

H. R. 7011

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

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2020

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

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pandemic Risk Insurance Act of 2020”.

SEC. 2. PURPOSE.

The purpose of this Act is to establish a Federal program that provides for a transparent system of shared public and private compensation for business interruption losses resulting from a pandemic or outbreak of communicable disease, in order to—

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

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

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) COVERED PUBLIC HEALTH EMERGENCY.—

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

(i) for which an emergency is declared, on or after January 1, 2021, under the Public Health Service Act; and

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

(B) 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, a covered public health emergency has occurred.

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

(3) BUSINESS INTERRUPTION INSURANCE.—The term “business interruption insurance” means commercial lines of property and casualty insurance coverage, including event cancellation insurance or other non-property contingent business interruption insurance, provided or made available for losses resulting from periods of suspended business operations, including losses from a covered public health emergency, or a civil order related to a covered public health emergency, whether provided under broader coverage for property and casualty losses or separately.

(4) CONTROL.—

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

(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;

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

(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 January 1, 2021, 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).

(5) DIRECT EARNED PREMIUM.—The term “direct earned premium” means a direct earned premium for property and casualty insurance issued by any participating insurer for insurance against losses occurring in the United States.

(6) EVENT.—The term “event” means a trade show, consumer show, exhibition, fair, conference, convention, meeting, seminar, charity event, auction, gala dinner, competition, sporting event, film or television production, award show, or other similar event.

(7) EVENT CANCELLATION INSURANCE.—The term “event cancellation insurance” means insurance that indemnifies an insured for losses that occur as a consequence of—

(A) cancellation, abandonment, or rescheduling of an event; or

(B) non-appearance at an event of a principal speaker.

(8) INSURED LOSS.—The term “insured loss” means any loss resulting from a covered public health emergency that is covered by primary or excess business interruption insurance issued by a participating insurer if such loss occurs—

(A) within the United States; and

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

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

(A) that is—

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

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

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

- (iv) a State residual market insurance entity or State workers' compensation fund; or
 - (v) any other entity described in section 4(f), to the extent provided in the rules of the Secretary issued under section 4(f);
- (B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in subsections (d) and (f) of section 4; and
- (C) that meets any other criteria that the Secretary may reasonably prescribe.

Such term includes captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools).

(10) INSURER DEDUCTIBLE.—The term “insurer deductible” means, with respect to a participating insurer—

- (A) the value of the participating insurer's direct earned premiums during the immediately preceding calendar year, multiplied by 5 percent; and
- (B) notwithstanding subparagraph (A), for any calendar year, if a participating insurer has not had a full year of operations during the calendar year immediately preceding such calendar year, such portion of the direct earned premiums of the participating insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums.

(11) NAIC.—The term “NAIC” means the National Association of Insurance Commissioners.

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

(13) 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.

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

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

(A) means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and event cancellation insurance; and

(B) does not include—

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

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

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

(iv) insurance for medical malpractice;

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

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

(vii) reinsurance or retrocessional reinsurance;

(viii) commercial automobile insurance;

(ix) burglary and theft insurance;

(x) surety insurance;

(xi) professional liability insurance; or

(xii) farm owners multiple peril insurance.

(16) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(17) 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.

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

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

- (A) to begin at 12:01 a.m. on that date; and
- (B) to end at midnight on that date.

SEC. 4. PANDEMIC RISK REINSURANCE PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—There is established in the Department of the Treasury the Pandemic Risk Reinsurance Program.

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

(3) VOLUNTARY PARTICIPATION.—

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

(B) ELECTION.—The Secretary shall provide a process by which insurers may elect to participate in the Program, with respect to a calendar year.

(4) TREATMENT OF EXISTING POLICIES.—This Act may not be construed to affect any policy for business interruption insurance in force on the date of the enactment of this Act.

(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 a participating insurer, unless—

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

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

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

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

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

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

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

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

(B) written certification—

(i) of the underlying claim; and

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

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

(c) MANDATORY AVAILABILITY OF COVERAGE FOR COVERED PUBLIC HEALTH EMERGENCIES UNDER BUSINESS INTERRUPTION COVERAGE.—During each calendar year, each participating insurer shall, with respect to such year—

(1) make available, in all of its business interruption insurance policies, coverage for insured losses; and

(2) make available business interruption insurance coverage for insured losses that does not differ materially from the terms, conditions, amounts, limits, deductibles, or self-insured retentions and other coverage grants, limitations, and exclusions applicable to losses arising from events other than public health emergencies.

(d) STATE RESIDUAL MARKET INSURANCE ENTITIES.—

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

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

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

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

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

(e) REINSURANCE FOR INSURED LOSSES.—

(1) FEDERAL SHARE OF COMPENSATION.—

(A) IN GENERAL.—The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an participating insurer during each calendar year shall be equal to 95 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such calendar year.

(B) PROGRAM TRIGGER.—In the case of a covered public health emergency commencing after the date on which the Secretary issues final regulations pursuant to paragraph (2)(B)(ii), no compensation shall be paid by the Secretary under subsection (a) unless the aggregate industry insured losses for participating insurers resulting from such covered public health emergency exceed \$250,000,000.

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

(2) CAP ON ANNUAL LIABILITY.—

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

(i) the Secretary shall not make any payment under this Act for any portion of the amount of such losses that exceeds \$750,000,000,000; and
(ii) no participating insurer that has met its insurer deductible shall be liable for the payment of any amounts under subparagraph (B).

(B) INSURER SHARE.—

(i) IN GENERAL.—For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured losses to be paid by each participating insurer that incurs insured losses under the Program, except that, notwithstanding paragraph (1) or any other provision of Federal

or State law, no participating insurer may be required to make any payment for insured losses in excess of its deductible under section 3(8) combined with its share of insured losses under paragraph (1)(A) of this subsection.

(ii) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue final regulations for determining the pro rata share of insured losses under the Program when insured losses exceed \$750,000,000,000, in accordance with clause (i).

(iii) REPORT TO CONGRESS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall provide a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the process to be used by the Secretary for determining the allocation of pro rata payments for insured losses under the Program when such losses exceed \$750,000,000,000.

(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed \$750,000,000,000 during any calendar year. The Secretary shall provide an initial notice to Congress not later than 15 days after the end of a covered public health emergency, stating whether the Secretary estimates that aggregate insured losses will exceed \$750,000,000,000.

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

(5) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, unless expressly provided, and shall not be subject to judicial review.

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

(g) REINSURANCE TO COVER EXPOSURE.—

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

(2) LIMITATION ON FINANCIAL ASSISTANCE.—The amount of financial assistance provided pursuant to this section shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the calendar year provided pursuant to this section, may not exceed the

aggregate amount of the insurer's insured losses for the calendar year. If such recoveries and financial assistance for the calendar year exceed such aggregate amount of insured losses for the calendar year and there is no agreement between the insurer and any reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

SEC. 5. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

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

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

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

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

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

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

(3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 4; and

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

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

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

(e) **SUBMISSION OF PREMIUM INFORMATION.**—

(1) **IN GENERAL.**—The Secretary shall annually compile information on the business interruption insurance premium rates of insurers for the preceding year.

(2) **ACCESS TO INFORMATION.**—To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC business

interruption insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

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

(f) REPORTING OF BUSINESS INTERRUPTION INSURANCE DATA.—

(1) AUTHORITY.—Beginning upon the date of the enactment of this Act, in each calendar year, the Secretary shall require participating insurers to submit to the Secretary such information regarding losses of such insurers, under insurance coverage for business interruption, resulting from public health emergencies 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 losses resulting from public health emergencies purchased; and

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

(2) REPORTS.—Not later than one year after the date of the enactment of this Act and annually 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 the availability and affordability of business interruption insurance for losses resulting from public health emergencies;

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

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

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

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

(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 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, 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.

(g) FUNDING.—

(1) FEDERAL PAYMENTS.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program.

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

SEC. 6. PREEMPTION AND NULLIFICATION OF PRE-EXISTING EXCLUSIONS.

(a) GENERAL NULLIFICATION.—Any exclusion in a contract of a participating insurer for business interruption insurance that is in force on the date of enactment of this Act shall be void to the extent that it excludes losses that would otherwise be insured losses under the Program.

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

(c) REINSTATEMENT OF EXCLUSIONS.—Notwithstanding subsections (a) and (b) or any provision of State law, a participating insurer may reinstate a preexisting provision in a contract for business interruption insurance that is in force on the date of enactment of this Act and that excludes coverage for loss resulting from a covered public health emergency only—

(1) if the participating insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

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

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

(B) the participating insurer provided notice, at least 30 days before any such reinstatement, of—

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

(ii) the rights of the insured with respect to such coverage, including any date upon which the exclusion would be reinstated if no payment is received.

SEC. 7. PRESERVATION PROVISIONS.

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

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

(2) except that—

(A) the definition of the term “covered public health emergency” in section 3 shall be the exclusive definition of that term for purposes of compensation for insured losses under this Act, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this Act;

(B) during the period beginning on the date of enactment of this Act and ending on December 31, 2020, rates and forms for business interruption insurance covered by this Act and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable, except that nothing in this Act affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory, and, with respect to forms, where a State has prior approval authority, it shall apply to allow subsequent review of such forms; and

(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 9, including authority in subsection 208(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access.

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

SEC. 8. STUDY AND ANALYSES.

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

(1) **STUDY.**—The Secretary, in consultation with the NAIC, representatives of the insurance industry and of policy holders, other experts in the insurance field, and other experts as needed, shall assess the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer insurance for risk of public health emergencies after

termination of the Program, and the availability and affordability of such insurance for various policyholders.

(2) REPORT.—The Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than the expiration of the 12-month period beginning on the date of the enactment of this Act.

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

(1) IN GENERAL.—The President's Working Group on Financial Markets, in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders, shall perform an ongoing analysis regarding the long-term availability and affordability of insurance for risk of public health emergencies.

(2) REPORT.—Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act and every two years thereafter, the President's Working Group on Financial Markets shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its findings pursuant to the analysis conducted under paragraph (1).

(c) AVAILABILITY AND AFFORDABILITY OF BUSINESS INTERRUPTION INSURANCE IN SPECIFIC MARKETS.—

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

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

(A) an analysis of both insurance and reinsurance capacity in specific markets, including pricing and coverage limits in existing policies;

(B) an assessment of the factors contributing to any capacity constraints that are identified; and

(C) recommendations for addressing those capacity constraints.

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

(d) STUDY OF SMALL INSURER MARKET COMPETITIVENESS.—

(1) IN GENERAL.—Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act and every two years thereafter, the Secretary shall conduct a study of small insurers (as such term is defined by regulation by the Secretary) participating in the Program, and identify any competitive challenges small insurers face in the business interruption insurance marketplace, including—

- (A) changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers;
- (B) how the business interruption insurance market for risk of public health emergencies differs between small and large insurers, and whether such a difference exists within other perils;
- (C) the impact of the Program's availability on small insurers;
- (D) the effect of increasing the trigger amount for the Program under section 4(e)(1)(B) 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 and workers compensation carriers in the business interruption insurance marketplace.

(2) REPORT.—The Secretary shall submit a report to the Congress setting forth the findings and conclusions of each study required under paragraph (1).

SEC. 9. TERMINATION OF PROGRAM.

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

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

(c) REPEAL; SAVINGS CLAUSE.—This Act is repealed on the final termination date of the Program under subsection (a), except that such repeal shall not be construed—

(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (b) of this section, paragraph (4) or (5) of section 4(e), or subsection (a)(1), (c), (d), or (e) of section 5, as in effect on the day before the date of such repeal, or applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (b) of this section is in effect; or

(2) to prevent the availability of funding under section 5(g) during any period in which the authority of the Secretary under subsection (b) of this section is in effect.