separate line item in the pol-
14 icy, at the time of offer and renewal of the pol-
15 icy;

16 (3) in the case of any policy that is issued after
17 the date of enactment of this Act, the participating
18 insurer provides clear and conspicuous disclosure to
19 the policyholder of the existence of the
20 \$750,000,000,000 cap under subsection (e)(2), at
21 the time of offer, purchase, and renewal of the pol-
22 icy;

23 (4) the participating insurer processes the claim
24 for the insured loss in accordance with appropriate

1 business practices, and any reasonable procedures
2 that the Secretary may prescribe; and

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

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

9 (B) written certification—

10 (i) of the underlying claim; and

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

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

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

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

23 (2) make available business interruption insur-
24 ance coverage for insured losses that does not differ
25 materially from the terms, conditions, amounts, lim-

1 its, deductibles, or self-insured retentions and other
2 coverage grants, limitations, and exclusions applica-
3 ble to losses arising from events other than public
4 health emergencies.

5 (d) STATE RESIDUAL MARKET INSURANCE ENTI-
6 TIES.—

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

12 (2) TREATMENT OF CERTAIN ENTITIES.—For
13 purposes of the regulations issued pursuant to para-
14 graph (1)—

15 (A) a State residual market insurance enti-
16 ty that does not share its profits and losses
17 with private sector insurers shall be treated as
18 a separate insurer; and

19 (B) a State residual market insurance enti-
20 ty that shares its profits and losses with private
21 sector insurers shall not be treated as a sepa-
22 rate insurer, and shall report to each private
23 sector insurance participant its share of the in-
24 sured losses of the entity, which shall be in-

1 cluded in each private sector participating in-
2 surer's insured losses.

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

10 (e) REINSURANCE FOR INSURED LOSSES.—

11 (1) FEDERAL SHARE OF COMPENSATION.—

12 (A) IN GENERAL.—The Federal share of
13 compensation under the Program to be paid by
14 the Secretary for insured losses of an partici-
15 pating insurer during each calendar year shall
16 be equal to 95 percent of that portion of the
17 amount of such insured losses that exceeds the
18 applicable insurer deductible required to be paid
19 during such calendar year.

20 (B) PROGRAM TRIGGER.—In the case of a
21 covered public health emergency commencing
22 after the date on which the Secretary issues
23 final regulations pursuant to paragraph
24 (2)(B)(ii), no compensation shall be paid by the
25 Secretary under subsection (a) unless the ag-

1 aggregate industry insured losses for participating
2 insurers resulting from such covered public
3 health emergency exceed \$250,000,000.

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

11 (2) CAP ON ANNUAL LIABILITY.—

12 (A) IN GENERAL.—Notwithstanding para-
13 graph (1) or any other provision of Federal or
14 State law, if the aggregate insured losses exceed
15 \$750,000,000,000, during a calendar year—

16 (i) the Secretary shall not make any
17 payment under this Act for any portion of
18 the amount of such losses that exceeds
19 \$750,000,000,000; and

20 (ii) no participating insurer that has
21 met its insurer deductible shall be liable
22 for the payment of any amounts under
23 subparagraph (B).

24 (B) INSURER SHARE.—

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

14 (ii) REGULATIONS.—Not later than
15 90 days after the date of enactment of this
16 Act, the Secretary shall issue final regula-
17 tions for determining the pro rata share of
18 insured losses under the Program when in-
19 sured losses exceed \$750,000,000,000, in
20 accordance with clause (i).

21 (iii) REPORT TO CONGRESS.—Not
22 later than 120 days after the date of en-
23 actment of this Act, the Secretary shall
24 provide a report to the Committee on
25 Banking, Housing, and Urban Affairs of

1 the Senate and the Committee on Finan-
2 cial Services of the House of Representa-
3 tives describing the process to be used by
4 the Secretary for determining the alloca-
5 tion of pro rata payments for insured
6 losses under the Program when such losses
7 exceed \$750,000,000,000.

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

16 (4) FINAL NETTING.—The Secretary shall have
17 sole discretion to determine the time at which claims
18 relating to any insured loss or covered public health
19 emergency shall become final.

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

24 (f) CAPTIVE INSURERS AND OTHER SELF-INSUR-
25 ANCE ARRANGEMENTS.—The Secretary may, in consulta-

1 tion with the NAIC or the appropriate State regulatory
2 authority, apply the provisions of this Act, as appropriate,
3 to other classes or types of captive insurers and other self-
4 insurance arrangements by municipalities and other enti-
5 ties (such as workers' compensation self-insurance pro-
6 grams and State workers' compensation reinsurance
7 pools), but only if such application is determined before
8 the commencement of a covered public health emergency
9 in which such an entity incurs an insured loss and all of
10 the provisions of this Act are applied comparably to such
11 entities.

12 (g) REINSURANCE TO COVER EXPOSURE.—

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

19 (2) LIMITATION ON FINANCIAL ASSISTANCE.—

20 The amount of financial assistance provided pursu-
21 ant to this section shall not be reduced by reinsur-
22 ance paid or payable to an insurer from other
23 sources, except that recoveries from such other
24 sources, taken together with financial assistance for
25 the calendar year provided pursuant to this section,

1 may not exceed the aggregate amount of the insurer's insured losses for the calendar year. If such recoveries and financial assistance for the calendar year exceed such aggregate amount of insured losses for the calendar year 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.

9 **SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF**
10 **CLAIMS.**

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

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

16 (2) to prescribe regulations and procedures to
17 effectively administer and implement the Program,
18 and to ensure that all participating insurers and
19 self-insured entities are treated comparably under
20 the Program.

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

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

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

5 (3) the Secretary may, at any time, seek repay-
6 ment from or reimburse any insurer, based on esti-
7 mates of insured losses under the Program, to effec-
8 tuate the insured loss sharing provisions in section
9 4; and

10 (4) the Secretary will determine any final net-
11 ting of payments under the Program, including pay-
12 ments owed to the Federal Government from any in-
13 surer and any Federal share of compensation for in-
14 sured losses owed to any insurer, to effectuate the
15 insured loss sharing provisions in section 4.

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

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

22 (e) SUBMISSION OF PREMIUM INFORMATION.—

23 (1) IN GENERAL.—The Secretary shall annually
24 compile information on the business interruption in-

1 insurance premium rates of insurers for the preceding
2 year.

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

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

13 (f) REPORTING OF BUSINESS INTERRUPTION INSUR-
14 ANCE DATA.—

15 (1) AUTHORITY.—Beginning upon the date of
16 the enactment of this Act, in each calendar year, the
17 Secretary shall require participating insurers to sub-
18 mit to the Secretary such information regarding
19 losses of such insurers, under insurance coverage for
20 business interruption, resulting from public health
21 emergencies as the Secretary considers appropriate
22 to analyze the effectiveness of the Program, which
23 shall include information regarding—

24 (A) lines of insurance with exposure to
25 such losses;

- 1 (B) premiums earned on such coverage;
- 2 (C) geographical location of exposures;
- 3 (D) pricing of such coverage;
- 4 (E) the take-up rate for such coverage;
- 5 (F) the amount of private reinsurance for
- 6 losses resulting from public health emergencies
- 7 purchased; and
- 8 (G) such other matters as the Secretary
- 9 considers appropriate.

10 (2) REPORTS.—Not later than one year after

11 the date of the enactment of this Act and annually

12 thereafter, the Secretary shall submit a report to the

13 Committee on Financial Services of the House of

14 Representatives and the Committee on Banking,

15 Housing, and Urban Affairs of the Senate that in-

16 cludes—

- 17 (A) an analysis of the overall effectiveness
- 18 of the Program;
- 19 (B) an evaluation of the availability and
- 20 affordability of business interruption insurance
- 21 for losses resulting from public health emer-
- 22 gencies;
- 23 (C) an evaluation of any changes or trends
- 24 in the data collected under paragraph (1);

1 (D) an evaluation of whether any aspects
2 of the Program have the effect of discouraging
3 or impeding insurers from providing business
4 interruption insurance coverage or coverage for
5 public health emergencies;

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

8 (F) in the case of the data reported in
9 paragraph (1)(B), an updated estimate of the
10 total amount earned since the first January 1
11 occurring after the date of the enactment of
12 this Act.

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

21 (4) ADVANCE COORDINATION.—Before col-
22 lecting any data or information under paragraph (1)
23 from an insurer, or affiliate of an insurer, the Sec-
24 retary shall coordinate with the appropriate State in-
25 surance regulatory authorities and any relevant gov-

1 ernment agency or publicly available sources to de-
2 termine if the information to be collected is available
3 from, and may be obtained in a timely manner by,
4 individually or collectively, such entities. If the Sec-
5 retary determines that such data or information is
6 available, and may be obtained in a timely matter,
7 from such entities, the Secretary shall obtain the
8 data or information from such entities. If the Sec-
9 retary determines that such data or information is
10 not so available, the Secretary may collect such data
11 or information from an insurer and affiliates.

12 (5) CONFIDENTIALITY.—

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

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

14 (C) INFORMATION-SHARING AGREE-
15 MENT.—Any data or information obtained by
16 the Secretary under this subsection may be
17 made available to State insurance regulatory
18 authorities, individually or collectively, through
19 an information-sharing agreement that—

20 (i) shall comply with applicable Fed-
21 eral law; and

22 (ii) shall not constitute a waiver of, or
23 otherwise affect, any privilege under Fed-
24 eral or State law (including any privilege
25 referred to in subparagraph (A) and the

1 rules of any Federal or State court) to
2 which the data or information is otherwise
3 subject.

4 (D) AGENCY DISCLOSURE REQUIRE-
5 MENTS.—Section 552 of title 5, United States
6 Code, including any exceptions thereunder, shall
7 apply to any data or information submitted
8 under this subsection to the Secretary by an in-
9 surer or affiliate of an insurer.

10 **SEC. 6. PREEMPTION AND NULLIFICATION OF PRE-EXIST-**
11 **ING EXCLUSIONS.**

12 (a) GENERAL NULLIFICATION.—Any exclusion in a
13 contract of a participating insurer for business interrup-
14 tion insurance that is in force on the date of enactment
15 of this Act shall be void to the extent that it excludes
16 losses that would otherwise be insured losses under the
17 Program.

18 (b) GENERAL PREEMPTION.—Any State approval of
19 any exclusion from a contract of a participating insurer
20 for business interruption insurance that is in force on the
21 date of enactment of this Act, shall be void to the extent
22 that it excludes losses that would otherwise be insured
23 losses under the Program.

24 (c) REINSTATEMENT OF EXCLUSIONS.—Notwith-
25 standing subsections (a) and (b) or any provision of State

1 law, a participating insurer may reinstate a preexisting
2 provision in a contract for business interruption insurance
3 that is in force on the date of enactment of this Act and
4 that excludes coverage for loss resulting from a covered
5 public health emergency only—

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

9 (2) for contracts in effect for less than 5
10 months—

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

16 (B) the participating insurer provided no-
17 tice, at least 30 days before any such reinstate-
18 ment, of—

19 (i) the increased premium for such
20 covered public health emergency coverage;
21 and

22 (ii) the rights of the insured with re-
23 spect to such coverage, including any date
24 upon which the exclusion would be rein-
25 stated if no payment is received.

1 **SEC. 7. PRESERVATION PROVISIONS.**

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

6 (1) except as specifically provided in this Act;

7 and

8 (2) except that—

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

18 (B) during the period beginning on the
19 date of enactment of this Act and ending on
20 December 31, 2020, rates and forms for busi-
21 ness interruption insurance covered by this Act
22 and filed with any State shall not be subject to
23 prior approval or a waiting period under any
24 law of a State that would otherwise be applica-
25 ble, except that nothing in this Act affects the
26 ability of any State to invalidate a rate as ex-

1 cessive, inadequate, or unfairly discriminatory,
2 and, with respect to forms, where a State has
3 prior approval authority, it shall apply to allow
4 subsequent review of such forms; and

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

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

21 **SEC. 8. STUDY AND ANALYSES.**

22 (a) **STUDY AND REPORT ON THE PROGRAM.**—

23 (1) **STUDY.**—The Secretary, in consultation
24 with the NAIC, representatives of the insurance in-
25 dustry and of policy holders, other experts in the in-

1 insurance field, and other experts as needed, shall as-
2 sess the effectiveness of the Program and the likely
3 capacity of the property and casualty insurance in-
4 dustry to offer insurance for risk of public health
5 emergencies after termination of the Program, and
6 the availability and affordability of such insurance
7 for various policyholders.

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

13 (b) ANALYSIS OF MARKET CONDITIONS FOR PUBLIC
14 HEALTH EMERGENCY RISK INSURANCE.—

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

24 (2) REPORT.—Not later than the expiration of
25 the 12-month period beginning on the date of the

1 enactment of this Act and every two years there-
2 after, the President's Working Group on Financial
3 Markets shall submit a report to the Committee on
4 Banking, Housing, and Urban Affairs of the Senate
5 and the Committee on Financial Services of the
6 House of Representatives on its findings pursuant to
7 the analysis conducted under paragraph (1).

8 (c) AVAILABILITY AND AFFORDABILITY OF BUSI-
9 NESS INTERRUPTION INSURANCE IN SPECIFIC MAR-
10 KETS.—

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

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

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

22 (B) an assessment of the factors contrib-
23 uting to any capacity constraints that are iden-
24 tified; and

1 (C) recommendations for addressing those
2 capacity constraints.

3 (3) REPORT.—Not later than 180 days after
4 the date of enactment of this Act, the Comptroller
5 General shall submit a report on the study required
6 by paragraph (1) to the Committee on Banking,
7 Housing, and Urban Affairs of the Senate and the
8 Committee on Financial Services of the House of
9 Representatives.

10 (d) STUDY OF SMALL INSURER MARKET COMPETI-
11 TIVENESS.—

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

21 (A) changes to the market share, premium
22 volume, and policyholder surplus of small insur-
23 ers relative to large insurers;

24 (B) how the business interruption insur-
25 ance market for risk of public health emer-

1 agencies differs between small and large insur-
2 ers, and whether such a difference exists within
3 other perils;

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

6 (D) the effect of increasing the trigger
7 amount for the Program under section
8 4(e)(1)(B) on small insurers;

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

11 (F) the impact that State workers com-
12 pensation laws have on small insurers and
13 workers compensation carriers in the business
14 interruption insurance marketplace.

15 (2) REPORT.—The Secretary shall submit a re-
16 port to the Congress setting forth the findings and
17 conclusions of each study required under paragraph
18 (1).

19 **SEC. 9. TERMINATION OF PROGRAM.**

20 (a) TERMINATION.—The Program shall terminate
21 [on December 31, 2027/ upon the expiration of the 7-year
22 period beginning upon the date of the enactment of this
23 Act].

24 (b) CONTINUING AUTHORITY TO PAY OR ADJUST
25 COMPENSATION.—Following the termination of the Pro-

1 gram, the Secretary may take such actions as may be nec-
2 essary to ensure payment, recoupment, reimbursement, or
3 adjustment of compensation for insured losses arising out
4 of any covered public health emergency occurring during
5 the period in which the Program was in effect under this
6 Act, in accordance with the provisions of section 4 and
7 regulations promulgated thereunder.

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

12 (1) to prevent the Secretary from taking, or
13 causing to be taken, such actions under subsection
14 (b) of this section, paragraph (4) or (5) of section
15 4(e), or subsection (a)(1), (c), (d), or (e) of section
16 5, as in effect on the day before the date of such re-
17 peal, or applicable regulations promulgated there-
18 under, during any period in which the authority of
19 the Secretary under subsection (b) of this section is
20 in effect; or

21 (2) to prevent the availability of funding under
22 **【section 5(g)】** during any period in which the au-
23 thority of the Secretary under subsection (b) of this
24 section is in effect.