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TRIA REFORM ACT OF 2014

JULY 16, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4871]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4871) to reauthorize the Terrorism Risk Insurance Act of 2002, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "TRIA Reform Act of 2014".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—TRIA REFORM

Sec. 101. References.
Sec. 102. Extension of program.
Sec. 103. Certification of acts of terrorism.
Sec. 104. Separate treatment of conventional terrorism from NBCR terrorism.
Sec. 105. Availability of coverage.
Sec. 106. Terrorism loss risk-spreading premiums amount.
Sec. 107. Increase of aggregate retention amount; mandatory recoupment.
Sec. 108. Terrorism loss risk-spreading premium.
Sec. 109. Risk-sharing mechanisms.
Sec. 110. Reporting of terrorism insurance data.
Sec. 111. Delivery of notices to policyholders.
Sec. 112. Definition of control.
Sec. 113. Annual study of small insurer market competitiveness.
Sec. 114. CBO and OMB studies regarding budgeting for costs of Federal insurance programs.
Sec. 115. GAO study on upfront premiums and capital reserve fund.

39–006

TITLE II—NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS REFORM

Sec. 201. Short title.
Sec. 202. Reestablishment of the National Association of Registered Agents and Brokers.

TITLE I—TRIA REFORM

SEC. 101. REFERENCES.

Except as otherwise expressly provided, wherever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note).

SEC. 102. EXTENSION OF PROGRAM.

(a) IN GENERAL.—Subsection (a) of section 108 (15 U.S.C. 6701 note) is amended by striking "December 31, 2014" and inserting "December 31, 2019".

(b) PROGRAM YEARS.—Subparagraph (G) of section 102(11) (15 U.S.C. 6701 note) is amended by striking "2014" and inserting "2019".

SEC. 103. CERTIFICATION OF ACTS OF TERRORISM.

(a) IN GENERAL.—Paragraph (1) of section 102 (15 U.S.C. 6701 note) is amended—

(1) in subparagraph (A), in the matter preceding clause (i), by striking "concurrence with the Secretary of State" and inserting "consultation with the Secretary of Homeland Security";

(2) in subparagraph (B)—

(A) in clause (i), by striking "; or" and inserting a period;

(B) by striking clause (ii); and

(C) by striking "terrorism if—" and all that follows through "(i) the act" and inserting "terrorism if the act";

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (E) and (G), respectively;

(4) by inserting after subparagraph (B) the following new subparagraph:

"(C) TIMING OF CERTIFICATION.—

"(i) PRELIMINARY CERTIFICATION NOTICE.—The Secretary shall issue a preliminary certification notice indicating whether an act is expected to be a certified act of terrorism not later than 15 days after—

"(I) the date of the occurrence of a potential act of terrorism; or

"(II) the receipt of a petition seeking a preliminary certification decision submitted by an insurer having an in-force policy or policies that could be affected by a certification decision.

"(ii) FINAL CERTIFICATION NOTICE.—Not later than 90 days after the date of the occurrence of a potential act of terrorism or the receipt of a petition submitted to the Secretary pursuant to clause (i)(II), the Secretary shall issue a final certification notice indicating whether an act is a certified act of terrorism for purposes of this Act.

"(iii) RULE OF CONSTRUCTION.—Failure to issue a preliminary certification notice under clause (i) shall not prevent the Secretary from issuing a final certification notice under clause (ii).."; and

(5) by inserting before subparagraph (G), as so redesignated by paragraph (3) of this subsection, the following new subparagraph:

"(F) FAILURE TO MAKE DETERMINATION.—If the Secretary does not certify, or make a determination not to certify, an act as an act of terrorism before the expiration of the 90-day period beginning on the occurrence of such act, such act shall be treated for purposes of this Act as having been determined by the Secretary not to be an act of terrorism and such determination shall be final and shall not be subject to judicial review.".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to the Program Year for the Terrorism Insurance Program established by title I of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) that begins on January 1, 2015, and Program Years thereafter.

SEC. 104. SEPARATE TREATMENT OF CONVENTIONAL TERRORISM FROM NBCR TERRORISM.

(a) DEFINITION.—

(1) IN GENERAL.—Section 102 (15 U.S.C. 6701 note) is amended—

(A) in paragraph (1), by inserting after subparagraph (C), as added by section 103(a)(4) of this Act, the following new subparagraph:

"(D) ACT OF NBCR TERRORISM.—Each certification of an act of terrorism under subparagraph (A) shall include a determination of whether such act involves NBCR terrorism.";

(B) by redesignating paragraphs (9) through (16) as paragraphs (10) through (17), respectively; and

(C) by inserting after paragraph (8) the following new paragraph:

"(9) NBCR TERRORISM.—Notwithstanding paragraph (1), the term 'NBCR terrorism' means an act of terrorism to the extent that the insured losses involve, regardless of any other cause or event that contributes concurrently or in any sequence to such insurance loss—

"(A) an act of terrorism that is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation, or radioactive contamination;

"(B) the release of radioactive material, and it appears that one purpose of the act of terrorism was to release such material;

"(C) an act of terrorism that is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical material; or

"(D) the release of pathogenic or poisonous biological or chemical material, and it appears that one purpose of the act of terrorism was to release such material.".

(2) APPLICABILITY.—The amendments made by paragraph (1) shall apply to the Program Year for the Terrorism Insurance Program established by title I of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) that begins on January 1, 2016, and Program Years thereafter.

(b) FEDERAL SHARE OF INSURED LOSS COMPENSATION.—Subparagraph (A) of section 103(e)(1) (15 U.S.C. 6701 note) is amended—

(1) by striking "The Federal share" and inserting "Subject to subparagraphs (B) and (C), the Federal share";

(2) by striking "an insurer during the Transition period" and inserting the following: "an insurer—

"(i) during the Transition period,";

(3) by inserting "through the Program Year ending on December 31, 2015," after "each Program Year thereafter";

(4) by striking the period at the end and inserting "; and"; and

(5) by adding at the end the following new clause:

"(ii) shall be equal to—

"(I) except as provided in subclause (II)—

"(aa) during the Program Year beginning on January 1, 2016, 84 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Program Year;

"(bb) during the Program Year beginning on January 1, 2017, 83 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Program Year;

"(cc) during the Program Year beginning on January 1, 2018, 82 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Program Year; and

"(dd) during the Program Year beginning on January 1, 2019, 80 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Program Year; and

"(II) in the case of insured losses resulting from acts of NBCR terrorism, during the Program Year beginning on January 1, 2016, and each Program Year thereafter, 85 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Program Year.".

(c) PROGRAM TRIGGER.—Subparagraph (B) of section 103(e)(1) (15 U.S.C. 6701 note) is amended—

(1) in the matter preceding clause (i)—

(A) by striking "a certified act" and inserting "certified acts"; and

(B) by striking "such certified act" and inserting "such certified acts";

(2) in clause (i) by striking "or" at the end;

(3) in clause (ii), by striking the period at the end and inserting the following "through the Program Year ending on December 31, 2015; or";

(4) by adding at the end the following:

"(iii)(I) except as provided in subclause (II)—

"(aa) $200,000,000, with respect to such insured losses occurring in the Program Year beginning on January 1, 2016;

"(bb) $300,000,000, with respect to such insured losses occurring in the Program Year beginning on January 1, 2017;

"(cc) $400,000,000, with respect to such insured losses occurring in the Program Year beginning on January 1, 2018; and

"(dd) $500,000,000, with respect to such insured losses occurring in the Program Year beginning on January 1, 2019; and

"(II) in the case of an act of NBCR terrorism, $100,000,000, with respect to such insured losses occurring in the Program Year beginning on January 1, 2016, or any Program Year thereafter."; and

(5) by adding after and below clause (iii), as added by paragraph (4) of this subsection, the following:

"In determining the aggregate industry insured losses resulting from certified acts of terrorism for purposes of this subparagraph, the Secretary shall not consider any act of terrorism resulting, in the aggregate, in less than $50,000,000 in insured losses.".

SEC. 105. AVAILABILITY OF COVERAGE.

Subsection (c) of section 103 (15 U.S.C. 6701 note) is amended to read as follows:

"(c) MANDATORY AVAILABILITY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), during each Program Year, each entity that meets the definition of an insurer under section 102 shall make available—

"(A) in all of its property and casualty insurance policies, coverage for insured losses; and

"(B) property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

"(2) NO MANDATORY AVAILABILITY FOR SMALL INSURERS.—The Secretary shall provide, by regulation and in consultation with State insurance regulatory authorities, that paragraph (1) shall not apply for a Program Year with respect to any small insurer (as such term is defined in such regulations by the Secretary) that, at the option of the insurer, makes a request for such inapplicability for such Program Year to the appropriate State insurance regulatory authority for the State in which such insurer is domiciled and is determined by such State insurance regulatory authority to meet such requirements for financial hardship or financial infeasibility of providing coverage for insured losses as the Secretary shall establish in such regulations. The insurer shall provide notice, in a manner satisfactory to the State insurance regulatory authority, informing affected prospective and current policyholders whether such coverage is not provided by the insurer. This paragraph may not be construed to require any State insurance regulatory authority to undertake making determinations under this paragraph.".

SEC. 106. TERRORISM LOSS RISK-SPREADING PREMIUMS AMOUNT.

(a) IN GENERAL.—Subparagraph (C) of section 103(e)(7) (15 U.S.C. 6701 note) is amended—

(1) by striking "subparagraphs (A) through (E)" and inserting "subparagraphs (A) through (F)"; and

(2) by striking "133 percent" and inserting "150 percent".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to the Program Year for the Terrorism Insurance Program established by title I of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) that begins on January 1, 2016, and Program Years thereafter.

SEC. 107. INCREASE OF AGGREGATE RETENTION AMOUNT; MANDATORY RECOUPMENT.

(a) IN GENERAL.—Paragraph (6) of section 103(e) (15 U.S.C. 6701 note) is amended—

(1) in subparagraph (D)(ii), by striking "and" at the end;

(2) in subparagraph (E)—

(A) in the matter preceding clause (i), by inserting "through the Program Year ending on December 31, 2015" before the comma; and

(B) in clause (ii), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(F) for the Program Year beginning January 1, 2016, and each Program Year thereafter, the lesser of—

"(i) the amount that is equal to the sum of the insurer deductibles for the Program Year for all insurers participating in the Program; and

"(ii) the aggregate amount, for all insurers, of insured losses during such Program Year.".

(b) MANDATORY RECOUPMENT.—

(1) AMOUNT; TIMING.—Paragraph (7) of section 103(e) (15 U.S.C. 6701 note) is amended—

(A) by striking subparagraphs (A) and (B) and inserting the following new subparagraph:

"(A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount for each of the periods referred to in subparagraphs (A) through (F) of paragraph (6) shall be equal to the lesser of—

"(i) the aggregate amount, for all insurers, of insured losses during such period that are compensated by the Federal Government pursuant to paragraph (1); or

"(ii) the insurance marketplace aggregate retention amount under paragraph (6) for such period.";

(B) in subparagraph (E)(i)(III), by striking "after January 1, 2012" and inserting "before December 31, 2014"; and

(C) by redesignating subparagraphs (C), (D), (E) (as so amended), and (F) as subparagraphs (B), (C), (D), and (E), respectively.

(2) CONFORMING AMENDMENTS.—Section 103(e) (15 U.S.C. 6701 note) is amended in paragraph (7)(D)(i), as so redesignated by paragraph (1)(C) of this subsection, by striking "subparagraph (C)" and inserting "subparagraph (B)".

SEC. 108. TERRORISM LOSS RISK-SPREADING PREMIUM.

(a) IN GENERAL.—Section 103(e) (15 U.S.C. 6701 note) is amended by striking paragraph (8) and inserting the following new paragraph:

"(8) TERRORISM LOSS RISK-SPREADING PREMIUMS.—

"(A) ESTABLISHMENT.—After an act of terrorism, the Secretary shall, to the extent provided in paragraph (7)(B), and may, to the extent provided in paragraph (7)(C), establish terrorism loss risk-spreading premiums, which shall be imposed as a policyholder premium surcharge on property and casualty insurance policies for all participating insurers in force after the date of such establishment.

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

"(C) DETERMINATION OF PREMIUMS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall—

"(i) impose such terrorism loss risk-spreading premiums beginning with such period of coverage during the year as the Secretary determines appropriate, but shall commence imposition of such premiums not later than 18 months after the occurrence of the act of terrorism for which such premiums are imposed;

"(ii) base any terrorism loss risk-spreading premium on a percentage of the premium amount charged for property and casualty insurance coverage under the policy; and

"(iii) take into consideration—

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

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

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

"(D) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium collected on a discretionary basis pursuant to paragraph (7)(C) shall not be less than, on an annual basis, the amount equal to 3 percent of the premium charged for property and casualty insurance coverage under the policy.

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

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to the Program Year for the Terrorism Insurance Program established by title I of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) that begins on January 1, 2016, and Program Years thereafter.

SEC. 109. RISK-SHARING MECHANISMS.

(a) IN GENERAL.—Section 103(e) (15 U.S.C. 6701 note) is amended by adding at the end the following new paragraph:

"(9) RISK-SHARING MECHANISMS.—

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

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

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

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

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

"(C) MEMBERSHIP.—The Advisory Committee shall be composed of nine members who are directors, officers, or other employees of insurers, reinsurers, or capital market participants that are participating or that desire to participate in such mechanisms, and who are representative of the affected sectors of the insurance industry, including commercial property insurance, commercial casualty insurance, reinsurance, and alternative risk transfer industries.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to the Program Year for the Terrorism Insurance Program established by title I of the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) that begins on January 1, 2015, and Program Years thereafter.

SEC. 110. REPORTING OF TERRORISM INSURANCE DATA.

Section 104 (15 U.S.C. 6701 note) is amended by adding at the end the following new subsection:

"(h) REPORTING OF TERRORISM INSURANCE DATA.—

"(1) AUTHORITY.—During the Program Year beginning on January 1, 2016, and in each Program Year thereafter, the Secretary shall require insurers participating in the Program to submit to the Secretary such information regarding insurance coverage for terrorism losses of such insurers as the Secretary considers appropriate to analyze the effectiveness of the Program, which shall include information regarding—

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

"(B) premiums earned on such coverage;

"(C) geographical location of exposures;

"(D) pricing of such coverage;

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

"(F) the amount of private reinsurance for acts of terrorism purchased; and

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

"(2) REPORTS.—Not later than 6 months after the termination of the Program Year beginning on January 1, 2016, and not later than 6 months after the termination of each Program Year thereafter, the Secretary shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that includes—

"(A) an analysis of the overall effectiveness of the Program;

"(B) an evaluation of any changes or trends in the data collected under paragraph (1);

"(C) an evaluation of whether any aspects of the Program have the effect of discouraging or impeding insurers from providing commercial property casualty insurance coverage or coverage for acts of terrorism;

"(D) an evaluation of the impact of the Program on workers' compensation insurers;

"(E) an evaluation of the impact on availability and affordability of terrorism insurance coverage and fiscal protection of the taxpayers of separate Federal treatment under the Program for nuclear, biological, chemical, and radiological terrorism; and

"(F) in the case of the data reported in paragraph (1)(B), an updated estimate of the total amount earned since the commencement of Program Year 1.

"(3) PROTECTION OF DATA.—To the extent possible, the Secretary shall contract with an insurance statistical aggregator to collect the information described in paragraph (1), which shall keep any nonpublic information confidential and provide it to the Secretary in an aggregate form or in such other form or manner that does not permit identification of the insurer submitting such information.

"(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (1) from an insurer, or affiliate of an insurer, the Secretary shall coordinate with the appropriate State insurance regulatory authorities or their representatives and any relevant government agency or publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, individually or collectively, such entities. If the Secretary determines that such data or information is available, and may be obtained in a timely matter, from such entities, the Secretary shall obtain the data or information from such entities. If the Secretary determines that such data or information is not so available, the Secretary may collect such data or information from an insurer and affiliates.

"(5) CONFIDENTIALITY.—

"(A) RETENTION OF PRIVILEGE.—The submission of any non-publicly available data and information to the Secretary and the sharing of any non-publicly available data with or by the Secretary among other Federal agencies, the State insurance regulatory authorities and their collective agents, or any other entities under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

"(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Secretary, regarding the privacy or confidentiality of any data or information in the possession of the source to the Secretary, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection.

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

"(i) shall comply with applicable Federal law; and

"(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including any privilege referred to in subparagraph (A) and the rules of any Federal or State court) to which the data or information is otherwise subject.

"(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, including any exceptions thereunder, shall apply to any data or information submitted under this subsection to the Secretary by an insurer or affiliate of an insurer.".

SEC. 111. DELIVERY OF NOTICES TO POLICYHOLDERS.

Section 103(b)(2) (15 U.S.C. 6701 note) is amended—

(1) in subparagraph (B), by striking ", purchase,"; and

(2) in subparagraph (C), by striking ", purchase,".

SEC. 112. DEFINITION OF CONTROL.

Paragraph (3) of section 102 (15 U.S.C. 6701 note) is amended—

(1) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively and realigning such clauses, as so redesignated, so as to be indented six ems from the left margin;

(2) in the matter preceding clause (i) (as so redesignated), by striking "An entity has" and inserting the following:

"(A) IN GENERAL.—An entity has"; and

(3) by adding at the end the following new subparagraph:

"(B) RULE OF CONSTRUCTION.—An entity, including any affiliate thereof, does not have control over another entity if, as of the date of the enactment of the TRIA Reform Act of 2014, the entity is acting as an attorney-in-fact, as defined by the Secretary, for the other entity and such other entity is a reciprocal insurer, provided that the entity is not, for reasons other than the attorney-in-fact relationship, defined as having control under subparagraph (A).".

SEC. 113. ANNUAL STUDY OF SMALL INSURER MARKET COMPETITIVENESS.

Section 108 (15 U.S.C. 6701 note) is amended by adding at the end the following new subsection:

"(h) STUDY OF SMALL INSURER MARKET COMPETITIVENESS.—

"(1) IN GENERAL.—The Secretary shall conduct an annual study of small insurers participating in the Program, and identify any competitive challenges small insurers face in the terrorism risk insurance marketplace, including—

"(A) changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers;

"(B) how the property and casualty insurance market for terrorism risk differs between small and large insurers, and whether such a difference exists within other perils;

"(C) the impact of the Program's mandatory availability requirement under section 103(c) and the voluntary opt-out for small insurers;

"(D) the effect of increasing the trigger amount for the Program under section 103(e)(1)(B)(iii)(I) on small insurers;

"(E) the availability and cost of private reinsurance for small insurers; and

"(F) the impact that State workers compensation laws have on small insurers, particularly the impact of mandatory, non-excludable participation and unlimited financial liability.

"(2) TIMING AND REPORT.—The Secretary shall complete the first study under paragraph (1) and submit a report to the Congress setting forth the findings and conclusions of the study not later than June 30, 2016, and shall complete an annual study under paragraph (1) and submit a report regarding such study to the Congress by June 1 annually thereafter.".

SEC. 114. CBO AND OMB STUDIES REGARDING BUDGETING FOR COSTS OF FEDERAL INSURANCE PROGRAMS.

Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, the Director of the Congressional Budget Office and the Director of the Office of Management and Budget shall each—

(1) conduct a study to determine the feasibility of applying accrual accounting concepts to budgeting for the costs of the Terrorism Risk Insurance Program and for the costs of the other Federal insurance programs; and

(2) submit a report regarding such study to the Committees on the Budget of the House of Representatives and the Senate, which shall include a recommendation specifically addressing the feasibility of applying fair value concepts to budgeting for the costs of Federal insurance programs, including the Terrorism Risk Insurance Program.

SEC. 115. GAO STUDY ON UPFRONT PREMIUMS AND CAPITAL RESERVE FUND.

(a) STUDY.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall complete a study on the viability of the Federal Government—

(1) assessing and collecting upfront premiums on insurers that participate in the Terrorism Risk Insurance Program established under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) (in this section referred to as the "Program"), which shall include a comparison of practices in international markets to assess and collect premiums either before or after terrorism losses are incurred; and

(2) creating a capital reserve fund under the Program and requiring insurers participating in the Program to dedicate capital specifically for terrorism losses before such losses are incurred, which shall include a comparison of practices in international markets to establish reserve funds.

(b) REQUIRED CONTENT.—The study required under subsection (a) shall examine, but shall not be limited to, the following issues:

(1) UPFRONT PREMIUMS.—With respect to upfront premiums described in subsection (a)(1)—

(A) how the Federal Government could determine the price of such upfront premiums on insurers that participate in the Program;

(B) how the Federal Government could collect such upfront premiums;

(C) how the Federal Government could ensure that such upfront premiums are not spent for purposes other than satisfying claims through the Program;

(D) how the assessment and collection of such upfront premiums could affect take-up rates for terrorism risk coverage in different regions and industries;

(E) the effect of collecting such upfront premiums on the private market for terrorism risk reinsurance; and

(F) the size of the Federal Government subsidy insurers currently receive through their participation in the Program.

(2) CAPITAL RESERVE FUND.—With respect to the capital reserve fund described in subsection (a)(2)—

(A) how the creation of a capital reserve fund would affect the Federal Government's fiscal exposure under the Terrorism Risk Insurance Program and the ability of the Program to meet its statutory purposes;

(B) how a capital reserve fund would impact insurers and reinsurers, including liquidity, insurance pricing, and capacity to provide terrorism risk coverage;

(C) the feasibility of segregating funds attributable to terrorism risk from funds attributable to other insurance lines;

(D) how a capital reserve fund would be viewed and treated under current Financial Accounting Standards Board accounting rules and the tax laws; and

(E) how a capital reserve fund would affect the States' ability to regulate insurers participating in the Program.

(3) INTERNATIONAL PRACTICES.—With respect to international markets referred to in paragraphs (1) and (2) of subsection (A), how other countries, if any—

(A) have established terrorism insurance structures;

(B) charge premiums or otherwise collect funds to pay for the costs of terrorism insurance structures, including risk and administrative costs; and

(C) have established capital reserve funds to pay for the costs of terrorism insurance structures.

(4) DURATION.—With respect to the capital reserve fund described in subsection (a)(2), how the duration of the Program would affect the viability of such capital reserve fund.

(c) REPORT.—Upon completion of the study required under subsection (a), the Comptroller General shall submit a report on the results of such study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(d) PUBLIC AVAILABILITY.—The study and report required under this section shall be made available to the public in electronic form and shall be published on the website of the Government Accountability Office.

TITLE II—NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS REFORM

SEC. 201. SHORT TITLE.

This title may be cited as the "National Association of Registered Agents and Brokers Reform Act of 2014".

SEC. 202. REESTABLISHMENT OF THE NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.

(a) IN GENERAL.—Subtitle C of title III of the Gramm-Leach-Bliley Act (15 U.S.C. 6751 et seq.) is amended to read as follows:

"Subtitle C—National Association of Registered Agents and Brokers

"SEC. 321. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.

"(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (referred to in this subtitle as the 'Association').

"(b) STATUS.—The Association shall—

"(1) be a nonprofit corporation;

"(2) not be an agent or instrumentality of the Federal Government;

"(3) be an independent organization that may not be merged with or into any other private or public entity; and

"(4) except as otherwise provided in this subtitle, be subject to, and have all the powers conferred upon, a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–301.01 et seq.) or any successor thereto.

"SEC. 322. PURPOSE.

"The purpose of the Association shall be to provide a mechanism through which licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multi-state basis without affecting the laws, rules, and regulations, and preserving the rights of a State, pertaining to—

"(1) licensing, continuing education, and other qualification requirements of insurance producers that are not members of the Association;

"(2) resident or nonresident insurance producer appointment requirements;

"(3) supervising and disciplining resident and nonresident insurance producers;

"(4) establishing licensing fees for resident and nonresident insurance producers so that there is no loss of insurance producer licensing revenue to the State; and

"(5) prescribing and enforcing laws and regulations regulating the conduct of resident and nonresident insurance producers.

"SEC. 323. MEMBERSHIP.

"(a) ELIGIBILITY.—

"(1) IN GENERAL.—Any insurance producer licensed in its home State shall, subject to paragraphs (2) and (4), be eligible to become a member of the Association.

"(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Subject to paragraph (3), an insurance producer is not eligible to become a member of the Association if a State insurance regulator has suspended or revoked the insurance license of the insurance producer in that State.

"(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—

"(A) the State insurance regulator reissues or renews the license of the insurance producer in the State in which the license was suspended or revoked, or otherwise terminates or vacates the suspension or revocation; or

"(B) the suspension or revocation expires or is subsequently overturned by a court of competent jurisdiction.

"(4) CRIMINAL HISTORY RECORD CHECK REQUIRED.—

"(A) IN GENERAL.—An insurance producer who is an individual shall not be eligible to become a member of the Association unless the insurance producer has undergone a criminal history record check that complies with regulations prescribed by the Attorney General of the United States under subparagraph (K).

"(B) CRIMINAL HISTORY RECORD CHECK REQUESTED BY HOME STATE.—An insurance producer who is licensed in a State and who has undergone a criminal history record check during the 2-year period preceding the date of submission of an application to become a member of the Association, in compliance with a requirement to undergo such criminal history record check as a condition for such licensure in the State, shall be deemed to have undergone a criminal history record check for purposes of subparagraph (A).

"(C) CRIMINAL HISTORY RECORD CHECK REQUESTED BY ASSOCIATION.—

"(i) IN GENERAL.—The Association shall, upon request by an insurance producer licensed in a State, submit fingerprints or other identification information obtained from the insurance producer, and a request for a criminal history record check of the insurance producer, to the Federal Bureau of Investigation.

"(ii) PROCEDURES.—The board of directors of the Association (referred to in this subtitle as the 'Board') shall prescribe procedures for obtaining and utilizing fingerprints or other identification information and criminal history record information, including the establishment of reasonable fees to defray the expenses of the Association in connection with the performance of a criminal history record check and appropriate safeguards for maintaining confidentiality and security of the information. Any fees charged pursuant to this clause shall be separate and distinct from those charged by the Attorney General pursuant to subparagraph (I).

"(D) FORM OF REQUEST.—A submission under subparagraph (C)(i) shall include such fingerprints or other identification information as is required by the Attorney General concerning the person about whom the criminal history record check is requested, and a statement signed by the person authorizing the Attorney General to provide the information to the Association and for the Association to receive the information.

"(E) PROVISION OF INFORMATION BY ATTORNEY GENERAL.—Upon receiving a submission under subparagraph (C)(i) from the Association, the Attorney General shall search all criminal history records of the Federal Bureau of Investigation, including records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation, that the Attorney General determines appropriate for criminal history records corresponding to the fingerprints or other identification information provided under subparagraph (D) and provide all criminal history record information included in the request to the Association.

"(F) LIMITATION ON PERMISSIBLE USES OF INFORMATION.—Any information provided to the Association under subparagraph (E) may only—

"(i) be used for purposes of determining compliance with membership criteria established by the Association;

"(ii) be disclosed to State insurance regulators, or Federal or State law enforcement agencies, in conformance with applicable law; or

"(iii) be disclosed, upon request, to the insurance producer to whom the criminal history record information relates.

"(G) PENALTY FOR IMPROPER USE OR DISCLOSURE.—Whoever knowingly uses any information provided under subparagraph (E) for a purpose not authorized in subparagraph (F), or discloses any such information to anyone not authorized to receive it, shall be fined not more than $50,000 per violation as determined by a court of competent jurisdiction.

"(H) RELIANCE ON INFORMATION.—Neither the Association nor any of its Board members, officers, or employees shall be liable in any action for using information provided under subparagraph (E) as permitted under subparagraph (F) in good faith and in reasonable reliance on its accuracy.

"(I) FEES.—The Attorney General may charge a reasonable fee for conducting the search and providing the information under subparagraph (E), and any such fee shall be collected and remitted by the Association to the Attorney General.

"(J) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as—

"(i) requiring a State insurance regulator to perform criminal history record checks under this section; or

"(ii) limiting any other authority that allows access to criminal history records.

"(K) REGULATIONS.—The Attorney General shall prescribe regulations to carry out this paragraph, which shall include—

"(i) appropriate protections for ensuring the confidentiality of information provided under subparagraph (E); and

"(ii) procedures providing a reasonable opportunity for an insurance producer to contest the accuracy of information regarding the insurance producer provided under subparagraph (E).

"(L) INELIGIBILITY FOR MEMBERSHIP.—

"(i) IN GENERAL.—The Association may, under reasonably consistently applied standards, deny membership to an insurance producer on the basis of criminal history record information provided under subparagraph (E), or where the insurance producer has been subject to disciplinary action, as described in paragraph (2).

"(ii) RIGHTS OF APPLICANTS DENIED MEMBERSHIP.—The Association shall notify any insurance producer who is denied membership on the basis of criminal history record information provided under subparagraph (E) of the right of the insurance producer to—

"(I) obtain a copy of all criminal history record information provided to the Association under subparagraph (E) with respect to the insurance producer; and

"(II) challenge the denial of membership based on the accuracy and completeness of the information.

"(M) DEFINITION.—For purposes of this paragraph, the term 'criminal history record check' means a national background check of criminal history records of the Federal Bureau of Investigation.

"(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association may establish membership criteria that bear a reasonable relationship to the purposes for which the Association was established.

"(c) ESTABLISHMENT OF CLASSES AND CATEGORIES OF MEMBERSHIP.—

"(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, experience, or other qualifications.

"(2) BUSINESS ENTITIES.—The Association shall establish a class of membership and membership criteria for business entities. A business entity that applies for membership shall be required to designate an individual Association member responsible for the compliance of the business entity with Association standards and the insurance laws, standards, and regulations of any State in which the business entity seeks to do business on the basis of Association membership.

"(3) CATEGORIES.—

"(A) SEPARATE CATEGORIES FOR INSURANCE PRODUCERS PERMITTED.—The Association may establish separate categories of membership for insurance producers and for other persons or entities within each class, based on the types of licensing categories that exist under State laws.

"(B) SEPARATE TREATMENT FOR DEPOSITORY INSTITUTIONS PROHIBITED.—No special categories of membership, and no distinct membership criteria, shall be established for members that are depository institutions or for employees, agents, or affiliates of depository institutions.

"(d) MEMBERSHIP CRITERIA.—

"(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for personal qualifications, education, training, and experience. The Association shall not establish criteria that unfairly limit the ability of a small insurance producer to become a member of the Association, including imposing discriminatory membership fees.

"(2) QUALIFICATIONS.—In establishing criteria under paragraph (1), the Association shall not adopt any qualification less protective to the public than that contained in the National Association of Insurance Commissioners (referred to in this subtitle as the 'NAIC') Producer Licensing Model Act in effect as of the date of enactment of the National Association of Registered Agents and Brokers Reform Act of 2013, and shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

"(3) ASSISTANCE FROM STATES.—

"(A) IN GENERAL.—The Association may request a State to provide assistance in investigating and evaluating the eligibility of a prospective member for membership in the Association.

"(B) AUTHORIZATION OF INFORMATION SHARING.—A submission under subsection (a)(4)(C)(i) made by an insurance producer licensed in a State shall include a statement signed by the person about whom the assistance is requested authorizing—

"(i) the State to share information with the Association; and

"(ii) the Association to receive the information.

"(C) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as requiring or authorizing any State to adopt new or additional requirements concerning the licensing or evaluation of insurance producers.

"(4) DENIAL OF MEMBERSHIP.—The Association may, based on reasonably consistently applied standards, deny membership to any State-licensed insurance producer for failure to meet the membership criteria established by the Association.

"(e) EFFECT OF MEMBERSHIP.—

"(1) AUTHORITY OF ASSOCIATION MEMBERS.—Membership in the Association shall—

"(A) authorize an insurance producer to sell, solicit, or negotiate insurance in any State for which the member pays the licensing fee set by the State for any line or lines of insurance specified in the home State license of the insurance producer, and exercise all such incidental powers as shall be necessary to carry out such activities, including claims adjustments and settlement to the extent permissible under the laws of the State, risk management, employee benefits advice, retirement planning, and any other insurance-related consulting activities;

"(B) be the equivalent of a nonresident insurance producer license for purposes of authorizing the insurance producer to engage in the activities described in subparagraph (A) in any State where the member pays the licensing fee; and

"(C) be the equivalent of a nonresident insurance producer license for the purpose of subjecting an insurance producer to all laws, regulations, provisions or other action of any State concerning revocation, suspension, or other enforcement action related to the ability of a member to engage in any activity within the scope of authority granted under this subsection and to all State laws, regulations, provisions, and actions preserved under paragraph (5).

"(2) VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994.—Nothing in this subtitle shall be construed to alter, modify, or supercede any requirement established by section 1033 of title 18, United States Code.

"(3) AGENT FOR REMITTING FEES.—The Association shall act as an agent for any member for purposes of remitting licensing fees to any State pursuant to paragraph (1).

"(4) NOTIFICATION OF ACTION.—

"(A) IN GENERAL.—The Association shall notify the States (including State insurance regulators) and the NAIC when an insurance producer has satisfied the membership criteria of this section. The States (including State insurance regulators) shall have 10 business days after the date of the notification in order to provide the Association with evidence that the insurance producer does not satisfy the criteria for membership in the Association.

"(B) ONGOING DISCLOSURES REQUIRED.—On an ongoing basis, the Association shall disclose to the States (including State insurance regulators) and the NAIC a list of the States in which each member is authorized to operate. The Association shall immediately notify the States (including State insurance regulators) and the NAIC when a member is newly authorized to operate in one or more States, or is no longer authorized to operate in one or more States on the basis of Association membership.

"(5) PRESERVATION OF CONSUMER PROTECTION AND MARKET CONDUCT REGULATION.—

"(A) IN GENERAL.—No provision of this section shall be construed as altering or affecting the applicability or continuing effectiveness of any law, regulation, provision, or other action of any State, including those described in subparagraph (B), to the extent that the State law, regulation, provision, or other action is not inconsistent with the provisions of this subtitle related to market entry for nonresident insurance producers, and then only to the extent of the inconsistency.

"(B) PRESERVED REGULATIONS.—The laws, regulations, provisions, or other actions of any State referred to in subparagraph (A) include laws, regulations, provisions, or other actions that—

"(i) regulate market conduct, insurance producer conduct, or unfair trade practices;

"(ii) establish consumer protections; or

"(iii) require insurance producers to be appointed by a licensed or authorized insurer.

"(f) BIENNIAL RENEWAL.—Membership in the Association shall be renewed on a biennial basis.

"(g) CONTINUING EDUCATION.—

"(1) IN GENERAL.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to the continuing education requirements under the licensing laws of a majority of the States.

"(2) STATE CONTINUING EDUCATION REQUIREMENTS.—A member may not be required to satisfy continuing education requirements imposed under the laws, regulations, provisions, or actions of any State other than the home State of the member.

"(3) RECIPROCITY.—The Association shall not require a member to satisfy continuing education requirements that are equivalent to any continuing education requirements of the home State of the member that have been satisfied by the member during the applicable licensing period.

"(4) LIMITATION ON THE ASSOCIATION.—The Association shall not directly or indirectly offer any continuing education courses for insurance producers.

"(h) PROBATION, SUSPENSION AND REVOCATION.—

"(1) DISCIPLINARY ACTION.—The Association may place an insurance producer that is a member of the Association on probation or suspend or revoke the membership of the insurance producer in the Association, or assess monetary fines or penalties, as the Association determines to be appropriate, if—

"(A) the insurance producer fails to meet the applicable membership criteria or other standards established by the Association;

"(B) the insurance producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator;

"(C) an insurance license held by the insurance producer has been suspended or revoked by a State insurance regulator; or

"(D) the insurance producer has been convicted of a crime that would have resulted in the denial of membership pursuant to subsection (a)(4)(L)(i) at the time of application, and the Association has received a copy of the final disposition from a court of competent jurisdiction.

"(2) VIOLATIONS OF ASSOCIATION STANDARDS.—The Association shall have the power to investigate alleged violations of Association standards.

"(3) REPORTING.—The Association shall immediately notify the States (including State insurance regulators) and the NAIC when the membership of an insurance producer has been placed on probation or has been suspended, revoked, or otherwise terminated, or when the Association has assessed monetary fines or penalties.

"(i) CONSUMER COMPLAINTS.—

"(1) IN GENERAL.—The Association shall—

"(A) refer any complaint against a member of the Association from a consumer relating to alleged misconduct or violations of State insurance laws to the State insurance regulator where the consumer resides and, when appropriate, to any additional State insurance regulator, as determined by standards adopted by the Association; and

"(B) make any related records and information available to each State insurance regulator to whom the complaint is forwarded.

"(2) TELEPHONE AND OTHER ACCESS.—The Association shall maintain a toll-free number for purposes of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet webpage.

"(3) FINAL DISPOSITION OF INVESTIGATION.—State insurance regulators shall provide the Association with information regarding the final disposition of a complaint referred pursuant to paragraph (1)(A), but nothing shall be construed to compel a State to release confidential investigation reports or other information protected by State law to the Association.

"(j) INFORMATION SHARING.—The Association may—

"(1) share documents, materials, or other information, including confidential and privileged documents, with a State, Federal, or international governmental entity or with the NAIC or other appropriate entity referred to paragraphs (3) and (4), provided that the recipient has the authority and agrees to maintain the confidentiality or privileged status of the document, material, or other information;

"(2) limit the sharing of information as required under this subtitle with the NAIC or any other non-governmental entity, in circumstances under which the Association determines that the sharing of such information is unnecessary to further the purposes of this subtitle;

"(3) establish a central clearinghouse, or utilize the NAIC or another appropriate entity, as determined by the Association, as a central clearinghouse, for use by the Association and the States (including State insurance regulators), through which members of the Association may disclose their intent to operate in 1 or more States and pay the licensing fees to the appropriate States; and

"(4) establish a database, or utilize the NAIC or another appropriate entity, as determined by the Association, as a database, for use by the Association and the States (including State insurance regulators) for the collection of regulatory information concerning the activities of insurance producers.

"(k) EFFECTIVE DATE.—The provisions of this section shall take effect on the later of—

"(1) the expiration of the 2-year period beginning on the date of enactment of the National Association of Registered Agents and Brokers Reform Act of 2013; and

"(2) the date of incorporation of the Association.

"SEC. 324. BOARD OF DIRECTORS.

"(a) ESTABLISHMENT.—There is established a board of directors of the Association, which shall have authority to govern and supervise all activities of the Association.

"(b) POWERS.—The Board shall have such of the powers and authority of the Association as may be specified in the bylaws of the Association.

"(c) COMPOSITION.—

"(1) IN GENERAL.—The Board shall consist of 13 members who shall be appointed by the President, by and with the advice and consent of the Senate, in

accordance with the procedures established under Senate Resolution 116 of the 112th Congress, of whom—

"(A) 8 shall be State insurance commissioners appointed in the manner provided in paragraph (2), 1 of whom shall be designated by the President to serve as the chairperson of the Board until the Board elects one such State insurance commissioner Board member to serve as the chairperson of the Board;

"(B) 3 shall have demonstrated expertise and experience with property and casualty insurance producer licensing; and

"(C) 2 shall have demonstrated expertise and experience with life or health insurance producer licensing.

"(2) STATE INSURANCE REGULATOR REPRESENTATIVES.—

"(A) RECOMMENDATIONS.—Before making any appointments pursuant to paragraph (1)(A), the President shall request a list of recommended candidates from the States through the NAIC, which shall not be binding on the President. If the NAIC fails to submit a list of recommendations not later than 15 business days after the date of the request, the President may make the requisite appointments without considering the views of the NAIC.

"(B) POLITICAL AFFILIATION.—Not more than 4 Board members appointed under paragraph (1)(A) shall belong to the same political party.

"(C) FORMER STATE INSURANCE COMMISSIONERS.—

"(i) IN GENERAL.—If, after offering each currently serving State insurance commissioner an appointment to the Board, fewer than 8 State insurance commissioners have accepted appointment to the Board, the President may appoint the remaining State insurance commissioner Board members, as required under paragraph (1)(A), of the appropriate political party as required under subparagraph (B), from among individuals who are former State insurance commissioners.

"(ii) LIMITATION.—A former State insurance commissioner appointed as described in clause (i) may not be employed by or have any present direct or indirect financial interest in any insurer, insurance producer, or other entity in the insurance industry, other than direct or indirect ownership of, or beneficial interest in, an insurance policy or annuity contract written or sold by an insurer.

"(D) SERVICE THROUGH TERM.—If a Board member appointed under paragraph (1)(A) ceases to be a State insurance commissioner during the term of the Board member, the Board member shall cease to be a Board member.

"(3) PRIVATE SECTOR REPRESENTATIVES.—In making any appointment pursuant to subparagraph (B) or (C) of paragraph (1), the President may seek recommendations for candidates from groups representing the category of individuals described, which shall not be binding on the President.

"(4) STATE INSURANCE COMMISSIONER DEFINED.—For purposes of this subsection, the term 'State insurance commissioner' means a person who serves in the position in State government, or on the board, commission, or other body that is the primary insurance regulatory authority for the State.

"(d) TERMS.—

"(1) IN GENERAL.—Except as provided under paragraph (2), the term of service for each Board member shall be 2 years.

"(2) EXCEPTIONS.—

"(A) 1-YEAR TERMS.—The term of service shall be 1 year, as designated by the President at the time of the nomination of the subject Board members for—

"(i) 4 of the State insurance commissioner Board members initially appointed under paragraph (1)(A), of whom not more than 2 shall belong to the same political party;

"(ii) 1 of the Board members initially appointed under paragraph (1)(B); and

"(iii) 1 of the Board members initially appointed under paragraph (1)(C).

"(B) EXPIRATION OF TERM.—A Board member may continue to serve after the expiration of the term to which the Board member was appointed for the earlier of 2 years or until a successor is appointed.

"(C) MID-TERM APPOINTMENTS.—A Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the Board member was appointed shall be appointed only for the remainder of that term.

"(3) SUCCESSIVE TERMS.—Board members may be reappointed to successive terms.

"(e) INITIAL APPOINTMENTS.—The appointment of initial Board members shall be made no later than 90 days after the date of enactment of the National Association of Registered Agents and Brokers Reform Act of 2014.

"(f) MEETINGS.—

"(1) IN GENERAL.—The Board shall meet—

"(A) at the call of the chairperson;

"(B) as requested in writing to the chairperson by not fewer than 5 Board members; or

"(C) as otherwise provided by the bylaws of the Association.

"(2) QUORUM REQUIRED.—A majority of all Board members shall constitute a quorum.

"(3) VOTING.—Decisions of the Board shall require the approval of a majority of all Board members present at a meeting, a quorum being present.

"(4) INITIAL MEETING.—The Board shall hold its first meeting not later than 45 days after the date on which all initial Board members have been appointed.

"(g) RESTRICTION ON CONFIDENTIAL INFORMATION.—Board members appointed pursuant to subparagraphs (B) and (C) of subsection (c)(1) shall not have access to confidential information received by the Association in connection with complaints, investigations, or disciplinary proceedings involving insurance producers.

"(h) ETHICS AND CONFLICTS OF INTEREST.—The Board shall issue and enforce an ethical conduct code to address permissible and prohibited activities of Board members and Association officers, employees, agents, or consultants. The code shall, at a minimum, include provisions that prohibit any Board member or Association officer, employee, agent or consultant from—

"(1) engaging in unethical conduct in the course of performing Association duties;

"(2) participating in the making or influencing the making of any Association decision, the outcome of which the Board member, officer, employee, agent, or consultant knows or had reason to know would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the person or a member of the immediate family of the person;

"(3) accepting any gift from any person or entity other than the Association that is given because of the position held by the person in the Association;

"(4) making political contributions to any person or entity on behalf of the Association; and

"(5) lobbying or paying a person to lobby on behalf of the Association.

"(i) COMPENSATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no Board member may receive any compensation from the Association or any other person or entity on account of Board membership.

"(2) TRAVEL EXPENSES AND PER DIEM.—Board members may be reimbursed only by the Association for travel expenses, including per diem in lieu of subsistence, at rates consistent with rates authorized for employees of Federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from home or regular places of business in performance of services for the Association.

"SEC. 325. BYLAWS, STANDARDS, AND DISCIPLINARY ACTIONS.

"(a) ADOPTION AND AMENDMENT OF BYLAWS AND STANDARDS.—

"(1) PROCEDURES.—The Association shall adopt procedures for the adoption of bylaws and standards that are similar to procedures under subchapter II of chapter 5 of title 5, United States Code (commonly known as the 'Administrative Procedure Act').

"(2) COPY REQUIRED TO BE FILED.—The Board shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, all proposed bylaws and standards of the Association, or any proposed amendment to the bylaws or standards of the Association, accompanied by a concise general statement of the basis and purpose of such proposal.

"(3) EFFECTIVE DATE.—Any proposed bylaw or standard of the Association, and any proposed amendment to the bylaws or standards of the Association, shall take effect, after notice under paragraph (2) and opportunity for public comment, on such date as the Association may designate, unless suspended under section 329(c).

"(4) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to subject the Board or the Association to the requirements of subchapter II of chapter 5 of title 5, United States Code (commonly known as the 'Administrative Procedure Act').

"(b) DISCIPLINARY ACTION BY THE ASSOCIATION.—

"(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed, or to determine whether a member of the Association should be placed on probation (referred to in this section as a 'disciplinary action') or whether to assess fines or monetary penalties, the Association shall bring specific charges, notify the member of the charges, give the member an opportunity to defend against the charges, and keep a record.

"(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—

"(A) any act or practice in which the member has been found to have been engaged;

"(B) the specific provision of this subtitle or standard of the Association that any such act or practice is deemed to violate; and

"(C) the sanction imposed and the reason for the sanction.

"(3) INELIGIBILITY OF PRIVATE SECTOR REPRESENTATIVES.—Board members appointed pursuant to section 324(c)(3) may not—

"(A) participate in any disciplinary action or be counted toward establishing a quorum during a disciplinary action; and

"(B) have access to confidential information concerning any disciplinary action.

"SEC. 326. POWERS.

"In addition to all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, the Association shall have the power to—

"(1) establish and collect such membership fees as the Association finds necessary to impose to cover the costs of its operations;

"(2) adopt, amend, and repeal bylaws, procedures, or standards governing the conduct of Association business and performance of its duties;

"(3) establish procedures for providing notice and opportunity for comment pursuant to section 325(a);

"(4) enter into and perform such agreements as necessary to carry out the duties of the Association;

"(5) hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of this subtitle, and determine their qualification;

"(6) establish personnel policies of the Association and programs relating to, among other things, conflicts of interest, rates of compensation, where applicable, and qualifications of personnel;

"(7) borrow money; and

"(8) secure funding for such amounts as the Association determines to be necessary and appropriate to organize and begin operations of the Association, which shall be treated as loans to be repaid by the Association with interest at market rate.

"SEC. 327. REPORT BY THE ASSOCIATION.

"(a) IN GENERAL.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year.

"(b) FINANCIAL STATEMENTS.—Each report submitted under subsection (a) with respect to any fiscal year shall include audited financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

"SEC. 328. LIABILITY OF THE ASSOCIATION AND THE BOARD MEMBERS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.

"(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

"(b) LIABILITY OF BOARD MEMBERS, OFFICERS, AND EMPLOYEES.—No Board member, officer, or employee of the Association shall be personally liable to any person

for any action taken or omitted in good faith in any matter within the scope of their responsibilities in connection with the Association.

"SEC. 329. PRESIDENTIAL OVERSIGHT.

"(a) REMOVAL OF BOARD.—If the President determines that the Association is acting in a manner contrary to the interests of the public or the purposes of this subtitle or has failed to perform its duties under this subtitle, the President may remove the entire existing Board for the remainder of the term to which the Board members were appointed and appoint, in accordance with section 324 and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112th Congress, new Board members to fill the vacancies on the Board for the remainder of the terms.

"(b) REMOVAL OF BOARD MEMBER.—The President may remove a Board member only for neglect of duty or malfeasance in office.

"(c) SUSPENSION OF BYLAWS AND STANDARDS AND PROHIBITION OF ACTIONS.—Following notice to the Board, the President, or a person designated by the President for such purpose, may suspend the effectiveness of any bylaw or standard, or prohibit any action, of the Association that the President or the designee determines is contrary to the purposes of this subtitle.

"SEC. 330. RELATIONSHIP TO STATE LAW.

"(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted to the extent provided in subsection (b).

"(b) PROHIBITED ACTIONS.—

"(1) IN GENERAL.—No State shall—

"(A) impede the activities of, take any action against, or apply any provision of law or regulation arbitrarily or discriminatorily to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

"(B) impose any requirement upon a member of the Association that it pay fees different from those required to be paid to that State were it not a member of the Association; or

"(C) impose any continuing education requirements on any nonresident insurance producer that is a member of the Association.

"(2) STATES OTHER THAN A HOME STATE.—No State, other than the home State of a member of the Association, shall—

"(A) impose any licensing, personal or corporate qualifications, education, training, experience, residency, continuing education, or bonding requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership;

"(B) impose any requirement upon a member of the Association that it be licensed, registered, or otherwise qualified to do business or remain in good standing in the State, including any requirement that the insurance producer register as a foreign company with the secretary of state or equivalent State official;

"(C) require that a member of the Association submit to a criminal history record check as a condition of doing business in the State; or

"(D) impose any licensing, registration, or appointment requirements upon a member of the Association, or require a member of the Association to be authorized to operate as an insurance producer, in order to sell, solicit, or negotiate insurance for commercial property and casualty risks to an insured with risks located in more than one State, if the member is licensed or otherwise authorized to operate in the State where the insured maintains its principal place of business and the contract of insurance insures risks located in that State.

"(3) PRESERVATION OF STATE DISCIPLINARY AUTHORITY.—Nothing in this section may be construed to prohibit a State from investigating and taking appropriate disciplinary action, including suspension or revocation of authority of an insurance producer to do business in a State, in accordance with State law and that is not inconsistent with the provisions of this section, against a member of the Association as a result of a complaint or for any alleged activity, regardless of whether the activity occurred before or after the insurance producer commenced doing business in the State pursuant to Association membership.

"SEC. 331. COORDINATION WITH FINANCIAL INDUSTRY REGULATORY AUTHORITY.

"The Association shall coordinate with the Financial Industry Regulatory Authority in order to ease any administrative burdens that fall on members of the Association that are subject to regulation by the Financial Industry Regulatory Authority, consistent with the requirements of this subtitle and the Federal securities laws.

"SEC. 332. RIGHT OF ACTION.

"(a) RIGHT OF ACTION.—Any person aggrieved by a decision or action of the Association may, after reasonably exhausting available avenues for resolution within the Association, commence a civil action in an appropriate United States district court, and obtain all appropriate relief.

"(b) ASSOCIATION INTERPRETATIONS.—In any action under subsection (a), the court shall give appropriate weight to the interpretation of the Association of its bylaws and standards and this subtitle.

"SEC. 333. FEDERAL FUNDING PROHIBITED.

"The Association may not receive, accept, or borrow any amounts from the Federal Government to pay for, or reimburse, the Association for, the costs of establishing or operating the Association.

"SEC. 334. DEFINITIONS.

"For purposes of this subtitle, the following definitions shall apply:

"(1) BUSINESS ENTITY.—The term 'business entity' means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

"(2) DEPOSITORY INSTITUTION.—The term 'depository institution' has the meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

"(3) HOME STATE.—The term 'home State' means the State in which the insurance producer maintains its principal place of residence or business and is licensed to act as an insurance producer.

"(4) INSURANCE.—The term 'insurance' means any product, other than title insurance or bail bonds, defined or regulated as insurance by the appropriate State insurance regulatory authority.

"(5) INSURANCE PRODUCER.—The term 'insurance producer' means any insurance agent or broker, excess or surplus lines broker or agent, insurance consultant, limited insurance representative, and any other individual or entity that sells, solicits, or negotiates policies of insurance or offers advice, counsel, opinions or services related to insurance.

"(6) INSURER.—The term 'insurer' has the meaning as in section 313(e)(2)(B) of title 31, United States Code.

"(7) PRINCIPAL PLACE OF BUSINESS.—The term 'principal place of business' means the State in which an insurance producer maintains the headquarters of the insurance producer and, in the case of a business entity, where high-level officers of the entity direct, control, and coordinate the business activities of the business entity.

"(8) PRINCIPAL PLACE OF RESIDENCE.—The term 'principal place of residence' means the State in which an insurance producer resides for the greatest number of days during a calendar year.

"(9) STATE.—The term 'State' includes any State, the District of Columbia, any territory of the United States, and Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

"(10) STATE LAW.—

"(A) IN GENERAL.—The term 'State law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.

"(B) LAWS APPLICABLE IN THE DISTRICT OF COLUMBIA.—A law of the United States applicable only to or within the District of Columbia shall be treated as a State law rather than a law of the United States.".

(b) TECHNICAL AMENDMENT.—The table of contents for the Gramm-Leach-Bliley Act is amended by striking the items relating to subtitle C of title III and inserting the following new items:

"Subtitle C—National Association of Registered Agents and Brokers

"Sec. 321. National Association of Registered Agents and Brokers.
"Sec. 322. Purpose.
"Sec. 323. Membership.
"Sec. 324. Board of directors.
"Sec. 325. Bylaws, standards, and disciplinary actions.
"Sec. 326. Powers.
"Sec. 327. Report by the Association.
"Sec. 328. Liability of the Association and the Board members, officers, and employees of the Association.
"Sec. 329. Presidential oversight.
"Sec. 330. Relationship to State law.
"Sec. 331. Coordination with financial industry regulatory authority.
"Sec. 332. Right of action.
"Sec. 333. Federal funding prohibited.
"Sec. 334. Definitions.".

PURPOSE AND SUMMARY

H.R. 4871, the TRIA Reform Act of 2014, extends the authorization for the Terrorism Risk Insurance Act (TRIA) through December 31, 2019. Originally enacted in 2002, TRIA established a temporary federal program that helped to maintain the availability of commercial property and casualty insurance and reinsurance for terrorism-related risks. As stated on Section 101 of the original legislation, the program was to be "a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and (2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections."

H.R. 4871 builds upon those purposes and reforms the program to better protect taxpayers from the financial risks that TRIA poses. H.R. 4871 accomplishes three goals: it (1) strengthens taxpayer protections and encourages private market participation without curtailing the program's fundamental functions, (2) provides greater certainty and stability to the terrorism insurance market, and (3) prepares policymakers by realistically assessing the benefits and costs of the TRIA's current framework.

To strengthen taxpayer protections and encourage private market participation, H.R. 4871 reduces the federal co-share for insured losses exceeding an insurer's deductible, from 85 percent of insured losses today to 80 percent of insured losses by 2019. The co-share was last reduced in 2006, from 90 percent of insured losses in 2005 to 85 percent of insured losses. H.R 4871 also reduces taxpayer exposure by increasing over several years the program trigger, or threshold of certified losses after which federal payments begin, for acts of terrorism that do not include nuclear, biological, radiological, and or chemical (NBCR) agents. Beginning in 2016, H.R 4871 increases the trigger from $100 million to $500 million, in $100 million annual increments. The trigger was last increased in 2007, from $50 million in 2006 to $100 million.

To address concerns that the increased trigger could harm small insurers, H.R. 4871 authorizes the Secretary of the Treasury to develop a process through regulation and in consultation with state insurance regulatory authorities that permits small insurers to opt out of the federal statutory requirement to make available terrorism risk insurance. Small insurers may request to opt out if they can demonstrate financial hardship or financial infeasibility of providing coverage for insured losses.

H.R. 4871 protects taxpayers by aligning the aggregate retention requirement with mandatory deductible amounts. Under current law, while individual insurers each are responsible for a deductible equal to 20 percent of their prior year's direct earned premiums before they can receive federal assistance through the co-share mechanism, the losses for the insurance industry as a whole are capped at $27.5 billion in any given program year. That amount, known as the insurance marketplace aggregate retention amount, has re-

mained constant since 2007, when it was roughly equal to 20 percent of the industry's total amount of direct earned premiums collected for 2006. H.R. 4871 sets the retention amount equal to the sum of the industry's deductibles, or 20 percent of the industry's direct earned premiums for the prior year, rather than a fixed number. Setting the retention amount in this way indexes it to the state of the insurance market, allowing the retention amount to increase or decrease in proportion to the total amount of premiums collected each program year.

To provide greater certainty and stability to the market, H.R 4871 separates certified acts of terrorism into two categories: those that involve NBCR losses, which are inherently more difficult to model, and those that do not involve NBCR losses, for which the modeling is more developed. Because the modeling is less developed for the frequency and severity of NBCR events, H.R. 4871 retains the current program trigger of $100 million for acts of terrorism involving NBCR losses.

H.R. 4871 also provides more certainty in the certification process by giving the Secretary of Treasury up to 90 days after an event to provide a final determination whether it met the definition of an act of terrorism under the program, and whether it involved NBCR losses. To further expedite the payment of claims, H.R. 4871 requires the Secretary to issue a preliminary certification notice within 15 days of an event indicting whether it is expected to meet the definition of an act of terrorism under the program. H.R. 4871 also removes the current limitation that an event must result in $5 million in insured losses to be certified as an act of terrorism, which will allow the Secretary to base certification on the motivation underpinning the event rather than its scope.

To prepare policymakers by realistically assessing the benefits and costs of TRIA's current framework, H.R. 4871 eliminates TRIA's payment timing budget gimmick and adopts more realistic financing requirements for the recoupment of federal payments made under TRIA. In its 2007 reauthorization of TRIA, Congress added Section 103(e)(7)(E) to TRIA as a budget gimmick to meet Pay-As-You-Go requirements that new spending not increase projected deficits. Section 103(e)(7)(E) established specific repayment schedules that required recoupment within a short period of time, which are generally acknowledged as unrealistic and unworkable. H.R. 4871 ends the use of that budget gimmick beginning in Program Year 2015. In its place, H.R. 4871 provides that when federal payments are subject to recoupment, recoupment must begin no later than 18 months after the event. H.R. 4871 also increases the assessment rate for terrorism loss risk-spreading premiums required for the mandatory recoupment of federal payments from 133 percent to 150 percent of federal outlays. H.R. 4871 also requires that when terrorism loss risk-spreading premiums are used for the discretionary recoupment of federal payments, that they be not less than 3 percent of the annual premiums charged for property and casualty insurance coverage.

H.R. 4871 authorizes the Secretary of Treasury to collect data to enable Congress to better understand the terrorism risk insurance market and to conduct an annual study of the impact of TRIA on small insurers. H.R. 4871 requires the Congressional Budget Office and the Office of Management and Budget to study the feasibility

of applying accrual accounting concepts to TRIA. H.R. 4871 requires the General Accountability Office to study (1) the feasibility of collecting premiums from insurers using the TRIA program before a terrorist act or loss occurs; (2) the feasibility of developing a capital reserve fund, as originally envisioned by this Committee in 2005; and (3) other nations' practices for collecting premiums or creating capital reserve funds.

Title II of H.R. 4871 amends the Gramm-Leach-Bliley Act to repeal the contingent conditions preventing the establishment of the National Association of Registered Agents and Brokers (NARAB). In its place, Title II establishes the NARAB as an independent nonprofit corporation to prescribe, on a multi-state basis, licensing and qualification requirements for insurance agents and brokers. Title II is identical to H.R. 1155, the National Association of Registered Agents and Brokers Reform Act of 2013, introduced by Rep. Randy Neugebauer and passed by the House on September 10, 2013.

BACKGROUND AND NEED FOR LEGISLATION

Before the terrorist attacks of September 11, 2001, insurers considered the risk of significant terrorism-related damage to be so remote that they did not separately charge for coverage against terrorism risk, nor did they separately consider terrorism risk in underwriting property and casualty insurance. Instead, insurers generally covered losses resulting from terrorist acts under commercial property and casualty insurance policies. Complacency about terrorism risk, however, changed considerably following these attacks, which resulted in insurance companies paying out $31.6 billion (approximately $41.4 billion in current dollars, adjusted for inflation) in terrorism-related claims.

After September 11, insurance and reinsurance companies began to view potential losses from terrorism as a new and significant risk for which they could not accurately model, given the uncertainty of the location, frequency, and severity of such acts. Without reliable insurance models, the potential cost of terrorism insurance skyrocketed, and many insurance and reinsurance companies began excluding terrorism coverage from their policies. These exclusions made terrorism coverage either unavailable or unaffordable for businesses and employers—some of whom were contractually or legally obliged to obtain it—thus jeopardizing economic growth, particularly in large commercial centers.

To fill this void, some industry participants and analysts advocated the creation of a temporary federal reinsurance program that would allow insurers to offer coverage for terrorism-related losses. Proponents of this federal reinsurance program argued that a temporary government backstop would give the insurance industry time to build accurate terrorism-risk models so that appropriately priced, privately-backed coverage could again be made available.

In response to these calls, Congress passed the Terrorism Risk Insurance Act of 2002 (Pub. L. No. 107–297), popularly known as TRIA, which established the Terrorism Risk Insurance Program, administered by the Treasury Department and designed to make terrorism insurance coverage more widely available. In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111–203) established a Federal Insurance Office with-

in the Treasury Department and instructed its Director to assist the Treasury Secretary in administering TRIA.

Under the original temporary program, the federal government and the insurance industry share the risk of loss from terrorist attacks for three years, after which the program would expire. TRIA mandates that insurers participate in the program and requires that insurers make terrorism coverage available in all commercial property and casualty insurance policies; however, it does not require that businesses purchase terrorism coverage. To date, the federal government has never made a payment under TRIA because no terrorist attacks have taken place that meet TRIA's loss-sharing criteria.

Congress originally designed TRIA as a temporary three-year federal backstop, with the expectation that the industry would eventually model and price for terrorism risk. In its November 19, 2001 report for the 107th Congress on H.R. 3210, the Terrorism Risk Protection Act, the Financial Services Committee wrote:

> [t]he Committee believes that Congress must create the temporary program established by this legislation [H.R. 3210] to provide a bridge between today and the time when the private market has developed the mechanisms to provide terrorism risk coverage and reinsurance at reasonable cost and sufficient levels. The insurance industry in the past has demonstrated a remarkable resiliency in adapting to changing circumstances and, given time, will diversify and spread risks in such a way that they will be able to underwrite affordable terrorist risk insurance at a profit. Until that time comes, however, the Federal government can assist the industry by providing liquidity and creating a short-term industry risk spreading program.
>
> While there is a clear need to act to create this bridge, it is essential that it is done while providing the utmost protection for taxpayers.

In late 2005, Congress passed the Terrorism Risk Insurance Extension Act (Pub. L. No. 109–144), which extended TRIA for two years, through December 31, 2007. Congress extended TRIA because it found that the private market for terrorism insurance had not recovered as quickly as expected. The 2005 extension left much of the original TRIA program intact, but raised industry retention levels and reduced the insurance lines covered. For Program Year 2007, the act increased TRIA's program trigger to $100 million in aggregate industry losses and an individual insurer's deductible to 20 percent of premiums before the federal government shares 85 percent of the insured losses.

Despite the 2005 extension—or as some critics have argued because of it—a private market for terrorism insurance failed to develop. In 2007, with TRIA scheduled to expire for a second time, Congress passed H.R. 2761, the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub. L. No. 110–160). H.R. 2761 extended the TRIA program for seven years, through December 31, 2014. The legislation failed to include any reforms that encouraged private markets to stabilize, resume pricing terrorism insurance, or build capacity to absorb future losses. Instead, the legislation held the program's trigger, deductible, and co-share amounts at their

2007 levels through 2014. The legislation expanded TRIA, by adding domestic terrorism coverage to TRIA, which had previously covered only acts committed on behalf of a foreign person or interests. It also clarified TRIA's annual liability cap so that insurers were not responsible for losses exceeding $100 billion in any program year, and instituted the use of new budget gimmicks to affect the timing and amount of insurers' mandatory surcharge and recoupment amounts.

TRIA's authorization will expire on December 31, 2014. Although the Financial Services Committee has received testimony that there remains much capacity within insurance and reinsurance industries to cover greater portions of terrorism risk, the failure to include any reforms in the 2007 reauthorization have led many to believe that the industry has not yet developed the systems and products necessary for the terrorism-risk insurance market to function without a TRIA backstop.

While there may currently be a need for a federal backstop against acts of terrorism that cannot be modeled and whose size significantly affects the economy, continuing the program in its current form raises several concerns. Some critics of the program have pointed out that the TRIA extensions have dramatically expanded a federal program that was supposed to be temporary. Others note that government-provided terrorism reinsurance under TRIA has inhibited the return of private-sector terrorism insurance. And although the program has never been used, TRIA's potential post-event cost to taxpayers, which could total tens of billions of dollars or more, has also raised concerns.

In September 19, 2013, testimony before the Financial Services Committee on TRIA, Dr. Gordon Woo, Catastrophist for Risk Management Solutions, stated that insurance companies have had time to adjust to the post-September 11 view of terrorism risk. Dr. Woo testified that:

> In 2002, when the Terrorism Risk Insurance Act (TRIA) was introduced, and subsequently, when TRIA was reauthorized in 2005 and 2007, some attention was given to terrorism insurance risk models, but experience was still too limited for them to be accorded much weight. Now, in September 2013, with a doubling of experience since 2001, terrorism insurance risk modeling has attained a level of capability, validation and maturity to make a more notable contribution to the discussion over the future of TRIA.

In its FY 2015 budget proposal, the Obama Administration called for "programmatic reforms [to TRIA] to limit taxpayer exposure and achieve cost neutrality." The Administration's budget proposal endorsed several of the reforms in the TRIA Reform Act, including changes to "the threshold for a certified terrorist event," and to "the loss-sharing percentages for the Government and covered firms after the deductible is exceeded." Emphasizing the need for a market solution, the Administration's budget proposal stated that its objective over the longer term is a "full transition of the program to the private sector."

The Obama Administration's calls for reforming TRIA are not new. The previous administration also called upon Congress to reform TRIA to strengthen taxpayer protections and encourage more

private market participation. In a June 30, 2005 letter to the Financial Services Committee, then-Treasury Secretary John Snow wrote:

> [the] continuation of the program in its current form is likely to hinder the further development of the insurance market by crowding out innovation and capacity building.
>
> Any extension of the program should recognize several key principles, including the temporary nature of the program, the rapid expansion of private market development (particularly for insurers and reinsurers to grow capacity), and the need to significantly reduce taxpayer exposure. The administration would accept an extension only if it includes a significant increase to $500 million of the event size that triggers coverage, increases the dollar deductibles and percentage co-payments.

After fourteen years and two extensions, any further extension of the TRIA must include significant reforms that encourage the insurance industry to improve its modeling for acts of terrorism, to build its capacity to meet its financial obligations after an act of terrorism without government assistance, and to develop systems and products for a private terrorism insurance market that is not dependent on TRIA. H.R. 4871, the TRIA Reform Act of 2014, furthers those goals and better protects taxpayers against the tens of billions of dollars of risk they now bear through the program.

HEARINGS

The Committee on Financial Services did not hold hearings on H.R. 4871. The Committee did, however, hold two hearings on the subject of terrorism insurance—a full committee hearing entitled "The Terrorism Risk Insurance Act of 2002" on September 19, 2013; and a subcommittee hearing entitled "The Future of Terrorism Insurance: Fostering Private Market Innovation to Limit Taxpayer Exposure" on November 13, 2013.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 19–20, 2014 to consider H.R. 4871, ordering the same to be reported favorably to the House with an amendment on June 20 by a vote of 32 ayes to 27 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. Those votes were as follows:

1. An amendment in the nature of a substitute offered by Ranking Member Waters and Rep. Capuano to replace the bill's text with a 10-year clean reauthorization, and for other purposes, was not agreed to by a vote of 27 ayes to 31 nays (Recorded Vote No. 83).

Record vote no. FC-83

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Waters	X		
Mr. Bachus		X		Mrs. Maloney (NY)	X		
Mr. King (NY)		X		Ms. Velázquez			
Mr. Royce		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)	X		
Mr. McHenry		X		Mr. Lynch	X		
Mr. Campbell		X		Mr. David Scott (GA)	X		
Mrs. Bachmann		X		Mr. Al Green (TX)	X		
Mr. McCarthy (CA)				Mr. Cleaver	X		
Mr. Pearce		X		Ms. Moore	X		
Mr. Posey		X		Mr. Ellison	X		
Mr. Fitzpatrick		X		Mr. Perlmutter	X		
Mr. Westmoreland		X		Mr. Himes	X		
Mr. Luetkemeyer		X		Mr. Peters (MI)	X		
Mr. Huizenga (MI)		X		Mr. Carney	X		
Mr. Duffy		X		Ms. Sewell (AL)	X		
Mr. Hurt		X		Mr. Foster	X		
Mr. Stivers		X		Mr. Kildee	X		
Mr. Fincher		X		Mr. Murphy (FL)	X		
Mr. Stutzman		X		Mr. Delaney	X		
Mr. Mulvaney				Ms. Sinema	X		
Mr. Hultgren		X		Mrs. Beatty	X		
Mr. Ross		X		Mr. Heck (WA)	X		
Mr. Pittenger		X		Mr. Horsford	X		
Mrs. Wagner		X					
Mr. Barr		X					
Mr. Cotton		X					
Mr. Rothfus		X					
Mr. Messer		X					

2. The motion by Chairman Hensarling to report the bill favorably to the House with an amendment was agreed to by a vote of 32 ayes to 27 nays (Recorded Vote No. 84).

Record vote no. FC-84

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters		X	
Mr. Bachus	X			Mrs. Maloney (NY)		X	
Mr. King (NY)	X			Ms. Velázquez			
Mr. Royce	X			Mr. Sherman		X	
Mr. Lucas	X			Mr. Meeks		X	
Mr. Gary G. Miller (CA)	X			Mr. Capuano		X	
Mrs. Capito	X			Mr. Hinojosa		X	
Mr. Garrett	X			Mr. Clay		X	
Mr. Neugebauer	X			Mrs. McCarthy (NY)		X	
Mr. McHenry	X			Mr. Lynch		X	
Mr. Campbell	X			Mr. David Scott (GA)		X	
Mrs. Bachmann	X			Mr. Al Green (TX)		X	
Mr. McCarthy (CA)	X			Mr. Cleaver		X	
Mr. Pearce	X			Ms. Moore		X	
Mr. Posey	X			Mr. Ellison		X	
Mr. Fitzpatrick	X			Mr. Perlmutter		X	
Mr. Westmoreland	X			Mr. Himes		X	
Mr. Luetkemeyer	X			Mr. Peters (MI)		X	
Mr. Huizenga (MI)	X			Mr. Carney		X	
Mr. Duffy	X			Ms. Sewell (AL)		X	
Mr. Hurt	X			Mr. Foster		X	
Mr. Stivers	X			Mr. Kildee		X	
Mr. Fincher	X			Mr. Murphy (FL)		X	
Mr. Stutzman	X			Mr. Delaney		X	
Mr. Mulvaney				Ms. Sinema		X	
Mr. Hultgren	X			Mrs. Beatty		X	
Mr. Ross	X			Mr. Heck (WA)		X	
Mr. Pittenger	X			Mr. Horsford		X	
Mrs. Wagner	X						
Mr. Barr	X						
Mr. Cotton	X						
Mr. Rothfus	X						
Mr. Messer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R 4871 reforms and reauthorizes the Terrorism Risk Insurance Program and amends the Gramm-Leach-Bliley Act to repeal the contingent conditions preventing the establishment of the National Association of Registered Agents and Brokers (NARAB).

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 15, 2014.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4871, the TRIA Reform Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4871—TRIA Reform Act of 2014

Summary: H.R. 4871 would extend the Terrorism Risk Insurance Act (TRIA) for five years—through calendar year 2019—and, in cer-

tain instances, increase the share of insured losses paid by private insurers under the program.[1] The bill also would establish the National Association of Registered Agents and Brokers (NARAB) and authorize it to license producers of insurance (mostly agents and brokers) to operate in multiple states. Finally, the bill would require several new studies of various aspects of the terrorism insurance program.

Considering both the direct spending and revenue effects of the bill, CBO estimates that enacting H.R. 4871 would increase budget deficits by about $500 million over the 2015–2024 period. Changes in federal revenues and spending, however, would continue beyond 2024; CBO estimates that after taking into account all revenues and direct spending, enacting H.R. 4871 would lead to a small reduction in deficits over time.

Title I would reauthorize the TRIA program, which requires insurance firms that sell commercial property and casualty insurance to offer clients insurance coverage for damages caused by terrorist attacks by foreign or domestic interests.

Under TRIA, the federal government would help insurers cover losses in the event of a terrorist attack under certain conditions, and would impose assessments on the insurance industry to recover all or a portion of any federal payments. The program is currently set to expire at the end of calendar year 2014; no federal payments have been made under the program since its inception in 2002.

There is no reliable way to predict how much insured damage terrorists might cause, if any, in any year. Rather, CBO's estimate of the cost of financial assistance provided under the bill represents an expected value of payments from the program—a weighted average that reflects industry experts' opinions of the probability of various outcomes ranging from zero damages up to very large damages resulting from possible future terrorist attacks. The expected value can be thought of as the amount of an insurance premium that would be necessary to just offset the government's expected losses from providing this insurance, although firms do not pay any upfront premium for the federal assistance available under TRIA.

Title II of H.R. 4871 would establish the NARAB; it would allow insurance producers who join the organization to obtain a license to act as a producer in any state other than their home state by meeting the NARAB's eligibility requirements and paying certain fees.

CBO estimates that enacting the bill would increase direct spending for federal assistance under TRIA and spending by the NARAB by $3.0 billion over the 2015–2024 period.

CBO estimates that enacting H.R. 4871 also would increase revenues. The bill would direct the Department of the Treasury to recoup some or all of the costs of providing financial assistance under TRIA through taxes imposed on certain insurance policyholders. CBO expects that spending for financial assistance to insurers would be offset (on a cash basis) by an increase in revenues. In ad-

[1] The Terrorism Risk Insurance Act, Public Law 107–297, was enacted on November 2, 2002. It was extended on December 22, 2005, upon enactment of the Terrorism Risk Insurance Extension Act of 2005 (P.L. 109–144). On December 26, 2007, the Terrorism Risk Insurance Program Reauthorization Act of 2007 (P.L. 110–160) extended the program again. In this estimate, CBO refers to the original Act as subsequently amended, as TRIA.

dition, the bill would authorize the NARAB to charge fees to cover the cost of operating the organization. Taken together, CBO estimates that enacting H.R. 4871 would increase revenues by $2.5 billion over the 2015–2024 period, net of income and payroll tax offsets.[2]

Enacting the legislation would lead to additional spending of $250 million and additional revenues of $1 billion after 2024, CBO estimates. Thus the estimated net budgetary savings after 2024 would be slightly larger than the estimated net budgetary cost between 2015 and 2024.

The bill would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by extending and expanding some requirements on insurers and policyholders, including the payment of surcharges. State, local, or tribal governments could be required to pay a surcharge as purchasers of property and casualty insurance, but CBO estimates that the aggregate cost to public entities of complying with those mandates would probably fall below the annual threshold established in UMRA ($76 million for intergovernmental mandates in 2014, adjusted annually for inflation). CBO estimates that the aggregate cost to private insurers and policyholders to comply with those mandates would exceed UMRA's annual threshold for private-sector mandates ($152 million in 2014, adjusted annually for inflation) in each year policyholders pay a surcharge.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 4871 is shown in the following table. We estimate that enacting the bill would increase direct spending by $3.0 billion and increase revenues by $2.5 billion over the 2015–2024 period. The costs of this legislation fall within budget function 370 (commerce and housing credit).

[2] When excise taxes and other types of "indirect" taxes are imposed on goods and services, they tend to reduce income for workers or business owners in the taxed industry and others throughout the economy. Consequently, revenue derived from existing "direct" tax sources—such as individual and corporate income taxes and payroll taxes—will also be reduced. To approximate that effect, CBO and the staff of the Joint Committee on Taxation apply an offset when estimating the net revenue that legislation imposing some form of indirect tax is expected to generate. The amount of the offset ranges from 25.2 percent in 2015 to 26.2 percent in 2024.

	By fiscal year, in millions of dollars—											
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015–2019	2015–2024
CHANGES IN DIRECT SPENDING [a]												
Title I—TRIA Reform:												
Estimated Budget Authority	120	280	380	440	480	360	210	120	80	60	1,700	2,530
Estimated Outlays	120	280	380	440	480	360	210	120	80	60	1,700	2,530
Title II—NARAB Reform:												
Estimated Budget Authority	1	2	55	56	58	60	63	66	68	68	172	497
Estimated Outlays	1	1	49	56	58	60	63	65	69	69	165	491
Total Changes in Direct Spending:												
Estimated Budget Authority	121	282	435	496	538	420	273	186	148	128	1,873	3,027
Estimated Outlays	121	281	429	496	538	420	273	186	148	128	1,865	3,020
CHANGES IN REVENUES												
Title I—TRIA Reform	0	40	100	160	220	290	310	300	300	300	520	2,020
Title II—NARAB Reform	1	2	55	56	58	60	63	65	69	69	172	497
Total Changes in Revenues	1	42	155	216	278	350	373	366	368	368	693	2,518
NET INCREASE OR DECREASE (−) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Effect on the Deficit	120	239	274	280	260	70	−100	−180	−220	−240	1,173	503

Notes: TRIA = Terrorism Risk Insurance Act; NARAB = National Association of Registered Agents and Brokers.
Components may not sum to totals because of rounding.

[a] CBO also estimates that implementing H.R. 4871 would increase discretionary costs by $2 million over the 2015–2019 period.

Basis of estimate for Title I (TRIA): Title I would extend the TRIA program for five years, through December 31, 2019. CBO estimates that enacting the extension would increase direct spending by $2.5 billion and revenues by $2.0 billion over the 2015–2024 period. While this estimate reflects CBO's best judgment on the basis of available information, the cost of the TRIA program is a function of inherently unpredictable future terrorist attacks. As such, actual costs are likely to vary significantly from the estimated amounts. Such costs could be either higher or lower than the expected-value estimates provided for each year.

Terrorism Risk Insurance Act under current law

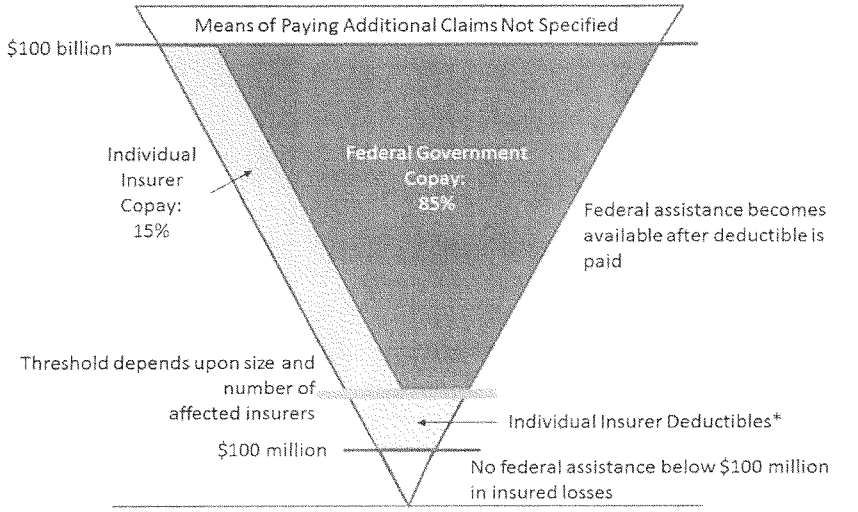
The Terrorism Risk Insurance Act provides financial assistance to commercial property and casualty insurers for losses above certain thresholds (illustrated in Figure 1 on the next page) caused by terrorist attacks by individuals acting on behalf of foreign or domestic interests. For such assistance to be provided, the Secretary of the Treasury must certify that a terrorist attack has occurred in the United States or other specified locations. TRIA is set to expire on December 31, 2014.

TRIA does not require commercial property and casualty insurance policies to cover losses from terrorist attacks involving nuclear, biological, chemical, or radioactive (NBCR) materials. If, however, an insurer and a policyholder choose to include losses from terrorist attacks involving NBCR materials in such a policy, TRIA would cover a portion of the losses resulting from such attacks.

For the Secretary of the Treasury to certify a terrorist attack, insured damages resulting from the attack must exceed $5 million. Financial assistance becomes available to insurers suffering losses from a certified attack once the insurers suffering losses have aggregate insured losses from an attack that exceed $100 million. Once that threshold is met, insurance companies that suffer losses are responsible for paying claims up to a deductible amount that equals 20 percent of the premiums they collected for certain lines of insurance in the calendar year preceding a certified attack. The total amount of deductibles paid by insurers would depend on the amount of losses from an attack and the particular insurers involved.

After meeting their individual deductibles for damage claims, insurers that suffered losses and the federal government would each pay a portion of the losses above the deductible (in 2014, the federal government would pay 85 percent of insured losses and individual insurers would pay 15 percent) up to total losses of as much as $100 billion. The law does not specify how any claims above the $100 billion cap would be paid.

Figure 1. Loss-sharing Under Terrorism Risk Insurance Act (TRIA)



Notes: Diagram not drawn to scale.
* Deductible = 20% of each insurer's direct earned premiums in the previous year for TRIA-covered insurance lines.

The Secretary of the Treasury is authorized to recover payments made by the federal government through taxes in the form of surcharges paid by all purchasers of commercial property and casualty insurance. The Secretary is required to recoup any federal payments made to cover losses, but only if those recoveries plus other amounts paid by directly affected insurers do not exceed $27.5 billion—known as the retention amount. If insured losses from a terrorist attack are large enough that insurers pay more than the industry retention amount, the Secretary would not be required to recoup any federal payments. The program provides the Secretary with authority, however, to recover federal payments in that instance after considering the ultimate cost to taxpayers, economic conditions, and the affordability of commercial insurance.

Modifications to TRIA under H.R. 4871

H.R. 4871 would extend TRIA for five years, through December 31, 2019. The bill also would make changes in program parameters that would increase the share of insured losses paid, in certain instances, by private insurers in the event of an attack.

The bill would make changes to the program trigger, that is, the level of aggregate insured losses from a certified attack that must be incurred before insurers would become eligible for federal assistance. For losses resulting from an attack using nuclear, biological, chemical or radiological (NBCR) materials, the current-law level, $100 million, would be retained for the term of the program. For losses incurred from an attack using conventional (or non-NBCR) materials, however, the trigger would increase incrementally from $100 million in calendar year 2015 to $500 million in calendar year 2019, the last year the program would be in effect under H.R. 4871.

As under current law, an insurer suffering losses as a result of a certified attack would pay claims up to a specified deductible.

The bill would retain the same deductible limits as in current law: 20-percent of certain premiums collected in the year preceding an attack.

H.R. 4871 also would continue the payment-sharing process that exists under current law. Affected insurers and the federal government would each pay a portion of the losses over the deductibles up to the $100 billion limit for the program. However, the bill would establish different sharing rates for losses depending on the materials used in the attack. Currently, the federal government would cover 85 percent of covered losses above the deductible. Under the bill, in the case of an NBCR attack, the federal government's share would remain at 85 percent of covered losses through the expiration of the program. In the case of an attack using conventional materials, however, that rate would decrease incrementally from 85 percent of covered losses in calendar year 2015 to 80 percent of covered losses in calendar year 2019.

Finally, H.R. 4871 would change the industry retention amount the limit used to calculate the amount of federal spending that would be recovered from policyholders—from a flat amount, $27 billion in 2015, to an amount equal to the sum of the deductibles for all insurers participating in the program during the year of the loss. (CBO estimates that amount would be about $44 billion in 2016.)

Direct spending for TRIA

By extending financial assistance to certain commercial insurers for losses from future acts of terrorism against insured private property, enacting H.R. 4871 would expose the federal government to potentially large liabilities for five more years (2015 through 2019). For any particular year, the amount of insured damage caused by terrorists could range from zero to many billions of dollars. CBO's estimate of the cost of this program reflects how much, on average, the government could be expected to pay to insurers and recover from the industry over the 2015–2024 period.

The following sections describe our method for estimating the expected value of financial assistance under the bill and explain how we convert that cost to estimates of annual federal expenditures.

Estimating the Expected Cost of Federal Assistance. For this estimate, CBO discussed the process of estimating insured losses with industry actuaries and reviewed models used by firms to set premiums for the terrorism component of property and casualty insurance that they offer. State insurance regulators generally require such premiums to be grounded in a widely accepted model of expected losses from covered events. After the terrorist attacks on September 11, 2001, the insurance industry began efforts to set premiums for insurance coverage for terrorist events using such models.

Although estimating losses associated with terrorist events is difficult because of the lack of meaningful historical data, the insurance industry has experience setting premiums for other catastrophic events namely, natural disasters. Setting premiums for hurricanes and earthquakes, for example, involves determining areas that could sustain damage, the value of the losses that could result from various types of events with different levels of severity, and the frequency of such events.

Similarly, estimating premiums for losses resulting from terrorist attacks involves judgments regarding potential targets and the frequency of potential attacks. Because there is a very limited history of terrorist attacks in the United States, many of the parameters needed by the insurance industry to set premiums are based on expert opinion regarding terrorist activities and capabilities as well as information about attempted attacks that were not successful.

Estimating Potential Insured Losses. Based on discussions with insurers and information provided by the insurance industry, CBO estimates that the expected or average annual loss subject to TRIA coverage under the bill would be about $2.1 billion (in 2014 dollars); of that amount, $1.5 billion would account for losses caused by attacks using conventional materials and $650 million would be for losses caused by attacks using NBCR materials. This estimate incorporates industry expectations of the probabilities of terrorist attacks, encompassing the possibility of attacks that result in enormous loss of life and property damage, as well as a significant likelihood that no such attacks would occur in any given year. This estimate also reflects our expectation that some portion of losses from terrorism would not be covered by TRIA because some policyholders choose not to purchase insurance coverage for terrorism risks.

CBO's estimate incorporates an expectation that, in most years, losses from terrorist attacks covered by TRIA would cost significantly less than $2.1 billion. We expect that there is a significant chance that no terrorist attacks covered by TRIA would occur in a given year. Since enactment of TRIA, no covered events have occurred, though several attempts were prevented by law enforcement and other security measures. Although the risk of a terrorist attack with many lives lost and substantial property damage still remains, based on industry models, CBO assumes for this estimate that attacks causing losses similar in scale to those sustained on September 11, 2011, in New York City are likely to occur very rarely, if at all.[3]

Under current law, insurers are not required to offer coverage for attacks using NBCR materials, although if an insurer and a policyholder voluntarily agree to include this coverage in a property and casualty policy, TRIA would cover some of those losses. While the bill would not require property and casualty policies to include coverage for losses resulting from attacks using NBCR materials, information provided by the industry indicates that a small amount of coverage is currently in place for such losses. Thus, under the bill, the government's exposure to losses resulting from terrorist attacks involving NBCR materials would likewise be small compared with losses resulting from attacks using conventional materials. The only exception is in the workers' compensation insurance line, where no exclusions for specific causes are allowed.

Determining the Federal Share of Insured Losses. Federal payments under TRIA would be lower than the total expected losses from terrorist attacks because TRIA places limits on eligibility for federal assistance and requires that insurers that suffer losses as

[3] Based on information from the Insurance Information Institute, we estimate that industry losses on September 11, 2001, totaled about $44 billion (in 2014 dollars), including about $35 billion in losses that would have qualified for coverage under TRIA had the law been in effect on that date.

the result of a certified attack pay a share of covered losses. CBO took account of those requirements to estimate federal spending for any given amount of insured losses from future terrorist attacks.

- *Upper and lower limits for federal assistance.* Because federal payments under TRIA would be capped at $100 billion per event, we excluded costs for potential losses above that level.
- Similarly, H.R. 4871 would set a minimum level of aggregate insured losses that must be incurred before insurers become eligible for financial assistance. Those minimum levels would depend on the materials used in a certified attack. If conventional materials were used, the minimum level of losses would increase each year of the authorization from $100 million in 2015 to $500 million in 2019. For attacks using NBCR materials, that minimum level would remain at $100 million each year. For this estimate, we excluded losses below the appropriate minimum level as well.
- *Insurers' deductibles.* Before the federal government would make any payments under TRIA, an insurer incurring losses would first pay claims up to a deductible amount. H.R. 4871 would maintain the current-law deductible of 20 percent of premiums on certain property and casualty lines collected by affected insurers in the calendar year preceding an attack.

The total amount of the deductibles could range from a few million dollars to several billion dollars, depending on how many insurers provide coverage for losses resulting from a particular terrorist attack. In addition, the value of each individual insurer's deductible would vary greatly across the industry. For this estimate, CBO considered a range of possibilities regarding the share of federal assistance, using industry data to estimate insurers' deductibles under the bill. The range encompasses the possibility that an attack would affect only a few insurers with relatively small deductibles or several insurers with relatively large deductibles. CBO expects that insured losses below a few hundred million dollars for attacks using either conventional or NBCR materials would most likely be covered by insurers' deductibles, and therefore, would not result in a significant increase in federal spending.

- *Shared payments if losses exceed insurers' deductibles.* Once affected insurers have paid claims up to their deductibles, the federal government would share a portion of the losses above the deductibles. Under H.R. 4871, the federal government's share of claims above the deductible for losses from conventional attacks would fall from the current level of 85 percent of total losses to 80 percent, up to the $100 billion limit covered by the program, by 2019. For losses incurred in attacks using NBCR materials, the federal government's share of amounts above the deductible would remain at 85 percent, up to the $100 billion limit, for the full term of the program.

After taking into account minimum and maximum limits, deductibles, and the insurers' share of payments above the deductibles, CBO estimates that enacting title I would increase direct spending in total by $2.8 billion (but a portion of that estimated spending would occur after 2024, as noted below). That amount translates into an average of roughly $560 million for each of the five years for which the program would be extended. Actual

spending would be spread out over many years, and those costs would be recovered through surcharges imposed on policyholders (which are discussed in the section on revenues below).

Taken another way, if the Secretary of the Treasury were authorized to collect premiums for the program, CBO estimates that the Secretary would need to charge, on average, about $560 million per year (for five years) to offset the government's projected losses under the bill. The bill, however, would not authorize any charges prior to a certified attack. The bill also does not contain an explicit requirement for the Secretary to recoup interest that would accrue on amounts outstanding.

Timing of Federal Spending. To estimate federal spending for this program on a cash basis, CBO used information from insurance experts on historical rates of payment for property and casualty claims following catastrophic events. Based on such information, CBO estimates that outlays under title I would total about $2.5 billion over the 2015–2024 period and about $250 million after 2024. In general, following a catastrophic loss, it takes many years to complete insurance payments because of disputes over the value of covered losses by property and business owners. Under this bill, we expect that financial assistance to insurers would be paid over several years, with most of the spending occurring within the first five years following a certified event.

Revenues for TRIA

Enacting title I would affect federal revenues by authorizing the Secretary of the Treasury to impose taxes in the form of surcharges on all holders of property and casualty insurance policies to recover the amount of federal payments made under the program, with certain limitations. CBO estimates that this provision would increase revenues by $2.0 billion over the 2015–2024 period and an additional $1 billion after 2024.

Surcharges. If a terrorist attack were to trigger government payment of financial assistance, the bill would require the Secretary of the Treasury to recoup some or all of that cost through taxes paid by purchasers of commercial property and casualty insurance. The calculation of the amount to be recouped would continue as under current law for the first year of the reauthorization (2015). Starting in calendar year 2016, the bill would direct the Secretary to recoup all federal assistance paid to affected insurers up the industry retention amount, which would be set at the deductible amount for all insurers participating in the program (about $44 billion in 2016, CBO estimates.)

If insured losses from a terrorist attack are large enough that federal assistance exceeds the industry retention amount, the Secretary would not be required to recoup that excess federal assistance—although the Secretary could choose to do so. In that case, the amount the Secretary would collect would be based on economic conditions, the affordability of commercial insurance, and the cost to taxpayers of no additional recoupment. CBO expects that the Secretary would not seek to recover financial assistance provided above the industry retention amount and would not collect interest on outstanding amounts.

The recoupment of financial assistance would be accomplished by assessing a surcharge on premiums for property and casualty in-

surance policies and would apply to policies in force following a terrorist attack that necessitated federal assistance. The amount to be recovered would be 150 percent of the difference between the industry retention amount and the Secretary's estimate of the total amount paid by insurers for deductibles and their share of payments over the deductibles. CBO estimates that surcharges resulting from a five-year extension of TRIA would total, on an expected-value basis, $2.8 billion over the 2015–2024 period.

Timing and Tax Offset. The bill would direct the Secretary to begin collection of the surcharge in cases where a surcharge would be imposed—no later than 18 months after an attack. CBO assumes that such surcharges would be fully collected over 10 years, with collections starting in the first year after a certified attack.

The gross revenue collections would be partially offset by a loss of revenues from income and payroll taxes. Consistent with standard procedures for estimating the revenue impact of indirect business taxes, CBO reduced the gross revenue impact of the insurance surcharges to reflect offsetting effects on income and payroll tax receipts. On balance, CBO estimates that enacting title I would increase revenues by a total of $2.0 billion over the 2015–2024 period, net of income and payroll tax offsets.

Spending subject to appropriation for TRIA

Title I also would direct several agencies to prepare reports on various issues related to the TRIA program. Spending to complete those reports would be subject to the availability of appropriated funds. Specifically:

- The Congressional Budget Office and the Office of Management and Budget each would be required to determine the feasibility of applying accrual accounting concepts to budgeting for the costs of TRIA and other insurance programs administered by the federal government; and
- The Government Accountability Office would be required to assess the viability of collecting upfront premiums from insurers that participate in the TRIA program and creating a reserve fund under the program where participating insurers would be able to dedicate capital for terrorism losses.

CBO estimates that implementing the new reporting requirements would cost about $2 million over the 2015–2019 period to complete the required studies and reports.

Basis of estimate for Title II (NARAB): CBO believes that cash flows related to the National Association of Registered Agents and Brokers that would be created under the bill should be recorded in the budget as revenues and direct spending because the association's authority would exist only through a preemption of states' power to regulate the licensing of insurance producers. This preemption would stem from an exercise of the sovereign power of the federal government.

Direct spending for NARAB

Under H.R. 4871, the NARAB would be responsible for establishing eligibility requirements for membership in the association, evaluating applicants' eligibility for membership, and managing license requirements for members. Title II would direct the NARAB to establish separate classes of membership for businesses and in-

dividuals and require members to meet certain continuing education requirements.

H.R. 4871 would authorize the NARAB to create a database to centralize information about regulatory actions taken by states regarding insurance producers. The bill would allow two years from the date of enactment for the association to set up operations. During that time, the NARAB would be authorized to borrow funds from the public to cover start-up costs, which would be repaid from membership fees.

Based on information about the cost to operate similar professional organizations, CBO estimates that enacting title II would increase direct spending by $491 million over the 2015–2024 period to cover start-up, staffing, and operating costs of the organization.

Revenues for NARAB

H.R. 4871 would authorize the NARAB to charge fees to members to cover the cost of operating the organization. CBO assumes that the NARAB would use its authority to borrow funds to organize and begin its operations before membership fees could be collected, but revenues would keep pace with outlays beginning in 2015. CBO estimates that collecting those fees would increase revenues by $497 million over the 2015–2024 period.

Spending subject to appropriation for NARAB

Title II would require the Department of Justice to establish regulations to implement a requirement that members of NARAB undergo a background check conducted by the Attorney General. The NARAB would be authorized to collect fees, which would be remitted to the Department of Justice, for those background checks. We expect that those fees would be classified as offsetting collections and would be credited to the salaries and expenses appropriation of the Federal Bureau of Investigation (FBI). This is the same budgetary treatment accorded fees currently collected by the FBI for similar purposes.

We estimate that collecting and spending the fees for background checks authorized under title II would have no significant net effect on discretionary spending in any year.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4871, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON JUNE 20, 2014

	By fiscal year, in millions of dollars—												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014–2019	2014–2024
	NET INCREASE OR DECREASE (−) IN THE DEFICIT												
Statutory Pay-As-You-Go Effect	0	120	239	274	280	260	70	−100	−180	−220	−240	1,173	503
Memorandum:													
Changes in Outlays	0	121	281	429	496	538	420	273	186	148	128	1,865	3,020
Changes in Revenues	0	1	42	155	216	278	350	373	366	368	368	693	2,518

Intergovernmental and private-sector impact: H.R. 4871 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act, by extending and expanding requirements contained in the Terrorism Risk Insurance Act. Those mandates would:

- Require property and casualty insurers to offer terrorism insurance;
- Require property and casualty insurers to collect and report information about terrorism insurance policies; and
- Require, under certain circumstances, property and casualty insurers to collect surcharges from policyholders in amounts large enough to pay assessments to the federal government.

The bill also would impose intergovernmental mandates by preempting state laws and by requiring state insurance regulators to report on the results of insurance investigations.

State, local, or tribal governments could be required to pay a surcharge as purchasers of property and casualty insurance, but CBO estimates that the aggregate costs to public entities of complying with all of the mandates contained in the bill would fall below the annual threshold established in UMRA ($76 million in 2014 for intergovernmental mandates, adjusted annually for inflation). CBO estimates that the aggregate cost to private insurers and policyholders to comply with the mandates would exceed the annual threshold established in UMRA ($152 million in 2014 for private-sector mandates, adjusted annually for inflation) beginning in 2018.

Mandates that apply to public and private entities

Requirement to Offer Insurance. Current law (through 2014) requires that insurance companies offer terrorism insurance as a part of their property and casualty policies. Insurers may set their own premium rates, and policyholders can choose whether to purchase such insurance. The bill would extend the requirement to offer terrorism insurance through 2019. According to industry representatives, the cost to public and private insurers of continuing to offer such insurance would be minimal.

Requirement to Collect and Report Information. The bill would require property and casualty insurers to collect and report information to the federal government regarding their insurance coverage for terrorism losses (including information about lines of insurance with exposure to such losses; premiums earned on such coverage; geographical location of exposures; and pricing of such coverage). Based on information from insurers, CBO estimates that the cost to public and private entities of complying with the mandate would amount to tens of millions of dollars annually.

Repayment of Assistance. Insurers that offer terrorism insurance would receive financial assistance to cover losses under some conditions in the event of a certified terrorist attack. The bill would extend and expand the requirement that the federal government recoup the costs of such financial assistance through assessments on the insurers and surcharges on purchasers of property and casualty insurance. On average, policyholders would be required to pay a higher amount in surcharges under the bill in the event of a certified terrorist attack as compared to the amount they would have

to pay under current requirements. The requirement to repay the federal government would be both an intergovernmental and a private-sector mandate under UMRA since state and local governments and private entities are both providers and purchasers of insurance.

The cost to insurers to comply with the mandate to administer the surcharges on policyholders and remit the amounts collected to the federal government would be small.

CBO estimates that insurer surcharges would total about $715 million over the 2015–2019 period. That amount is equal to federal benefits paid over those years plus 50 percent of those benefits (see the section on Revenues for TRIA, above, for further discussion). Based on information about the purchase of various types of insurance by public entities, CBO judges that state, local, and tribal governments comprise a small portion of the total market for property and casualty insurance. To the extent that state, local, or tribal governments would be required to pay a surcharge as policyholders, CBO estimates that the aggregate cost to public entities of complying with the mandate would total about $60 million over the 2015–2019 period. CBO estimates that the aggregate amount of surcharges paid by private entities would total about $655 million over the 2015–2019 period.

Mandates that apply to public entities only

H.R. 4871 would prohibit states from requiring producers that are members of the National Association of Registered Agents and Brokers to register with secretaries of state, meet state licensing requirements, complete education requirements, or be bonded. The bill also would require state insurance regulators to notify the NARAB of the results of complaint investigations.

Under current law, about 10 states require nonresident producers to register with their respective secretaries of state, and to pay fees. The bill would prohibit states from imposing this requirement and from collecting such fees. Based on the number of producers that are currently registered in states that impose that requirement, CBO estimates that the states would lose less than $1 million in fee revenue in 2017 and each year thereafter. We also estimates that the cost to states for the licensing, education, bonding, and notification requirements would be minimal. The bill also would preempt some state laws that regulate insurance. Based on information from state insurance regulators, CBO estimates that the cost to states of extending those preemptions would be minimal.

Previous CBO estimates: On June 24, 2014, CBO transmitted a cost estimate for S. 2244, the Terrorism Risk Insurance Program Reauthorization Act of 2014, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on June 23, 2014. Title I of H.R. 4817 and S. 2244 would extend authorization for TRIA for a different length of time and change the program's parameters in different ways; the CBO cost estimates reflect the differences between the two bills.

On June 13, 2013, CBO transmitted a cost estimate for S. 534, the National Association of Registered Agents and Brokers Reform Act of 2013, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on June 6, 2013. The provisions

of title II of H.R. 4817 and S. 534 are similar, as are the CBO cost estimates.

Estimate prepared by: Federal costs: Susan Willie, David Torregrosa, Perry Beider, and Kevin Perese; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Amy Petz and Tristan Hanon.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 4871 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee states that no provision of H.R. 4871 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee states that H.R. 4871 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This bill may be cited as the "TRIA Reform Act of 2014."

TITLE I—TRIA REFORM

Section 101. References

Clarifies that all amendments contained in this bill refer to the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note).

Section 102. Extension of program

Extends the Terrorism Risk Insurance Program for five years through December 31, 2019.

Section 103. Certification of acts of terrorism

Beginning on January 1, 2015, requires the Treasury Secretary, when deciding whether to certify an "act of terrorism," to consult with the Secretary of Homeland Security and the Attorney General of the United States. Requires the Secretary to issue a preliminary certification within 15 days after an event followed by a final determination within 90 days to certify an event as an act of terrorism. This section also removes the $5 million threshold for certifying acts of terror.

Section 104. Separate treatment of conventional terrorism from NBCR Terrorism

- Bifurcation of the definition of "act of terrorism"

Beginning on January 1, 2016, for each event certified as an act of terrorism, the Treasury Secretary shall include a determination whether the event does or does not involve Nuclear, Biological, Chemical, or Radiological (NBCR) terrorism.

- Federal Share of Insured Losses (Co-Pay)

Beginning on January 1, 2016, annually reduces the federal share of payments for non-NBCR acts of terrorism to 80 percent of insured losses by 2019. For acts involving NBCR terrorism, the federal share of payments would remain at 85 percent of insured losses.

- Program Trigger

Beginning January 1, 2016, increases the program trigger for non-NBCR acts of terrorism by $100 million per year up to $500 million by January 1, 2019. For acts involving NBCR terrorism, the program trigger would remain at $100 million. For purposes of determining if industry losses have exceeded the trigger, the Treasury Secretary shall not include acts resulting in $50 million or less in insured losses.

Section 105. Availability of coverage

Requires the Treasury Secretary to promulgate regulations to allow small insurers to voluntarily opt-out of TRIA's mandatory availability requirement if their state regulator determines continued participation by such insurer would create a financial hardship or that it would be financially infeasible for the insurer to provide coverage for insured losses.

Section 106. Terrorism loss risk-spreading premiums amount

Beginning on January 1, 2016, increases the amount that the Treasury Secretary is required to collect through terrorism loss risk-spreading premiums from 133 to 150 percent of the federal payments made subject to mandatory recoupment.

Section 107. Increase of aggregate retention amount

Beginning on January 1, 2016, increases the insurance marketplace aggregate retention amount to equal the sum of insurer deductibles for the preceding program year for all participating insurers. Clarifies that the amount of federal payments subject to

mandatory recoupment shall be equal to the lesser of the total of federal payments made or the insurance marketplace aggregate retention amount.

Section 108. Terrorism loss risk-spreading premium

Beginning on January 1, 2016, requires the Treasury Secretary when establishing terrorism loss risk-spreading premiums, to begin collecting such premiums within 18 months after the occurrence of the certified act for which they are imposed and, in the case of premiums imposed on a discretionary basis, limits the premium to not less than 3 percent of the annual premiums charged for property and casualty insurance coverage.

Section 109. Risk-sharing mechanism

Asserts that Congress finds it is desirable to encourage the growth of nongovernmental, private market reinsurance capacity for terrorism risks, and requires the Treasury Secretary to establish an Advisory Committee to encourage the creation and development of private market risk-sharing mechanisms.

Section 110. Reporting of terrorism insurance data

Beginning on January 1, 2016, the Treasury Secretary shall collect the following information: (1) lines of insurance with exposure to terrorism; (2) premiums earned on terrorism risk coverage; (3) the geographical location of risk exposure; (4) the pricing of terrorism risk insurance; (5) the take-up rate of terrorism risk insurance; (6) the amount of private reinsurance for acts of terrorism purchased; and (7) such other data as the Secretary deems appropriate. Requires the Secretary to collect the data in a manner that does not reveal proprietary information of the participating insurers, and to provide the House and Senate Committees of jurisdiction an analysis of such data on an annual basis.

Section 111. Delivery of notice to policyholders

Requires insurers to issue disclosure notices to policyholders only at the time of offer and renewal of the policy rather than at the time of offer, purchase, and renewal, as required under current law.

Section 112. Definition of control

Clarifies definition of "control" for certain reciprocal insurers where the establishment of an attorney-in-fact relationship could currently be misinterpreted by Treasury and result in misallocated deductible, liability cap, recoupment, and liability.

Section 113. Annual study of small insurer market competitiveness

Requires the Treasury Secretary to conduct an annual study of small insurers participating in the TRIA program to identify any competitive challenges they may face in the terrorism risk insurance marketplace.

Section 114. CBO and OMB studies regarding budgeting for costs of federal insurance programs

Requires the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) to each conduct a study on the

application of accrual accounting concepts to budgeting for the costs of TRIA and other federal insurance programs, and report their findings to the House and Senate Committees of jurisdiction.

Section 115. GAO study on upfront premiums and capital reserve fund

Requires the Government Accountability Office (GAO) to study the viability of the Federal government assessing and collecting upfront premiums from insurers for terrorism reinsurance coverage or requiring insurers to create capital reserve funds for terrorism-related risks. This study would also provide a comparative analysis of the types of systems implemented in other countries that collect or assess premiums or create capital reserve funds.

TITLE II—NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS REFORM

Section 201. Short title

Provides that this title may be referred to as the "National Association of Registered Agents and Brokers Reform Act of 2014.

Section 202. Reestablishment of the National Association of Registered Agents and Brokers

Amends the Gramm-Leach-Bliley Act to repeal the contingent conditions preventing the establishment of the National Association of Registered Agents and Brokers (NARAB) and establishes the NARAB.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TERRORISM RISK INSURANCE ACT OF 2002

* * * * * * *

TITLE I—TERRORISM INSURANCE PROGRAM

* * * * * * *

SEC. 102. DEFINITIONS.

In this title, the following definitions shall apply:

(1) ACT OF TERRORISM.—

(A) CERTIFICATION.—The term "act of terrorism" means any act that is certified by the Secretary, in [concurrence with the Secretary of State] *consultation with the Secretary of Homeland Security*, and the Attorney General of the United States—

(i) * * *

* * * * * * *

(B) LIMITATION.—No act shall be certified by the Secretary as an act of [terrorism if—]

[(i) the act] *terrorism if the act* is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation[; or].

[(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.]

(C) TIMING OF CERTIFICATION.—

(i) PRELIMINARY CERTIFICATION NOTICE.—The Secretary shall issue a preliminary certification notice indicating whether an act is expected to be a certified act of terrorism not later than 15 days after—

(I) the date of the occurrence of a potential act of terrorism; or

(II) the receipt of a petition seeking a preliminary certification decision submitted by an insurer having an in-force policy or policies that could be affected by a certification decision.

(ii) FINAL CERTIFICATION NOTICE.—Not later than 90 days after the date of the occurrence of a potential act of terrorism or the receipt of a petition submitted to the Secretary pursuant to clause (i)(II), the Secretary shall issue a final certification notice indicating whether an act is a certified act of terrorism for purposes of this Act.

(iii) RULE OF CONSTRUCTION.—Failure to issue a preliminary certification notice under clause (i) shall not prevent the Secretary from issuing a final certification notice under clause (ii).

(D) ACT OF NBCR TERRORISM.—Each certification of an act of terrorism under subparagraph (A) shall include a determination of whether such act involves NBCR terrorism.

[(C)] *(E)* DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

(F) FAILURE TO MAKE DETERMINATION.—If the Secretary does not certify, or make a determination not to certify, an act as an act of terrorism before the expiration of the 90-day period beginning on the occurrence of such act, such act shall be treated for purposes of this Act as having been determined by the Secretary not to be an act of terrorism and such determination shall be final and shall not be subject to judicial review.

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

(3) CONTROL.—[An entity has]

(A) IN GENERAL.— An entity has "control" over another entity, if—

[(A)] *(i)* the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other entity;

[(B)] *(ii)* the entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

[(C)] *(iii)* the Secretary determines, after notice and opportunity for hearing, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

(B) RULE OF CONSTRUCTION.—An entity, including any affiliate thereof, does not have control over another entity if, as of the date of the enactment of the TRIA Reform Act of 2014, the entity is acting as an attorney-in-fact, as defined by the Secretary, for the other entity and such other entity is a reciprocal insurer, provided that the entity is not, for reasons other than the attorney-in-fact relationship, defined as having control under subparagraph (A).

* * * * * * *

(9) NBCR TERRORISM.—Notwithstanding paragraph (1), the term "NBCR terrorism" means an act of terrorism to the extent that the insured losses involve, regardless of any other cause or event that contributes concurrently or in any sequence to such insurance loss—

(A) an act of terrorism that is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation, or radioactive contamination;

(B) the release of radioactive material, and it appears that one purpose of the act of terrorism was to release such material;

(C) an act of terrorism that is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical material; or

(D) the release of pathogenic or poisonous biological or chemical material, and it appears that one purpose of the act of terrorism was to release such material.

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

[(10)] *(11)* PROGRAM.—The term "Program" means the Terrorism Insurance Program established by this title.

[(11)] *(12)* PROGRAM YEARS.—

(A) * * *

* * * * * * *

(G) ADDITIONAL PROGRAM YEARS.—Except when used as provided in subparagraphs (B) through (F), the term "Program Year" means, as the context requires, any of Program Year 1, Program Year 2, Program Year 3, Program

Year 4, Program Year 5, or any of calendar years 2008 through [2014] *2019*.

[(12)] *(13)* PROPERTY AND CASUALTY INSURANCE.—The term "property and casualty insurance"—

(A) * * *

* * * * * * *

[(13)] *(14)* SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

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

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

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

(A) * * *

* * * * * * *

SEC. 103. TERRORISM INSURANCE PROGRAM.

(a) * * *

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

(1) * * *

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

(A) * * *

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

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

* * * * * * *

[(c) MANDATORY AVAILABILITY.—During each Program Year, each entity that meets the definition of an insurer under section 102—

[(1) shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

[(2) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.]

(c) MANDATORY AVAILABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), during each Program Year, each entity that meets the definition of an insurer under section 102 shall make available—

(A) in all of its property and casualty insurance policies, coverage for insured losses; and

(B) property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(2) NO MANDATORY AVAILABILITY FOR SMALL INSURERS.—The Secretary shall provide, by regulation and in consultation with State insurance regulatory authorities, that paragraph (1) shall not apply for a Program Year with respect to any small insurer (as such term is defined in such regulations by the Secretary) that, at the option of the insurer, makes a request for such inapplicability for such Program Year to the appropriate State insurance regulatory authority for the State in which such insurer is domiciled and is determined by such State insurance regulatory authority to meet such requirements for financial hardship or financial infeasibility of providing coverage for insured losses as the Secretary shall establish in such regulations. The insurer shall provide notice, in a manner satisfactory to the State insurance regulatory authority, informing affected prospective and current policyholders whether such coverage is not provided by the insurer. This paragraph may not be construed to require any State insurance regulatory authority to undertake making determinations under this paragraph.

* * * * * * *

(e) INSURED LOSS SHARED COMPENSATION.—

(1) FEDERAL SHARE.—

(A) IN GENERAL.— [The Federal share] *Subject to subparagraphs (B) and (C), the Federal share* of compensation under the Program to be paid by the Secretary for insured losses of [an insurer during the Transition Period] *an insurer—*

(i) during the Transition period, and each Program Year through Program Year 4 shall be equal to 90 percent, and during Program Year 5 and each Program Year thereafter *through the Program Year ending on December 31, 2015,* shall be equal to 85 percent, of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Transition Period or such Program Year[.]*; and*

(ii) shall be equal to—

(I) except as provided in subclause (II)—

(aa) during the Program Year beginning on January 1, 2016, 84 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Program Year;

(bb) during the Program Year beginning on January 1, 2017, 83 percent of that portion of the amount of such insured losses that exceeds

the applicable insurer deductible required to be paid during such Program Year;

(cc) during the Program Year beginning on January 1, 2018, 82 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Program Year; and

(dd) during the Program Year beginning on January 1, 2019, 80 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Program Year; and

(II) in the case of insured losses resulting from acts of NBCR terrorism, during the Program Year beginning on January 1, 2016, and each Program Year thereafter, 85 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Program Year.

(B) PROGRAM TRIGGER.—In the case of [a certified act] *certified acts* of terrorism occurring after March 31, 2006, no compensation shall be paid by the Secretary under subsection (a), unless the aggregate industry insured losses resulting from [such certified act] *such certified acts* of terrorism exceed—

(i) $50,000,000, with respect to such insured losses occurring in Program Year 4; [or]

(ii) $100,000,000, with respect to such insured losses occurring in Program Year 5 and any Program Year thereafter[.] *through the Program Year ending on December 31, 2015; or*

(iii)(I) except as provided in subclause (II)—

(aa) $200,000,000, with respect to such insured losses occurring in the Program Year beginning on January 1, 2016;

(bb) $300,000,000, with respect to such insured losses occurring in the Program Year beginning on January 1, 2017;

(cc) $400,000,000, with respect to such insured losses occurring in the Program Year beginning on January 1, 2018; and

(dd) $500,000,000, with respect to such insured losses occurring in the Program Year beginning on January 1, 2019; and

(II) in the case of an act of NBCR terrorism, $100,000,000, with respect to such insured losses occurring in the Program Year beginning on January 1, 2016, or any Program Year thereafter.

In determining the aggregate industry insured losses resulting from certified acts of terrorism for purposes of this subparagraph, the Secretary shall not consider any act of terrorism resulting, in the aggregate, in less than $50,000,000 in insured losses.

* * * * * * *

(6) INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.—For purposes of paragraph (7), the insurance marketplace aggregate retention amount shall be—

(A) * * *

* * * * * * *

(D) for Program Year 4, the lesser of—

(i) * * *

(ii) the aggregate amount, for all insurers, of insured losses during such Program Year; [and]

(E) for Program Year 5 and any Program Year thereafter *through the Program Year ending on December 31, 2015*, the lesser of—

(i) * * *

(ii) the aggregate amount, for all insurers, of insured losses during such Program Year[.]*; and*

(F) for the Program Year beginning January 1, 2016, and each Program Year thereafter, the lesser of—

(i) the amount that is equal to the sum of the insurer deductibles for the Program Year for all insurers participating in the Program; and

(ii) the aggregate amount, for all insurers, of insured losses during such Program Year.

(7) RECOUPMENT OF FEDERAL SHARE.—

[(A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount for each of the periods referred to in subparagraphs (A) through (E) of paragraph (6) shall be the difference between—

[(i) the insurance marketplace aggregate retention amount under paragraph (6) for such period; and

[(ii) the aggregate amount, for all insurers, of insured losses during such period that are not compensated by the Federal Government because such losses—

[(I) are within the insurer deductible for the insurer subject to the losses; or

[(II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).

[(B) NO MANDATORY RECOUPMENT IF UNCOMPENSATED LOSSES EXCEED INSURANCE MARKETPLACE RETENTION.—Notwithstanding subparagraph (A), if the aggregate amount of uncompensated insured losses referred to in clause (ii) of such subparagraph for any period referred to in any of subparagraphs (A) through (E) of paragraph (6) is greater than the insurance marketplace aggregate retention amount under paragraph (6) for such period, the mandatory recoupment amount shall be $0.]

(A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount for each of the periods referred to in subparagraphs (A) through (F) of paragraph (6) shall be equal to the lesser of—

(i) the aggregate amount, for all insurers, of insured losses during such period that are compensated by the Federal Government pursuant to paragraph (1); or

(ii) the insurance marketplace aggregate retention amount under paragraph (6) for such period.

[(C)] *(B)* MANDATORY ESTABLISHMENT OF SURCHARGES TO RECOUP MANDATORY RECOUPMENT AMOUNT.—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers compensation) occurring during any of the periods referred to in any of [subparagraphs (A) through (E)] *subparagraphs (A) through (F)* of paragraph (6), terrorism loss risk-spreading premiums in an amount equal to [133 percent] *150 percent* of any mandatory recoupment amount for such period.

[(D)] *(C)* DISCRETIONARY RECOUPMENT OF REMAINDER OF FINANCIAL ASSISTANCE.—To the extent that the amount of Federal financial assistance provided exceeds any mandatory recoupment amount, the Secretary may recoup, through terrorism loss risk-spreading premiums, such additional amounts that the Secretary believes can be recouped, based on—

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

* * * * * * *

[(E)] *(D)* TIMING OF MANDATORY RECOUPMENT.—

(i) IN GENERAL.—If the Secretary is required to collect terrorism loss risk-spreading premiums under [subparagraph (C)] *subparagraph (B)*—

(I) * * *

* * * * * * *

(III) for any act of terrorism that occurs on or [after January 1, 2012] *before December 31, 2014*, the Secretary shall collect all required premiums by September 30, 2017.

[(F)] *(E)* NOTICE OF ESTIMATED LOSSES.—Not later than 90 days after the date of an act of terrorism, the Secretary shall publish an estimate of aggregate insured losses, which shall be used as the basis for determining whether mandatory recoupment will be required under this paragraph. Such estimate shall be updated as appropriate, and at least annually.

[(8) POLICY SURCHARGE FOR TERRORISM LOSS RISK-SPREADING PREMIUMS.—

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

[(i) be imposed as a policyholder premium surcharge on property and casualty insurance policies in force after the date of such establishment;

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

[(iii) be based on a percentage of the premium amount charged for property and casualty insurance coverage under the policy.

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

[(C) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium collected on a discretionary basis pursuant to paragraph (7)(D) may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for property and casualty insurance coverage under the policy.

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

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

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

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

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

[(ii) RECOUPMENT OF ADJUSTMENTS.—Any mandatory recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums, in accordance with the timing requirements of paragraph (7)(E).

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

(8) TERRORISM LOSS RISK-SPREADING PREMIUMS.—

(A) ESTABLISHMENT.—After an act of terrorism, the Secretary shall, to the extent provided in paragraph (7)(B), and may, to the extent provided in paragraph (7)(C), establish terrorism loss risk-spreading premiums, which shall be imposed as a policyholder premium surcharge on property and casualty insurance policies for all participating insurers in force after the date of such establishment.

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

(C) DETERMINATION OF PREMIUMS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall—

(i) impose such terrorism loss risk-spreading premiums beginning with such period of coverage during the year as the Secretary determines appropriate, but shall commence imposition of such premiums not later than 18 months after the occurrence of the act of terrorism for which such premiums are imposed;

(ii) base any terrorism loss risk-spreading premium on a percentage of the premium amount charged for property and casualty insurance coverage under the policy; and

(iii) take into consideration—

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

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

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

(D) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium collected on a discretionary basis pursuant to paragraph (7)(C) shall not be less than, on an annual basis, the amount equal to 3 percent of the premium charged for property and casualty insurance coverage under the policy.

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

(9) RISK-SHARING MECHANISMS.—

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

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

(i) encourage the creation and development of such risk-sharing mechanisms;

(ii) assist the Secretary and be available to administer such risk-sharing mechanisms; and

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

(C) MEMBERSHIP.—The Advisory Committee shall be composed of nine members who are directors, officers, or other employees of insurers, reinsurers, or capital market participants that are participating or that desire to participate in such mechanisms, and who are representative of the affected sectors of the insurance industry, including commercial property insurance, commercial casualty insurance, reinsurance, and alternative risk transfer industries.

* * * * * * *

SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

(a) * * *

* * * * * * *

(h) REPORTING OF TERRORISM INSURANCE DATA.—

(1) AUTHORITY.—During the Program Year beginning on January 1, 2016, and in each Program Year thereafter, the Secretary shall require insurers participating in the Program to submit to the Secretary such information regarding insurance coverage for terrorism losses of such insurers as the Secretary considers appropriate to analyze the effectiveness of the Program, which shall include information regarding—

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

(B) premiums earned on such coverage;

(C) geographical location of exposures;

(D) pricing of such coverage;

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

(F) the amount of private reinsurance for acts of terrorism purchased; and

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

(2) REPORTS.—Not later than 6 months after the termination of the Program Year beginning on January 1, 2016, and not later than 6 months after the termination of each Program Year thereafter, the Secretary shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that includes—

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

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

(C) an evaluation of whether any aspects of the Program have the effect of discouraging or impeding insurers from providing commercial property casualty insurance coverage or coverage for acts of terrorism;

(D) an evaluation of the impact of the Program on workers' compensation insurers;

(E) an evaluation of the impact on availability and affordability of terrorism insurance coverage and fiscal protection of the taxpayers of separate Federal treatment under

the Program for nuclear, biological, chemical, and radiological terrorism; and

(F) in the case of the data reported in paragraph (1)(B), an updated estimate of the total amount earned since the commencement of Program Year 1.

(3) PROTECTION OF DATA.—To the extent possible, the Secretary shall contract with an insurance statistical aggregator to collect the information described in paragraph (1), which shall keep any nonpublic information confidential and provide it to the Secretary in an aggregate form or in such other form or manner that does not permit identification of the insurer submitting such information.

(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (1) from an insurer, or affiliate of an insurer, the Secretary shall coordinate with the appropriate State insurance regulatory authorities or their representatives and any relevant government agency or publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, individually or collectively, such entities. If the Secretary determines that such data or information is available, and may be obtained in a timely matter, from such entities, the Secretary shall obtain the data or information from such entities. If the Secretary determines that such data or information is not so available, the Secretary may collect such data or information from an insurer and affiliates.

(5) CONFIDENTIALITY.—

(A) RETENTION OF PRIVILEGE.—The submission of any non-publicly available data and information to the Secretary and the sharing of any non-publicly available data with or by the Secretary among other Federal agencies, the State insurance regulatory authorities and their collective agents, or any other entities under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Secretary, regarding the privacy or confidentiality of any data or information in the possession of the source to the Secretary, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection.

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

(i) shall comply with applicable Federal law; and

(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including any privilege referred to in subparagraph (A) and the rules of any Federal or State court) to which the data or information is otherwise subject.

(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, including any exceptions thereunder, shall apply to any data or information submitted under this subsection to the Secretary by an insurer or affiliate of an insurer.

* * * * * * *

SEC. 108. TERMINATION OF PROGRAM.

(a) TERMINATION OF PROGRAM.—The Program shall terminate on [December 31, 2014] *December 31, 2019*.

* * * * * * *

(h) STUDY OF SMALL INSURER MARKET COMPETITIVENESS.—

(1) IN GENERAL.—The Secretary shall conduct an annual study of small insurers participating in the Program, and identify any competitive challenges small insurers face in the terrorism risk insurance marketplace, including—

(A) changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers;

(B) how the property and casualty insurance market for terrorism risk differs between small and large insurers, and whether such a difference exists within other perils;

(C) the impact of the Program's mandatory availability requirement under section 103(c) and the voluntary opt-out for small insurers;

(D) the effect of increasing the trigger amount for the Program under section 103(e)(1)(B)(iii)(I) on small insurers;

(E) the availability and cost of private reinsurance for small insurers; and

(F) the impact that State workers compensation laws have on small insurers, particularly the impact of mandatory, non-excludable participation and unlimited financial liability.

(2) TIMING AND REPORT.—The Secretary shall complete the first study under paragraph (1) and submit a report to the Congress setting forth the findings and conclusions of the study not later than June 30, 2016, and shall complete an annual study under paragraph (1) and submit a report regarding such study to the Congress by June 1 annually thereafter.

* * * * * * *

GRAMM-LEACH-BLILEY ACT

SEC. 1. SHORT TITLE; TABLE OF CONTENTS

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

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TITLE III—INSURANCE

* * * * * * *

[Subtitle C—National Association of Registered Agents and Brokers

[Sec. 321. State flexibility in multistate licensing reforms.
[Sec. 322. National Association of Registered Agents and Brokers.
[Sec. 323. Purpose.
[Sec. 324. Relationship to the Federal Government.
[Sec. 325. Membership.
[Sec. 326. Board of directors.
[Sec. 327. Officers.
[Sec. 328. Bylaws, rules, and disciplinary action.
[Sec. 329. Assessments.
[Sec. 330. Functions of the NAIC.
[Sec. 331. Liability of the association and the directors, officers, and employees of the association.
[Sec. 332. Elimination of NAIC oversight.
[Sec. 333. Relationship to State law.
[Sec. 334. Coordination with other regulators.
[Sec. 335. Judicial review.
[Sec. 336. Definitions.]

Subtitle C—National Association of Registered Agents and Brokers

Sec. 321. National Association of Registered Agents and Brokers.
Sec. 322. Purpose.
Sec. 323. Membership.
Sec. 324. Board of directors.
Sec. 325. Bylaws, standards, and disciplinary actions.
Sec. 326. Powers.
Sec. 327. Report by the Association.
Sec. 328. Liability of the Association and the Board members, officers, and employees of the Association.
Sec. 329. Presidential oversight.
Sec. 330. Relationship to State law.
Sec. 331. Coordination with financial industry regulatory authority.
Sec. 332. Right of action.
Sec. 333. Federal funding prohibited.
Sec. 334. Definitions.

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TITLE III—INSURANCE

* * * * * * *

[Subtitle C—National Association of Registered Agents and Brokers

[SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.

[(a) IN GENERAL.—The provisions of this subtitle shall take effect unless, not later than 3 years after the date of the enactment of this Act, at least a majority of the States—

[(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or

[(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.

[(b) UNIFORMITY REQUIRED.—States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) if the States—

[(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;

[(2) establish uniform continuing education requirements for licensed insurance producers;

[(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);

[(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and

[(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

[(c) RECIPROCITY REQUIRED.—States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) if the following conditions are met:

[(1) ADMINISTRATIVE LICENSING PROCEDURES.—At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, without satisfying any additional requirements other than submitting—

[(A) a request for licensure;

[(B) the application for licensure that the producer submitted to its home State;

[(C) proof that the producer is licensed and in good standing in its home State; and

[(D) the payment of any requisite fee to the appropriate authority.

[(2) CONTINUING EDUCATION REQUIREMENTS.—A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.

[(3) NO LIMITING NONRESIDENT REQUIREMENTS.—A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do busi-

ness as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

[(4) RECIPROCAL RECIPROCITY.—Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.

[(d) DETERMINATION.—

[(1) NAIC DETERMINATION.—At the end of the 3-year period beginning on the date of the enactment of this Act, the National Association of Insurance Commissioners (hereafter in this subtitle referred to as the "NAIC") shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) has been achieved.

[(2) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over any challenge to the NAIC's determination under this section and such court shall apply the standards set forth in section 706 of title 5, United States Code, when reviewing any such challenge.

[(e) CONTINUED APPLICATION.—If, at any time, the uniformity or reciprocity required by subsections (b) and (c) no longer exists, the provisions of this subtitle shall take effect 2 years after the date on which such uniformity or reciprocity ceases to exist, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.

[(f) SAVINGS PROVISION.—No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c), unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.

[(g) UNIFORM LICENSING.—Nothing in this section shall be construed to require any State to adopt new or additional licensing requirements to achieve the uniformity necessary to satisfy subsection (a)(1).

[SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.

[(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (hereafter in this subtitle referred to as the "Association").

[(b) STATUS.—The Association shall—

[(1) be a nonprofit corporation;

[(2) have succession until dissolved by an Act of Congress;

[(3) not be an agent or instrumentality of the United States Government; and

[(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation

by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y-1001 et seq.).

[SEC. 323. PURPOSE.

[The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

[SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.

[The Association shall be subject to the supervision and oversight of the NAIC.

[SEC. 325. MEMBERSHIP.

[(a) ELIGIBILITY.—

[(1) IN GENERAL.—Any State-licensed insurance producer shall be eligible to become a member in the Association.

[(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year period preceding the date on which such producer applies for membership.

[(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—

[(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or

[(B) the suspension or revocation is subsequently overturned.

[(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association shall have the authority to establish membership criteria that—

[(1) bear a reasonable relationship to the purposes for which the Association was established; and

[(2) do not unfairly limit the access of smaller agencies to the Association membership.

[(c) ESTABLISHMENT OF CLASSES AND CATEGORIES.—

[(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

[(2) CATEGORIES.—The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing categories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are depository institutions or for their employees, agents, or affiliates.

[(d) MEMBERSHIP CRITERIA.—

[(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.

[(2) MINIMUM STANDARD.—In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

[(e) EFFECT OF MEMBERSHIP.—Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.

[(f) ANNUAL RENEWAL.—Membership in the Association shall be renewed on an annual basis.

[(g) CONTINUING EDUCATION.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.

[(h) SUSPENSION AND REVOCATION.—The Association may—

[(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and

[(2) suspend or revoke the membership of an insurance producer if—

[(A) the producer fails to meet the applicable membership criteria of the Association; or

[(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

[(i) OFFICE OF CONSUMER COMPLAINTS.—

[(1) IN GENERAL.—The Association shall establish an office of consumer complaints that shall—

[(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

[(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.

[(2) RECORDS AND REFERRALS.—The office of consumer complaints of the Association shall—

[(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and

[(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.

[(3) TELEPHONE AND OTHER ACCESS.—The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative

means of communication with consumers, such as an Internet home page.

[SEC. 326. BOARD OF DIRECTORS.

[(a) ESTABLISHMENT.—There is established the board of directors of the Association (hereafter in this subtitle referred to as the "Board") for the purpose of governing and supervising the activities of the Association and the members of the Association.

[(b) POWERS.—The Board shall have such powers and authority as may be specified in the bylaws of the Association.

[(c) COMPOSITION.—

[(1) MEMBERS.—The Board shall be composed of 7 members appointed by the NAIC.

[(2) REQUIREMENT.—At least 4 of the members of the Board shall each have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.

[(3) INITIAL BOARD MEMBERSHIP.—

[(A) IN GENERAL.—If, by the end of the 2-year period beginning on the date of the enactment of this Act, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-lines insurance in place as of the end of such period.

[(B) ALTERNATE COMPOSITION.—If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.

[(C) INOPERABILITY.—If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 332.

[(d) TERMS.—The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with one-third of the directors to be appointed each year.

[(e) BOARD VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.

[(f) MEETINGS.—The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

[SEC. 327. OFFICERS.

[(a) IN GENERAL.—

[(1) POSITIONS.—The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.

[(2) MANNER OF SELECTION.—Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

[(b) CRITERIA FOR CHAIRPERSON.—Only individuals who are members of the NAIC shall be eligible to serve as the chairperson of the board of directors.

[SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.

[(a) ADOPTION AND AMENDMENT OF BYLAWS.—

[(1) COPY REQUIRED TO BE FILED WITH THE NAIC.—The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

[(2) EFFECTIVE DATE.—Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—

[(A) 30 days after the date of the filing of a copy with the NAIC;

[(B) upon such later date as the Association may designate; or

[(C) upon such earlier date as the NAIC may determine.

[(3) DISAPPROVAL BY THE NAIC.—Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—

[(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subtitle and provides notice to the Association setting forth the reasons for such disapproval; or

[(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such subsection.

[(b) ADOPTION AND AMENDMENT OF RULES.—

[(1) FILING PROPOSED REGULATIONS WITH THE NAIC.—

[(A) IN GENERAL.—The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

[(B) OTHER RULES AND AMENDMENTS INEFFECTIVE.—No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

[(2) INITIAL CONSIDERATION BY THE NAIC.—Not later than 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date, if the NAIC finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall—

[(A) by order approve such proposed rule or amendment; or

[(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.

[(3) NAIC PROCEEDINGS.—

[(A) IN GENERAL.—Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—

[(i) include notice of the grounds for disapproval under consideration;

[(ii) provide opportunity for hearing; and

[(iii) be concluded not later than 180 days after the date of the Association's filing of such proposed rule or amendment.

[(B) DISPOSITION OF PROPOSAL.—At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.

[(C) EXTENSION OF TIME FOR CONSIDERATION.—The NAIC may extend the time for concluding any proceeding under subparagraph (A) for—

[(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or

[(ii) such longer period as to which the Association consents.

[(4) STANDARDS FOR REVIEW.—

[(A) GROUNDS FOR APPROVAL.—The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.

[(B) APPROVAL BEFORE END OF NOTICE PERIOD.—The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date on which the Association files proposed rules or amendments in accordance with paragraph (1), unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.

[(5) ALTERNATE PROCEDURE.—

[(A) IN GENERAL.—Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to the administration or organization of the Association shall take effect—

[(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

[(ii) upon such date as the NAIC shall for good cause determine.

[(B) ABROGATION BY THE NAIC.—

[(i) IN GENERAL.—At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or clause (ii) of this subparagraph, the NAIC may repeal such rule or amendment and require that the rule or amendment be

refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subtitle.

[(ii) EFFECT OF RECONSIDERATION BY THE NAIC.—Any action of the NAIC pursuant to clause (i) shall—

[(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and

[(II) not be considered to be a final action.

[(c) ACTION REQUIRED BY THE NAIC.—The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subtitle, require the Association to adopt, amend, or repeal any bylaw, rule, or amendment of the Association, whenever adopted.

[(d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

[(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed (hereafter in this section referred to as a "disciplinary action"), the Association shall bring specific charges, notify such member of such charges, give the member an opportunity to defend against the charges, and keep a record.

[(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—

[(A) any act or practice in which such member has been found to have been engaged;

[(B) the specific provision of this subtitle, the rules or regulations under this subtitle, or the rules of the Association which any such act or practice is deemed to violate; and

[(C) the sanction imposed and the reason for such sanction.

[(e) NAIC REVIEW OF DISCIPLINARY ACTION.—

[(1) NOTICE TO THE NAIC.—If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.

[(2) REVIEW BY THE NAIC.—Any disciplinary action taken by the Association shall be subject to review by the NAIC—

[(A) on the NAIC's own motion; or

[(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—

[(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or

[(ii) the date the notice of the disciplinary action was received by such aggrieved person.

[(f) EFFECT OF REVIEW.—The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.

[(g) SCOPE OF REVIEW.—

[(1) IN GENERAL.—In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—

[(A) determine whether the action should be taken;

[(B) affirm, modify, or rescind the disciplinary sanction; or

[(C) remand to the Association for further proceedings.

[(2) DISMISSAL OF REVIEW.—The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—

[(A) the specific grounds on which the action is based exist in fact;

[(B) the action is in accordance with applicable rules and regulations; and

[(C) such rules and regulations are, and were, applied in a manner consistent with the purposes of this subtitle.

[SEC. 329. ASSESSMENTS.

[(a) INSURANCE PRODUCERS SUBJECT TO ASSESSMENT.—The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b), except that, in setting such fees, the Association may not discriminate against smaller insurance producers.

[(b) NAIC ASSESSMENTS.—The NAIC may assess the Association for any costs that the NAIC incurs under this subtitle.

[SEC. 330. FUNCTIONS OF THE NAIC.

[(a) ADMINISTRATIVE PROCEDURE.—Determinations of the NAIC, for purposes of making rules pursuant to section 328, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.

[(b) EXAMINATIONS AND REPORTS.—

[(1) EXAMINATIONS.—The NAIC may make such examinations and inspections of the Association and require the Association to furnish to the NAIC such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subtitle.

[(2) REPORT BY ASSOCIATION.—As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.

[SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.

[(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer

solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

[(b) LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND EMPLOYEES.—Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subtitle.

[SEC. 332. ELIMINATION OF NAIC OVERSIGHT.

[(a) IN GENERAL.—The Association shall be established without NAIC oversight and the provisions set forth in section 324, subsections (a), (b), (c), and (e) of section 328, and sections 329(b) and 330 of this subtitle shall cease to be effective if, at the end of the 2-year period beginning on the date on which the provisions of this subtitle take effect pursuant to section 321—

[(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a), (b), and (c) of section 321; and

[(2) the NAIC has not approved the Association's bylaws as required by section 328 or is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.

[(b) BOARD APPOINTMENTS.—If the repeals required by subsection (a) are implemented, the following shall apply:

[(1) GENERAL APPOINTMENT POWER.—The President, with the advice and consent of the Senate, shall appoint the members of the Association's Board established under section 326 from lists of candidates recommended to the President by the NAIC.

[(2) PROCEDURES FOR OBTAINING NAIC APPOINTMENT RECOMMENDATIONS.—

[(A) INITIAL DETERMINATION AND RECOMMENDATIONS.—After the date on which the provisions of subsection (a) take effect, the NAIC shall, not later than 60 days thereafter, provide a list of recommended candidates to the President. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 326(c), the President shall, with the advice and consent of the Senate, make the requisite appointments without considering the views of the NAIC.

[(B) SUBSEQUENT APPOINTMENTS.—After the initial appointments, the NAIC shall provide a list of at least six recommended candidates for the Board to the President by January 15 of each subsequent year. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least six recommended candidates or comply with the requirements of section 326(c), the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.

[(C) PRESIDENTIAL OVERSIGHT.—

[(i) REMOVAL.—If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board

for the remainder of the term to which the members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

[(ii) SUSPENSION OF RULES OR ACTIONS.—The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

[(c) ANNUAL REPORT.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to the Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

[SEC. 333. RELATIONSHIP TO STATE LAW.

[(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted as provided in subsection (b).

[(b) PROHIBITED ACTIONS.—No State shall—

[(1) impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

[(2) impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency;

[(3) impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section; or

[(4) implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 325.

[(c) SAVINGS PROVISION.—Except as provided in subsections (a) and (b), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or other action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws.

[SEC. 334. COORDINATION WITH OTHER REGULATORS.

[(a) COORDINATION WITH STATE INSURANCE REGULATORS.—The Association shall have the authority to—

[(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 333;

[(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and

[(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

[(b) COORDINATION WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS.—The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subtitle and the Federal securities laws.

[SEC. 335. JUDICIAL REVIEW.

[(a) JURISDICTION.—The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subtitle. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

[(b) EXHAUSTION OF REMEDIES.—An aggrieved person shall be required to exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.

[(c) STANDARDS OF REVIEW.—The standards set forth in section 553 of title 5, United States Code, shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5, United States Code, shall be applied whenever a disciplinary action of the Association is judicially reviewed.

[SEC. 336. DEFINITIONS.

[For purposes of this subtitle, the following definitions shall apply:

[(1) HOME STATE.—The term "home State" means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

[(2) INSURANCE.—The term "insurance" means any product, other than title insurance, defined or regulated as insurance by the appropriate State insurance regulatory authority.

[(3) INSURANCE PRODUCER.—The term "insurance producer" means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

[(4) STATE.—The term "State" includes any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

[(5) STATE LAW.—The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.]

Subtitle C—National Association of Registered Agents and Brokers

SEC. 321. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.

(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (referred to in this subtitle as the "Association").

(b) STATUS.—The Association shall—

(1) be a nonprofit corporation;

(2) not be an agent or instrumentality of the Federal Government;

(3) be an independent organization that may not be merged with or into any other private or public entity; and

(4) except as otherwise provided in this subtitle, be subject to, and have all the powers conferred upon, a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–301.01 et seq.) or any successor thereto.

SEC. 322. PURPOSE.

The purpose of the Association shall be to provide a mechanism through which licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multi-state basis without affecting the laws, rules, and regulations, and preserving the rights of a State, pertaining to—

(1) licensing, continuing education, and other qualification requirements of insurance producers that are not members of the Association;

(2) resident or nonresident insurance producer appointment requirements;

(3) supervising and disciplining resident and nonresident insurance producers;

(4) establishing licensing fees for resident and nonresident insurance producers so that there is no loss of insurance producer licensing revenue to the State; and

(5) prescribing and enforcing laws and regulations regulating the conduct of resident and nonresident insurance producers.

SEC. 323. MEMBERSHIP.

(a) ELIGIBILITY.—

(1) IN GENERAL.—Any insurance producer licensed in its home State shall, subject to paragraphs (2) and (4), be eligible to become a member of the Association.

(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Subject to paragraph (3), an insurance producer is not eligible to become a member of the Association if a State insurance regulator has suspended or revoked the insurance license of the insurance producer in that State.

(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator reissues or renews the license of the insurance producer in the State in which the license was suspended or revoked, or otherwise terminates or vacates the suspension or revocation; or

(B) the suspension or revocation expires or is subsequently overturned by a court of competent jurisdiction.

(4) CRIMINAL HISTORY RECORD CHECK REQUIRED.—

(A) IN GENERAL.—An insurance producer who is an individual shall not be eligible to become a member of the Association unless the insurance producer has undergone a criminal history record check that complies with regulations prescribed by the Attorney General of the United States under subparagraph (K).

(B) CRIMINAL HISTORY RECORD CHECK REQUESTED BY HOME STATE.—An insurance producer who is licensed in a State and who has undergone a criminal history record check during the 2-year period preceding the date of submission of an application to become a member of the Association, in compliance with a requirement to undergo such criminal history record check as a condition for such licensure in the State, shall be deemed to have undergone a criminal history record check for purposes of subparagraph (A).

(C) CRIMINAL HISTORY RECORD CHECK REQUESTED BY ASSOCIATION.—

(i) IN GENERAL.—The Association shall, upon request by an insurance producer licensed in a State, submit fingerprints or other identification information obtained from the insurance producer, and a request for a criminal history record check of the insurance producer, to the Federal Bureau of Investigation.

(ii) PROCEDURES.—The board of directors of the Association (referred to in this subtitle as the "Board") shall prescribe procedures for obtaining and utilizing fingerprints or other identification information and criminal history record information, including the establishment of reasonable fees to defray the expenses of the Association in connection with the performance of a criminal history record check and appropriate safeguards for maintaining confidentiality and security of the information. Any fees charged pursuant to this clause shall be separate and distinct from those charged by the Attorney General pursuant to subparagraph (I).

(D) FORM OF REQUEST.—A submission under subparagraph (C)(i) shall include such fingerprints or other identification information as is required by the Attorney General concerning the person about whom the criminal history

record check is requested, and a statement signed by the person authorizing the Attorney General to provide the information to the Association and for the Association to receive the information.

(E) PROVISION OF INFORMATION BY ATTORNEY GENERAL.—Upon receiving a submission under subparagraph (C)(i) from the Association, the Attorney General shall search all criminal history records of the Federal Bureau of Investigation, including records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation, that the Attorney General determines appropriate for criminal history records corresponding to the fingerprints or other identification information provided under subparagraph (D) and provide all criminal history record information included in the request to the Association.

(F) LIMITATION ON PERMISSIBLE USES OF INFORMATION.—Any information provided to the Association under subparagraph (E) may only—

(i) be used for purposes of determining compliance with membership criteria established by the Association;

(ii) be disclosed to State insurance regulators, or Federal or State law enforcement agencies, in conformance with applicable law; or

(iii) be disclosed, upon request, to the insurance producer to whom the criminal history record information relates.

(G) PENALTY FOR IMPROPER USE OR DISCLOSURE.—Whoever knowingly uses any information provided under subparagraph (E) for a purpose not authorized in subparagraph (F), or discloses any such information to anyone not authorized to receive it, shall be fined not more than $50,000 per violation as determined by a court of competent jurisdiction.

(H) RELIANCE ON INFORMATION.—Neither the Association nor any of its Board members, officers, or employees shall be liable in any action for using information provided under subparagraph (E) as permitted under subparagraph (F) in good faith and in reasonable reliance on its accuracy.

(I) FEES.—The Attorney General may charge a reasonable fee for conducting the search and providing the information under subparagraph (E), and any such fee shall be collected and remitted by the Association to the Attorney General.

(J) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as—

(i) requiring a State insurance regulator to perform criminal history record checks under this section; or

(ii) limiting any other authority that allows access to criminal history records.

(K) REGULATIONS.—The Attorney General shall prescribe regulations to carry out this paragraph, which shall include—

(i) appropriate protections for ensuring the confidentiality of information provided under subparagraph (E); and

(ii) procedures providing a reasonable opportunity for an insurance producer to contest the accuracy of information regarding the insurance producer provided under subparagraph (E).

(L) INELIGIBILITY FOR MEMBERSHIP.—

(i) IN GENERAL.—The Association may, under reasonably consistently applied standards, deny membership to an insurance producer on the basis of criminal history record information provided under subparagraph (E), or where the insurance producer has been subject to disciplinary action, as described in paragraph (2).

(ii) RIGHTS OF APPLICANTS DENIED MEMBERSHIP.—The Association shall notify any insurance producer who is denied membership on the basis of criminal history record information provided under subparagraph (E) of the right of the insurance producer to—

(I) obtain a copy of all criminal history record information provided to the Association under subparagraph (E) with respect to the insurance producer; and

(II) challenge the denial of membership based on the accuracy and completeness of the information.

(M) DEFINITION.—For purposes of this paragraph, the term "criminal history record check" means a national background check of criminal history records of the Federal Bureau of Investigation.

(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association may establish membership criteria that bear a reasonable relationship to the purposes for which the Association was established.

(c) ESTABLISHMENT OF CLASSES AND CATEGORIES OF MEMBERSHIP.—

(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, experience, or other qualifications.

(2) BUSINESS ENTITIES.—The Association shall establish a class of membership and membership criteria for business entities. A business entity that applies for membership shall be required to designate an individual Association member responsible for the compliance of the business entity with Association standards and the insurance laws, standards, and regulations of any State in which the business entity seeks to do business on the basis of Association membership.

(3) CATEGORIES.—

(A) SEPARATE CATEGORIES FOR INSURANCE PRODUCERS PERMITTED.—The Association may establish separate categories of membership for insurance producers and for other persons or entities within each class, based on the types of licensing categories that exist under State laws.

(B) SEPARATE TREATMENT FOR DEPOSITORY INSTITUTIONS PROHIBITED.—No special categories of membership, and no distinct membership criteria, shall be established for members that are depository institutions or for employees, agents, or affiliates of depository institutions.

(d) MEMBERSHIP CRITERIA.—

(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for personal qualifications, education, training, and experience. The Association shall not establish criteria that unfairly limit the ability of a small insurance producer to become a member of the Association, including imposing discriminatory membership fees.

(2) QUALIFICATIONS.—In establishing criteria under paragraph (1), the Association shall not adopt any qualification less protective to the public than that contained in the National Association of Insurance Commissioners (referred to in this subtitle as the "NAIC") Producer Licensing Model Act in effect as of the date of enactment of the National Association of Registered Agents and Brokers Reform Act of 2013, and shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(3) ASSISTANCE FROM STATES.—

(A) IN GENERAL.—The Association may request a State to provide assistance in investigating and evaluating the eligibility of a prospective member for membership in the Association.

(B) AUTHORIZATION OF INFORMATION SHARING.—A submission under subsection (a)(4)(C)(i) made by an insurance producer licensed in a State shall include a statement signed by the person about whom the assistance is requested authorizing—

(i) the State to share information with the Association; and

(ii) the Association to receive the information.

(C) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as requiring or authorizing any State to adopt new or additional requirements concerning the licensing or evaluation of insurance producers.

(4) DENIAL OF MEMBERSHIP.—The Association may, based on reasonably consistently applied standards, deny membership to any State-licensed insurance producer for failure to meet the membership criteria established by the Association.

(e) EFFECT OF MEMBERSHIP.—

(1) AUTHORITY OF ASSOCIATION MEMBERS.—Membership in the Association shall—

(A) authorize an insurance producer to sell, solicit, or negotiate insurance in any State for which the member pays the licensing fee set by the State for any line or lines of insurance specified in the home State license of the insurance producer, and exercise all such incidental powers as shall be necessary to carry out such activities, including claims adjustments and settlement to the extent permissible under the laws of the State, risk management, employee benefits advice, retirement planning, and any other insurance-related consulting activities;

(B) be the equivalent of a nonresident insurance producer license for purposes of authorizing the insurance producer to engage in the activities described in subparagraph (A) in any State where the member pays the licensing fee; and

(C) be the equivalent of a nonresident insurance producer license for the purpose of subjecting an insurance producer to all laws, regulations, provisions or other action of any State concerning revocation, suspension, or other enforcement action related to the ability of a member to engage in any activity within the scope of authority granted under this subsection and to all State laws, regulations, provisions, and actions preserved under paragraph (5).

(2) VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994.—Nothing in this subtitle shall be construed to alter, modify, or supercede any requirement established by section 1033 of title 18, United States Code.

(3) AGENT FOR REMITTING FEES.—The Association shall act as an agent for any member for purposes of remitting licensing fees to any State pursuant to paragraph (1).

(4) NOTIFICATION OF ACTION.—

(A) IN GENERAL.—The Association shall notify the States (including State insurance regulators) and the NAIC when an insurance producer has satisfied the membership criteria of this section. The States (including State insurance regulators) shall have 10 business days after the date of the notification in order to provide the Association with evidence that the insurance producer does not satisfy the criteria for membership in the Association.

(B) ONGOING DISCLOSURES REQUIRED.—On an ongoing basis, the Association shall disclose to the States (including State insurance regulators) and the NAIC a list of the States in which each member is authorized to operate. The Association shall immediately notify the States (including State insurance regulators) and the NAIC when a member is newly authorized to operate in one or more States, or is no longer authorized to operate in one or more States on the basis of Association membership.

(5) PRESERVATION OF CONSUMER PROTECTION AND MARKET CONDUCT REGULATION.—

(A) IN GENERAL.—No provision of this section shall be construed as altering or affecting the applicability or continuing effectiveness of any law, regulation, provision, or other action of any State, including those described in subparagraph (B), to the extent that the State law, regulation, provision, or other action is not inconsistent with the provisions of this subtitle related to market entry for nonresident insurance producers, and then only to the extent of the inconsistency.

(B) PRESERVED REGULATIONS.—The laws, regulations, provisions, or other actions of any State referred to in subparagraph (A) include laws, regulations, provisions, or other actions that—

(i) regulate market conduct, insurance producer conduct, or unfair trade practices;

(ii) establish consumer protections; or

(iii) require insurance producers to be appointed by a licensed or authorized insurer.

(f) BIENNIAL RENEWAL.—Membership in the Association shall be renewed on a biennial basis.

(g) CONTINUING EDUCATION.—

(1) IN GENERAL.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to the continuing education requirements under the licensing laws of a majority of the States.

(2) STATE CONTINUING EDUCATION REQUIREMENTS.—A member may not be required to satisfy continuing education requirements imposed under the laws, regulations, provisions, or actions of any State other than the home State of the member.

(3) RECIPROCITY.—The Association shall not require a member to satisfy continuing education requirements that are equivalent to any continuing education requirements of the home State of the member that have been satisfied by the member during the applicable licensing period.

(4) LIMITATION ON THE ASSOCIATION.—The Association shall not directly or indirectly offer any continuing education courses for insurance producers.

(h) PROBATION, SUSPENSION AND REVOCATION.—

(1) DISCIPLINARY ACTION.—The Association may place an insurance producer that is a member of the Association on probation or suspend or revoke the membership of the insurance producer in the Association, or assess monetary fines or penalties, as the Association determines to be appropriate, if—

(A) the insurance producer fails to meet the applicable membership criteria or other standards established by the Association;

(B) the insurance producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator;

(C) an insurance license held by the insurance producer has been suspended or revoked by a State insurance regulator; or

(D) the insurance producer has been convicted of a crime that would have resulted in the denial of membership pursuant to subsection (a)(4)(L)(i) at the time of application, and the Association has received a copy of the final disposition from a court of competent jurisdiction.

(2) VIOLATIONS OF ASSOCIATION STANDARDS.—The Association shall have the power to investigate alleged violations of Association standards.

(3) REPORTING.—The Association shall immediately notify the States (including State insurance regulators) and the NAIC when the membership of an insurance producer has been placed on probation or has been suspended, revoked, or otherwise terminated, or when the Association has assessed monetary fines or penalties.

(i) CONSUMER COMPLAINTS.—

(1) IN GENERAL.—The Association shall—

(A) refer any complaint against a member of the Association from a consumer relating to alleged misconduct or violations of State insurance laws to the State insurance regu-

lator where the consumer resides and, when appropriate, to any additional State insurance regulator, as determined by standards adopted by the Association; and

(B) make any related records and information available to each State insurance regulator to whom the complaint is forwarded.

(2) TELEPHONE AND OTHER ACCESS.—The Association shall maintain a toll-free number for purposes of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet webpage.

(3) FINAL DISPOSITION OF INVESTIGATION.—State insurance regulators shall provide the Association with information regarding the final disposition of a complaint referred pursuant to paragraph (1)(A), but nothing shall be construed to compel a State to release confidential investigation reports or other information protected by State law to the Association.

(j) INFORMATION SHARING.—The Association may—

(1) share documents, materials, or other information, including confidential and privileged documents, with a State, Federal, or international governmental entity or with the NAIC or other appropriate entity referred to paragraphs (3) and (4), provided that the recipient has the authority and agrees to maintain the confidentiality or privileged status of the document, material, or other information;

(2) limit the sharing of information as required under this subtitle with the NAIC or any other non-governmental entity, in circumstances under which the Association determines that the sharing of such information is unnecessary to further the purposes of this subtitle;

(3) establish a central clearinghouse, or utilize the NAIC or another appropriate entity, as determined by the Association, as a central clearinghouse, for use by the Association and the States (including State insurance regulators), through which members of the Association may disclose their intent to operate in 1 or more States and pay the licensing fees to the appropriate States; and

(4) establish a database, or utilize the NAIC or another appropriate entity, as determined by the Association, as a database, for use by the Association and the States (including State insurance regulators) for the collection of regulatory information concerning the activities of insurance producers.

(k) EFFECTIVE DATE.—The provisions of this section shall take effect on the later of—

(1) the expiration of the 2-year period beginning on the date of enactment of the National Association of Registered Agents and Brokers Reform Act of 2013; and

(2) the date of incorporation of the Association.

SEC. 324. BOARD OF DIRECTORS.

(a) ESTABLISHMENT.—There is established a board of directors of the Association, which shall have authority to govern and supervise all activities of the Association.

(b) POWERS.—The Board shall have such of the powers and authority of the Association as may be specified in the bylaws of the Association.

(c) COMPOSITION.—

(1) IN GENERAL.—The Board shall consist of 13 members who shall be appointed by the President, by and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112~~th~~ Congress, of whom—

(A) 8 shall be State insurance commissioners appointed in the manner provided in paragraph (2), 1 of whom shall be designated by the President to serve as the chairperson of the Board until the Board elects one such State insurance commissioner Board member to serve as the chairperson of the Board;

(B) 3 shall have demonstrated expertise and experience with property and casualty insurance producer licensing; and

(C) 2 shall have demonstrated expertise and experience with life or health insurance producer licensing.

(2) STATE INSURANCE REGULATOR REPRESENTATIVES.—

(A) RECOMMENDATIONS.—Before making any appointments pursuant to paragraph (1)(A), the President shall request a list of recommended candidates from the States through the NAIC, which shall not be binding on the President. If the NAIC fails to submit a list of recommendations not later than 15 business days after the date of the request, the President may make the requisite appointments without considering the views of the NAIC.

(B) POLITICAL AFFILIATION.—Not more than 4 Board members appointed under paragraph (1)(A) shall belong to the same political party.

(C) FORMER STATE INSURANCE COMMISSIONERS.—

(i) IN GENERAL.—If, after offering each currently serving State insurance commissioner an appointment to the Board, fewer than 8 State insurance commissioners have accepted appointment to the Board, the President may appoint the remaining State insurance commissioner Board members, as required under paragraph (1)(A), of the appropriate political party as required under subparagraph (B), from among individuals who are former State insurance commissioners.

(ii) LIMITATION.—A former State insurance commissioner appointed as described in clause (i) may not be employed by or have any present direct or indirect financial interest in any insurer, insurance producer, or other entity in the insurance industry, other than direct or indirect ownership of, or beneficial interest in, an insurance policy or annuity contract written or sold by an insurer.

(D) SERVICE THROUGH TERM.—If a Board member appointed under paragraph (1)(A) ceases to be a State insurance commissioner during the term of the Board member, the Board member shall cease to be a Board member.

(3) PRIVATE SECTOR REPRESENTATIVES.—In making any appointment pursuant to subparagraph (B) or (C) of paragraph (1), the President may seek recommendations for candidates from groups representing the category of individuals described, which shall not be binding on the President.

(4) STATE INSURANCE COMMISSIONER DEFINED.—For purposes of this subsection, the term "State insurance commissioner" means a person who serves in the position in State government, or on the board, commission, or other body that is the primary insurance regulatory authority for the State.

(d) TERMS.—

(1) IN GENERAL.—Except as provided under paragraph (2), the term of service for each Board member shall be 2 years.

(2) EXCEPTIONS.—

(A) 1-YEAR TERMS.—The term of service shall be 1 year, as designated by the President at the time of the nomination of the subject Board members for—

(i) 4 of the State insurance commissioner Board members initially appointed under paragraph (1)(A), of whom not more than 2 shall belong to the same political party;

(ii) 1 of the Board members initially appointed under paragraph (1)(B); and

(iii) 1 of the Board members initially appointed under paragraph (1)(C).

(B) EXPIRATION OF TERM.—A Board member may continue to serve after the expiration of the term to which the Board member was appointed for the earlier of 2 years or until a successor is appointed.

(C) MID-TERM APPOINTMENTS.—A Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the Board member was appointed shall be appointed only for the remainder of that term.

(3) SUCCESSIVE TERMS.—Board members may be reappointed to successive terms.

(e) INITIAL APPOINTMENTS.—The appointment of initial Board members shall be made no later than 90 days after the date of enactment of the National Association of Registered Agents and Brokers Reform Act of 2013.

(f) MEETINGS.—

(1) IN GENERAL.—The Board shall meet—

(A) at the call of the chairperson;

(B) as requested in writing to the chairperson by not fewer than 5 Board members; or

(C) as otherwise provided by the bylaws of the Association.

(2) QUORUM REQUIRED.—A majority of all Board members shall constitute a quorum.

(3) VOTING.—Decisions of the Board shall require the approval of a majority of all Board members present at a meeting, a quorum being present.

(4) INITIAL MEETING.—The Board shall hold its first meeting not later than 45 days after the date on which all initial Board members have been appointed.

(g) RESTRICTION ON CONFIDENTIAL INFORMATION.—Board members appointed pursuant to subparagraphs (B) and (C) of subsection (c)(1) shall not have access to confidential information received by the Association in connection with complaints, investigations, or disciplinary proceedings involving insurance producers.

(h) ETHICS AND CONFLICTS OF INTEREST.—The Board shall issue and enforce an ethical conduct code to address permissible and prohibited activities of Board members and Association officers, employees, agents, or consultants. The code shall, at a minimum, include provisions that prohibit any Board member or Association officer, employee, agent or consultant from—

(1) engaging in unethical conduct in the course of performing Association duties;

(2) participating in the making or influencing the making of any Association decision, the outcome of which the Board member, officer, employee, agent, or consultant knows or had reason to know would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the person or a member of the immediate family of the person;

(3) accepting any gift from any person or entity other than the Association that is given because of the position held by the person in the Association;

(4) making political contributions to any person or entity on behalf of the Association; and

(5) lobbying or paying a person to lobby on behalf of the Association.

(i) COMPENSATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), no Board member may receive any compensation from the Association or any other person or entity on account of Board membership.

(2) TRAVEL EXPENSES AND PER DIEM.—Board members may be reimbursed only by the Association for travel expenses, including per diem in lieu of subsistence, at rates consistent with rates authorized for employees of Federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from home or regular places of business in performance of services for the Association.

SEC. 325. BYLAWS, STANDARDS, AND DISCIPLINARY ACTIONS.

(a) ADOPTION AND AMENDMENT OF BYLAWS AND STANDARDS.—

(1) PROCEDURES.—The Association shall adopt procedures for the adoption of bylaws and standards that are similar to procedures under subchapter II of chapter 5 of title 5, United States Code (commonly known as the "Administrative Procedure Act").

(2) COPY REQUIRED TO BE FILED.—The Board shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, all proposed bylaws and standards of the Association, or any proposed amendment to the bylaws or standards of the Association, accompanied by a concise general statement of the basis and purpose of such proposal.

(3) EFFECTIVE DATE.—Any proposed bylaw or standard of the Association, and any proposed amendment to the bylaws or standards of the Association, shall take effect, after notice under paragraph (2) and opportunity for public comment, on such date as the Association may designate, unless suspended under section 329(c).

(4) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to subject the Board or the Association to the require-

ments of subchapter II of chapter 5 of title 5, United States Code (commonly known as the "Administrative Procedure Act").

(b) DISCIPLINARY ACTION BY THE ASSOCIATION.—

(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed, or to determine whether a member of the Association should be placed on probation (referred to in this section as a "disciplinary action") or whether to assess fines or monetary penalties, the Association shall bring specific charges, notify the member of the charges, give the member an opportunity to defend against the charges, and keep a record.

(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which the member has been found to have been engaged;

(B) the specific provision of this subtitle or standard of the Association that any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for the sanction.

(3) INELIGIBILITY OF PRIVATE SECTOR REPRESENTATIVES.—Board members appointed pursuant to section 324(c)(3) may not—

(A) participate in any disciplinary action or be counted toward establishing a quorum during a disciplinary action; and

(B) have access to confidential information concerning any disciplinary action.

SEC. 326. POWERS.

In addition to all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, the Association shall have the power to—

(1) establish and collect such membership fees as the Association finds necessary to impose to cover the costs of its operations;

(2) adopt, amend, and repeal bylaws, procedures, or standards governing the conduct of Association business and performance of its duties;

(3) establish procedures for providing notice and opportunity for comment pursuant to section 325(a);

(4) enter into and perform such agreements as necessary to carry out the duties of the Association;

(5) hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of this subtitle, and determine their qualification;

(6) establish personnel policies of the Association and programs relating to, among other things, conflicts of interest, rates of compensation, where applicable, and qualifications of personnel;

(7) borrow money; and

(8) secure funding for such amounts as the Association determines to be necessary and appropriate to organize and begin operations of the Association, which shall be treated as loans to be repaid by the Association with interest at market rate.

SEC. 327. REPORT BY THE ASSOCIATION.

(a) IN GENERAL.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year.

(b) FINANCIAL STATEMENTS.—Each report submitted under subsection (a) with respect to any fiscal year shall include audited financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

SEC. 328. LIABILITY OF THE ASSOCIATION AND THE BOARD MEMBERS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.

(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) LIABILITY OF BOARD MEMBERS, OFFICERS, AND EMPLOYEES.—No Board member, officer, or employee of the Association shall be personally liable to any person for any action taken or omitted in good faith in any matter within the scope of their responsibilities in connection with the Association.

SEC. 329. PRESIDENTIAL OVERSIGHT.

(a) REMOVAL OF BOARD.—If the President determines that the Association is acting in a manner contrary to the interests of the public or the purposes of this subtitle or has failed to perform its duties under this subtitle, the President may remove the entire existing Board for the remainder of the term to which the Board members were appointed and appoint, in accordance with section 324 and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112~~th~~ Congress, new Board members to fill the vacancies on the Board for the remainder of the terms.

(b) REMOVAL OF BOARD MEMBER.—The President may remove a Board member only for neglect of duty or malfeasance in office.

(c) SUSPENSION OF BYLAWS AND STANDARDS AND PROHIBITION OF ACTIONS.—Following notice to the Board, the President, or a person designated by the President for such purpose, may suspend the effectiveness of any bylaw or standard, or prohibit any action, of the Association that the President or the designee determines is contrary to the purposes of this subtitle.

SEC. 330. RELATIONSHIP TO STATE LAW.

(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted to the extent provided in subsection (b).

(b) PROHIBITED ACTIONS.—

(1) IN GENERAL.—No State shall—

(A) impede the activities of, take any action against, or apply any provision of law or regulation arbitrarily or discriminatorily to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;

(B) impose any requirement upon a member of the Association that it pay fees different from those required to be paid to that State were it not a member of the Association; or

(C) impose any continuing education requirements on any nonresident insurance producer that is a member of the Association.

(2) STATES OTHER THAN A HOME STATE.—No State, other than the home State of a member of the Association, shall—

(A) impose any licensing, personal or corporate qualifications, education, training, experience, residency, continuing education, or bonding requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership;

(B) impose any requirement upon a member of the Association that it be licensed, registered, or otherwise qualified to do business or remain in good standing in the State, including any requirement that the insurance producer register as a foreign company with the secretary of state or equivalent State official;

(C) require that a member of the Association submit to a criminal history record check as a condition of doing business in the State; or

(D) impose any licensing, registration, or appointment requirements upon a member of the Association, or require a member of the Association to be authorized to operate as an insurance producer, in order to sell, solicit, or negotiate insurance for commercial property and casualty risks to an insured with risks located in more than one State, if the member is licensed or otherwise authorized to operate in the State where the insured maintains its principal place of business and the contract of insurance insures risks located in that State.

(3) PRESERVATION OF STATE DISCIPLINARY AUTHORITY.—Nothing in this section may be construed to prohibit a State from investigating and taking appropriate disciplinary action, including suspension or revocation of authority of an insurance producer to do business in a State, in accordance with State law and that is not inconsistent with the provisions of this section, against a member of the Association as a result of a complaint or for any alleged activity, regardless of whether the activity occurred before or after the insurance producer commenced doing business in the State pursuant to Association membership.

SEC. 331. COORDINATION WITH FINANCIAL INDUSTRY REGULATORY AUTHORITY.

The Association shall coordinate with the Financial Industry Regulatory Authority in order to ease any administrative burdens that fall on members of the Association that are subject to regulation by

the Financial Industry Regulatory Authority, consistent with the requirements of this subtitle and the Federal securities laws.

SEC. 332. RIGHT OF ACTION.

(a) RIGHT OF ACTION.—Any person aggrieved by a decision or action of the Association may, after reasonably exhausting available avenues for resolution within the Association, commence a civil action in an appropriate United States district court, and obtain all appropriate relief.

(b) ASSOCIATION INTERPRETATIONS.—In any action under subsection (a), the court shall give appropriate weight to the interpretation of the Association of its bylaws and standards and this subtitle.

SEC. 333. FEDERAL FUNDING PROHIBITED.

The Association may not receive, accept, or borrow any amounts from the Federal Government to pay for, or reimburse, the Association for, the costs of establishing or operating the Association.

SEC. 334. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) BUSINESS ENTITY.—The term "business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(2) DEPOSITORY INSTITUTION.—The term "depository institution" has the meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) HOME STATE.—The term "home State" means the State in which the insurance producer maintains its principal place of residence or business and is licensed to act as an insurance producer.

(4) INSURANCE.—The term "insurance" means any product, other than title insurance or bail bonds, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(5) INSURANCE PRODUCER.—The term "insurance producer" means any insurance agent or broker, excess or surplus lines broker or agent, insurance consultant, limited insurance representative, and any other individual or entity that sells, solicits, or negotiates policies of insurance or offers advice, counsel, opinions or services related to insurance.

(6) INSURER.—The term "insurer" has the meaning as in section 313(e)(2)(B) of title 31, United States Code.

(7) PRINCIPAL PLACE OF BUSINESS.—The term "principal place of business" means the State in which an insurance producer maintains the headquarters of the insurance producer and, in the case of a business entity, where high-level officers of the entity direct, control, and coordinate the business activities of the business entity.

(8) PRINCIPAL PLACE OF RESIDENCE.—The term "principal place of residence" means the State in which an insurance producer resides for the greatest number of days during a calendar year.

(9) STATE.—The term "State" includes any State, the District of Columbia, any territory of the United States, and Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(10) STATE LAW.—

(A) IN GENERAL.—The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.

(B) LAWS APPLICABLE IN THE DISTRICT OF COLUMBIA.—A law of the United States applicable only to or within the District of Columbia shall be treated as a State law rather than a law of the United States.

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EXCHANGE OF LETTERS

BOB GOODLATTE, Virginia
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
STEVE CHABOT, Ohio
SPENCER BACHUS, Alabama
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TRENT FRANKS, Arizona
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JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
RAUL R. LABRADOR, Idaho
BLAKE FARENTHOLD, Texas
GEORGE HOLDING, North Carolina
DOUG COLLINS, Georgia
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JASON SMITH, Missouri
VACANCY

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
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HAKEEM S. JEFFRIES, New York
DAVID CICILLINE, Rhode Island

July 16, 2014

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Hensarling,

I am writing concerning H.R. 4871, the "TRIA Reform Act of 2014," which your Committee ordered reported on June 20, 2014.

As a result of your having consulted with the Committee on the provisions in our jurisdiction and in order to expedite the House's consideration of H.R. 4871, the Committee on the Judiciary will not assert is jurisdictional claim over this bill by seeking a sequential referral. However, this is conditional on our mutual understanding and agreement that doing so will in no way diminish or alter the jurisdiction of the Committee on the Judiciary with respect to the appointment of conferees or to any future jurisdictional claim over the subject matters contained in the bill or similar legislation.

I would appreciate your response to this letter confirming this understanding, and would request that you include a copy of this letter and your response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill.

Sincerely,

Bob Goodlatte
Chairman

cc: The Honorable John Boehner, Speaker
The Honorable John Conyers
The Honorable Maxine Waters
The Honorable Thomas J. Wickham, Jr., Parliamentarian

JEB HENSARLING, TX , CHAIRMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

July 16, 2014

HAND-DELIVERED

The Honorable Bob Goodlatte
Chairman, Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte:

Thank you for your letter of even date herewith regarding H.R. 4871, the TRIA Reform Act of 2014, as amended.

I am most appreciative of your decision to forego consideration of H.R. 4871 so that it may move expeditiously to the House floor. I acknowledge that although you are waiving formal consideration of the bill, the Committee on the Judiciary is not waiving its jurisdiction over any subject matter contained in the bill that falls therein. In addition, if a conference is necessary on this legislation, I will support any request that your committee be represented therein.

Finally, I shall be pleased to include your letter and this letter in our committee's report on H.R. 4871 and in the *Congressional Record* during floor consideration of the same.

Sincerely,

JEB HENSARLING
Chairman

cc: The Honorable John A. Boehner (via e-mail)
The Honorable Maxine Waters (via e-mail)
The Honorable John Conyers, Jr. (via e-mail)
Mr. Thomas J. Wickham, Jr. (via e-mail)

MINORITY VIEWS

The Terrorism Risk Insurance Act of 2002 (TRIA) authorized the creation of the Terrorism Risk Insurance Program to ensure the availability and affordability of terrorism coverage. The Program contains several safeguards to limit taxpayer exposure and increase private sector participation. These safeguards include a $100 million program trigger, a 20 percent deductible requirement, a 15 percent insurer co-pay, a hard cap of $100 billion, and a recoupment mechanism.

Increasing the Program trigger five-fold will have a punitive effect on smaller, regional, and niche insurers who would be forced from the market. The dramatic increase will increase the potential exposure for companies, making terrorism coverage too great a risk for small and mid-sized companies to participate in the program. With fewer companies able to offer coverage, take-up rates may suffer and uninsured losses in the event of a terrorist attack may be greater, thus increasing taxpayer exposure. The increase will also disproportionately affect the workers' compensation market, which functions differently from other insurance markets, including property and casualty insurers. State workers' compensation statutes dictate that workers' compensation insurers cannot exclude or limit terrorism coverage. Because workers' compensation coverage for terrorism is mandatory for the vast majority of U.S. employers, carriers are unable to take advantage of the small insurer opt out included in the bill.

Increasing the program trigger from the current $100 million threshold would significantly increase potential exposure for workers' compensation carriers. This policy change would force them to limit their exposure by declining to cover employers faced with high terrorism risk—in some cases, many of the smaller workers' compensation insurers would be forced to pull completely out of certain regional markets to limit exposure. Those insurers that choose to continue to offer workers' compensation insurance coverage in and near perceived terror targets would severely jeopardize their financial stability and would likely face downward pressure from ratings agencies. This will force small workers' compensation carriers out of the market resulting in decreased competition. This will then lead to increased costs for employers, as well as reduced labor incomes and economic growth—while at the same time uninsured losses in the event of a terrorist attack will be greater, increasing pressure to the federal government to pay for those losses.

Bifurcating conventional terrorism and nuclear, biological, chemical, and radiological (NBCR) terrorism may bring uncertainty to the Program post-attack. Distinguishing between an NBCR and non-NBCR event may lead to practical challenges with the certification and claims process.

TRIA has been a resounding success. The Program has made terrorism coverage both available and affordable, all while costing taxpayers nothing. The Program also provides policyholders with the certainty they need to continue to develop, create jobs, and contribute to our economic growth. It is clear that such drastic reforms to TRIA do nothing to reduce taxpayer exposure or increase capacity, but only serve to phase-out the already limited backstop and leave our nation unprotected in the case of a terrorist attack.

MAXINE WATERS.
DAN KILDEE.
RUBÉN HINOJOSA.
STEVEN HORSFORD.
JOYCE BEATTY.
EMANUEL CLEAVER.
MICHAEL E. CAPUANO.
GARY C. PETERS.
CAROLYN B. MALONEY.
AL GREEN.
KEITH ELLISON.
DENNY HECK.
GWEN MOORE.
ED PERLMUTTER.
WM. LACY CLAY.

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