

TERRORISM RISK PROTECTION ACT

NOVEMBER 19, 2001.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 3210]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

Purpose and Summary	Page 12
Background and Need for Legislation	12
Hearings	15
Committee Consideration	16
Committee Votes	16
Committee Oversight Findings	22
Performance Goals and Objectives	22
New Budget Authority, Entitlement Authority, and Tax Expenditures	22
Committee Cost Estimate	22
Congressional Budget Office Estimate	22
Federal Mandates Statement	29
Advisory Committee Statement	29
Constitutional Authority Statement	30
Applicability to Legislative Branch	30
Section-by-Section Analysis of the Legislation	30
Changes in Existing Law Made by the Bill, as Reported	36
Additional and Dissenting Views	40

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 “Terrorism Risk Protection Act”.

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

- Sec. 1. Short title and table of contents.
- Sec. 2. Congressional findings.
- Sec. 3. Authority of Secretary of the Treasury.
- Sec. 4. Submission of premium information to Secretary.
- Sec. 5. Triggering determination and covered period.
- Sec. 6. Federal cost-sharing for commercial insurers.
- Sec. 7. Assessments.
- Sec. 8. Terrorism loss repayment surcharge.
- Sec. 9. Administration of assessments and surcharges.
- Sec. 10. Application to self-insurance arrangements and offshore insurers and reinsurers.
- Sec. 11. Reserve for terrorism coverage under commercial lines of business.
- Sec. 12. State preemption.
- Sec. 13. Consistent State guidelines for coverage for acts of terrorism.
- Sec. 14. Consultation with State insurance regulators and NAIC.
- Sec. 15. Sovereign immunity protections.
- Sec. 16. Study of potential effects of terrorism on life insurance industry.
- Sec. 17. Railroad insurance study.
- Sec. 18. Study of reinsurance pool system for future acts of terrorism.
- Sec. 19. Definitions.
- Sec. 20. Extension of program.
- Sec. 21. Regulations.

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the terrorist attacks on the World Trade Center and the Pentagon of September 11, 2001, resulted in a large number of deaths and injuries, the destruction and damage to buildings, and interruption of business operations;

(2) the attacks have inflicted possibly the largest losses ever incurred by insurers and reinsurers in a single day;

(3) while the insurance and reinsurance industries have committed to pay the losses arising from the September 11 attacks, the resulting disruption has created widespread market uncertainties with regard to the risk of losses arising from possible future terrorist attacks;

(4) such uncertainty threatens the continued availability of United States commercial property and casualty insurance for terrorism risk at meaningful coverage levels;

(5) the unavailability of affordable commercial property and casualty insurance for terrorist acts threatens the growth and stability of the United States economy, including impeding the ability of financial services providers to finance commercial property acquisitions and new construction;

(6) in the past, the private insurance markets have shown a remarkable resiliency in adapting to changed circumstances;

(7) given time, the private markets will diversify and develop risk spreading mechanisms to increase capacity and guard against possible future losses incurred by terrorist attacks;

(8) it is necessary to create a temporary industry risk sharing program to ensure the continued availability of commercial property and casualty insurance and reinsurance for terrorism-related risks;

(9) such action is necessary to limit immediate market disruptions, encourage economic stabilization, and facilitate a transition to a viable market for private terrorism risk insurance; and

(10) in addition, it is necessary to repeal portions of the tax law which discourage the insurance market from developing the necessary reserves to handle possible future losses due to acts of terrorism.

SEC. 3. AUTHORITY OF SECRETARY OF THE TREASURY.

The Secretary of the Treasury shall be responsible for carrying out a program for financial assistance for commercial property and casualty insurers, as provided in this Act.

SEC. 4. SUBMISSION OF PREMIUM INFORMATION TO SECRETARY.

To the extent such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit, to the Secretary or to the NAIC, a statement specifying the net premium amount of coverage written by such insurer for properties and persons in the United States under each line of commercial property and casualty insurance sold by such insurer during such periods as the Secretary may provide.

SEC. 5. TRIGGERING DETERMINATION AND COVERED PERIOD.

(a) **IN GENERAL.**—For purposes of this Act, a “triggering determination” is a determination by the Secretary that the insured losses resulting from the occurrence of an act of terrorism during the covered period (as such term is defined in subsection

(b)), or the aggregate insured losses resulting from multiple occurrences of acts of terrorism all occurring during the covered period, meet the requirements under either of the following paragraphs:

(1) INDUSTRY-WIDE TRIGGER.—Such industry-wide losses exceed \$1,000,000,000.

(2) INDIVIDUAL INSURER TRIGGER.—Such industry-wide losses exceed \$100,000,000 and some portion of such losses for any single commercial insurer exceed—

(A) 10 percent of the capital surplus of such commercial insurer (as such term is defined by the Secretary); and

(B) 10 percent of the net commercial property and casualty premiums written by such commercial insurer;

except that this paragraph shall not apply to any commercial insurer that was not providing commercial property and casualty insurance coverage prior to September 11, 2001.

(b) COVERED PERIOD.—For purposes of this Act, the “covered period” is the period beginning on the date of the enactment of this Act and ending on January 1, 2003.

(c) DETERMINATIONS REGARDING OCCURRENCES.—For purposes of subsection (a), the Secretary shall have the sole authority, which may not be delegated or designated to any other officer, employee, or position, for determining whether—

(1) an occurrence was caused by an act of terrorism;

(2) insured losses from acts of terrorism were caused by one or multiple occurrences; and

(3) an act of terrorism occurred during the covered period.

SEC. 6. FEDERAL COST-SHARING FOR COMMERCIAL INSURERS.

(a) IN GENERAL.—Pursuant to a triggering determination, the Secretary shall provide financial assistance to commercial insurers in accordance with this section to cover insured losses resulting from acts of terrorism, which shall be repaid in accordance with subsection (e).

(b) AMOUNT.—

(1) INDUSTRY-WIDE TRIGGER.—Subject to subsection (c), with respect to a triggering determination under section 5(a)(1), financial assistance shall be made available under this section to each commercial insurer in an amount equal to 90 percent of the amount of the insured losses of the insurer as a result of the triggering event involved.

(2) INDIVIDUAL INSURER TRIGGER.—Subject to subsection (c), with respect to a triggering determination under section 5(a)(2), financial assistance shall be made available under this section, to each commercial insurer incurring insured losses as a result of the triggering event involved that exceed the amounts under subparagraphs (A) and (B) of such section, in an amount equal to the difference between—

(A) 90 percent of the amount of the insured losses of the insurer as a result of such triggering event; and

(B) the amount under subparagraph (B) of section 5(a)(2).

(c) AGGREGATE LIMITATION.—The aggregate amount of financial assistance provided pursuant to this section may not exceed \$100,000,000,000.

(d) LIMITATIONS.—The Secretary may establish such limitations as may be necessary to ensure that payments under this section in connection with a triggering determination are made only to commercial insurers that are not in default of any obligation under section 7 to pay assessments or under section 8 to collect surcharges.

(e) REPAYMENT.—Financial assistance made available under this section shall be repaid through assessments under section 7 collected by the Secretary and surcharges remitted to the Secretary under section 8. Any such amounts collected or remitted shall be deposited into the general fund of the Treasury.

(f) EMERGENCY DESIGNATION.—Congress designates the amount of new budget authority and outlays in all fiscal years resulting from this section as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(e)). Such amount shall be available only to the extent that a request, that includes designation of such amount as an emergency requirement as defined in such Act, is transmitted by the President to Congress.

SEC. 7. ASSESSMENTS.

(a) IN GENERAL.—In the case of a triggering determination, each commercial insurer shall be subject to assessments under this section for the purpose of repaying financial assistance made available under section 6 in connection with such determination.

(b) **AGGREGATE ASSESSMENT.**—Pursuant to a triggering determination, the Secretary shall determine the aggregate amount to be assessed among all commercial insurers, which shall be equal to the lesser of—

(1) \$20,000,000,000; and

(2) the amount of financial assistance paid under section 6 in connection with the triggering determination.

(c) **ALLOCATION OF ASSESSMENT.**—

(1) **IN GENERAL.**—The Secretary shall allocate the aggregate assessment amount determined under subsection (b) among all commercial insurers. The portion of the aggregate assessment amount that is allocated as an assessment on each commercial insurer shall be based on the percentage, written by that insurer, of the aggregate written premium for all commercial insurers, for the calendar year preceding the assessment.

(2) **PAYMENT REQUIREMENT.**—Upon notification by the Secretary of an assessment under this section, each commercial insurer shall be required to pay to the Secretary, in the manner provided under section 9 by the Secretary, the amount equal to the assessment on such commercial insurer (subject to the limitation under paragraph (3)).

(3) **ANNUAL LIMITATION ON AMOUNT ALLOCATED TO EACH COMMERCIAL INSURER.**—

(A) **IN GENERAL.**—Of any assessments under this section on a commercial insurer, the portion required to be paid by any commercial insurer during a calendar year shall not exceed the amount that is equal to 3 percent of the net written premium for such insurer for the preceding calendar year.

(B) **MULTIPLE PAYMENTS.**—If any amounts required to be repaid under this section for a calendar year are limited by operation of subparagraph (A), the Secretary shall provide that all such remaining amounts shall be reallocated among all commercial insurers (in the manner provided in paragraph (1)) over such immediately succeeding calendar years, and repaid over such years, as may be necessary to provide for full payment of such remaining amounts, except that the limitation under subparagraph (A) shall apply to the amounts paid in any such successive calendar years.

(4) **ADMINISTRATIVE FLEXIBILITY.**—

(A) **TIMING OF ASSESSMENTS.**—Assessments under this section in connection with a triggering determination shall be made, to the extent that the Secretary considers practicable and appropriate, at the beginning of the calendar year immediately following the triggering determination.

(B) **ESTIMATES AND CORRECTIONS.**—If the Secretary makes an assessment at a time other than provided under subparagraph (A), the Secretary may—

(i) require commercial insurers to estimate their net premium written for the year in which the assessment is made; and

(ii) make a subsequent refund or require additional payments to correct such estimation at the end of the calendar year.

(5) **DEFERRAL OF CONTRIBUTIONS.**—The Secretary may defer the payment of part or all of the assessment required under paragraph (2) to be paid by a commercial insurer, but only to the extent that the Secretary determines that such deferral is necessary to avoid the likely insolvency of the commercial insurer.

SEC. 8. TERRORISM LOSS REPAYMENT SURCHARGE.

(a) **DETERMINATION OF IMPOSITION AND COLLECTION.**—

(1) **IN GENERAL.**—If, pursuant to a triggering determination, the Secretary determines that the aggregate amount of financial assistance provided pursuant to section 6 exceeds \$20,000,000,000, the Secretary shall consider and weigh the factors under paragraph (2) to determine the extent to which a surcharge under this section should be established.

(2) **FACTORS.**—The factors under this paragraph are—

(A) the ultimate costs to taxpayers if a surcharge under this section is not established;

(B) the economic conditions in the commercial marketplace;

(C) the affordability of commercial insurance for small- and medium-sized business; and

(D) such other factors as the Secretary considers appropriate.

(3) **POLICYHOLDER PREMIUM.**—The amount established by the Secretary as a surcharge under this section shall be established and imposed as a policyholder premium surcharge on commercial property and casualty insurance written after such determination, for the purpose of repaying financial assistance made available under section 6 in connection with such triggering determination.

(4) **COLLECTION.**—The Secretary shall provide for commercial insurers to collect surcharge amounts established under this section and remit such amounts collected to the Secretary.

(b) **AMOUNT AND DURATION.**—Subject to subsection (c), the surcharge under this section shall be established in such amount, and shall apply to commercial property and casualty insurance written during such period, as the Secretary determines is necessary to recover the aggregate amount of financial assistance provided under section 6 to cover insured losses resulting from the triggering event that exceed \$20,000,000,000.

(c) **PERCENTAGE LIMITATION.**—The surcharge under this section applicable to commercial property and casualty insurance coverage may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for such coverage.

(d) **OTHER TERMS.**—The surcharge under this section shall—

(1) be based on a percentage of the amount of commercial property and casualty insurance coverage that a policy provides; and

(2) be imposed with respect to all commercial property and casualty insurance coverage written during the period referred to in subsection (b).

(e) **EXCLUSIONS.**—For purposes of this section, commercial property and casualty insurance does not include any reinsurance provided to primary insurance companies.

SEC. 9. ADMINISTRATION OF ASSESSMENTS AND SURCHARGES.

(a) **MANNER AND METHOD.**—

(1) **IN GENERAL.**—The Secretary shall provide for the manner and method of carrying out assessments under section 7 and surcharges under section 8, including the timing and procedures of making assessments and surcharges, notifying commercial insurers of assessments or surcharge requirements, collecting payments from and surcharges through commercial insurers, and refunding of any excess amounts paid or crediting such amounts against future assessments.

(2) **EFFECT OF ASSESSMENTS AND SURCHARGES ON URBAN COMMERCIAL CENTERS.**—In determining the method and manner of imposing assessments under section 7 and surcharges under section 8, including the amount of such assessments and surcharges, the Secretary shall take into consideration the economic impact of any such assessments and surcharges 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.

(b) **TIMING OF COVERAGES AND ASSESSMENTS.**—The Secretary may adjust the timing of coverages and assessments provided under this Act to provide for equivalent application of the provisions of this Act to commercial insurers and policies that are not based on a calendar year.

(c) **ADJUSTMENT.**—The Secretary may adjust the assessments charged under section 7 or the percentage imposed under the surcharge under section 8 at any time, as the Secretary considers appropriate to protect the national interest, which may include avoiding unreasonable economic disruption or excessive market instability and avoiding undue burdens on small businesses.

SEC. 10. APPLICATION TO SELF-INSURANCE ARRANGEMENTS AND OFFSHORE INSURERS AND REINSURERS.

(a) **SELF-INSURANCE ARRANGEMENTS.**—The Secretary may, in consultation with the NAIC, apply the provisions of this Act, as appropriate, to self-insurance arrangements by municipalities and other entities, but only if such application is determined before the occurrence of a triggering event and all of the provisions of this Act are applied uniformly to such entities.

(b) **OFFSHORE INSURERS AND REINSURERS.**—The Secretary shall ensure that the provisions of this Act are applied as appropriate to any offshore or non-admitted entities that provide commercial property and casualty insurance.

SEC. 11. RESERVE FOR TERRORISM COVERAGE UNDER COMMERCIAL LINES OF BUSINESS.

(a) **IN GENERAL.**—Section 832 of the Internal Revenue Code of 1986 (relating to insurance company taxable income) is amended by adding at the end the following new subsection:

“(h) **TERRORISM RESERVE FOR COMMERCIAL LINES OF BUSINESS.**—In the case of an insurance company subject to tax under section 831(a)—

“(1) **INCLUSION FOR DECREASES, AND DEDUCTION FOR INCREASES, IN BALANCE OF RESERVE.**—

“(A) **DECREASE TREATED AS GROSS INCOME.**—If for any taxable year—

“(i) the opening balance for the terrorism commercial business reserve exceeds

“(ii) the closing balance for such reserve,

such excess shall be included in gross income under subsection (b)(1)(F).

“(B) INCREASE TREATED AS DEDUCTION.—If for any taxable year—

“(i) the closing balance for the terrorism commercial business reserve exceeds

“(ii) the opening balance for such reserve,

such excess shall be taken into account as a deduction under subsection (c)(14).

“(2) TERRORISM COMMERCIAL BUSINESS RESERVE.—For purposes of this section, the term ‘terrorism commercial business reserve’ means amounts held in a segregated account (or other separately identifiable arrangement or joint pooled account) which are set aside exclusively—

“(A) to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from declared terrorism losses under commercial lines of business, and

“(B) if so directed by the insurance commissioner of any State, to pay other claims as part of a plan of the company to avoid insolvency.

“(3) LIMITATION ON AMOUNT OF RESERVE.—

“(A) IN GENERAL.—If the closing balance of any terrorism commercial business reserve for any taxable year exceeds such reserve’s limit for such year—

“(i) such excess shall be included in gross income under subsection (b)(1)(F) for the following taxable year, and

“(ii) if such excess is distributed during such following taxable year, the opening balance of such reserve for such following taxable year shall be determined without regard to such excess.

“(B) RESERVE LIMIT.—

“(i) IN GENERAL.—For purposes of subparagraph (A), a reserve’s limit for any taxable year is such reserve’s allocable share of the national limit for the calendar year in which such taxable year begins.

“(ii) NATIONAL LIMIT.—The national limit is \$40,000,000,000 (\$13,340,000,000 for 2002).

“(iii) ALLOCATION OF LIMIT.—

“(I) IN GENERAL.—A reserve’s allocable share of the national limit for any calendar year is the amount which bears the same ratio to the national limit for such year as the company’s net premium for insurance for commercial lines of business which does not exclude coverage for acts of terrorism bears to the aggregate written premium for insurance (without regard to terrorism coverage) for all companies for commercial lines of business.

“(II) DETERMINATION OF NET WRITTEN PREMIUMS.—Except as otherwise provided in this section, all determinations under this subsection shall be made on the basis of the amounts required to be set forth on the annual statement approved by the National Association of Insurance Commissioners.

“(III) AGGREGATE WRITTEN PREMIUMS AND NET PREMIUMS.—For purposes of this clause, the terms ‘aggregate written premium’ and ‘net premium’ have the meanings given such terms in section 19 of the Terrorism Risk Protection Act.

“(iv) INFLATION ADJUSTMENT OF LIMIT.—In the case of any calendar year after 2002, the \$40,000,000,000 amount in clause (ii) shall be increased by an amount equal to the product of—

“(I) such dollar amount, and

“(II) the cost-of-living adjustment determined under subsection (f)(3) for such calendar year, determined by substituting ‘calendar year 2001’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount after adjustment under the preceding sentence is not a multiple of \$1,000,000, such amount shall be rounded to the nearest multiple of \$1,000,000.

“(4) DECLARED TERRORISM LOSSES.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘declared terrorism losses’ means, with respect to a taxable year—

“(i) the amount of net losses and loss adjustment expenses incurred in commercial lines of business that are attributable to 1 or more declared terrorism events, plus

“(ii) any nonrecoverable assessments, surcharges, or other liabilities that are borne by the company and are attributable to such events.

“(B) DECLARED TERRORISM EVENT.—The term ‘declared terrorism event’ means any event declared by the Secretary of the Treasury to be an act of terrorism against the United States for purposes of this section.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, and shall prescribe such regulations after consultation with the National Association of Insurance Commissioners.”

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 832(b) of such Code is amended by striking “and” at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting in lieu thereof “, and”, and by adding at the end the following new subparagraph:

“(F) each net decrease in reserves which is required by paragraph (1) or (3) of subsection (h) to be taken into account under this subparagraph.”

(2) Subsection (c) of section 832 of such Code is amended by striking “and” at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting in lieu thereof “; and”, and by adding at the end the following new paragraph:

“(14) each net increase in reserves which is required by subsection (h)(1) to be taken into account under this paragraph.”

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2001.

SEC. 12. STATE PREEMPTION.

(a) COVERED PERILS.—A commercial insurer shall be considered to have complied with any State law that requires or regulates the provision of insurance coverage for acts of terrorism if the insurer provides coverage in accordance with the definitions regarding acts of terrorism under this Act or under any regulations issued by the Secretary.

(b) RATE LAWS.—If any provision of any State law prevents an insurer from increasing its premium rates in an amount necessary to recover any assessments pursuant to section 7, such provision is preempted only to the extent necessary to provide for such insurer to recover such losses.

(c) FILE AND USE.—With respect only to commercial property and casualty insurance covering acts of terrorism, any provision of State law that requires, as a condition precedent to the effectiveness of rates or policies for such insurance that is made available by an insurer licensed to transact such business in the State, any action (including prior approval by the State insurance regulator for such State) other than filing of such rates and policies and related information with such State insurance regulator is preempted to the extent such law requires such additional actions for such insurance coverage. This subsection shall not be considered to preempt a provision of State law solely because the law provides that rates and policies for such insurance coverage are, upon such filing, subject to subsequent review and action, which may include actions to disapprove or discontinue use of such rates or policies, by the State insurance regulator.

SEC. 13. CONSISTENT STATE GUIDELINES FOR COVERAGE FOR ACTS OF TERRORISM.

(a) SENSE OF CONGRESS REGARDING COVERED PERILS.—It is the sense of the Congress that—

(1) the NAIC, in consultation with the Secretary, should develop appropriate definitions for acts of terrorism and appropriate standards for making determinations regarding occurrences of acts of terrorism;

(2) each State should adopt the definitions and standards developed by the NAIC for purposes of regulating insurance coverage made available in that State;

(3) in consulting with the NAIC, the Secretary should advocate and promote the development of definitions and standards that are appropriate for purposes of this Act; and

(4) after consultation with the NAIC, the Secretary should adopt definitions for acts of terrorism and standards for determinations that are appropriate for this Act.

(b) INSURANCE RESERVE GUIDELINES.—

(1) SENSE OF CONGRESS REGARDING ADOPTION BY STATES.—It is the sense of the Congress that—

(A) the NAIC should develop appropriate guidelines for commercial insurers and pools regarding maintenance of reserves against the risks of acts of terrorism; and

(B) each State should adopt such guidelines for purposes of regulating commercial insurers doing business in that State.

(2) CONSIDERATION OF ADOPTION OF NATIONAL GUIDELINES.—Upon the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary shall make a determination of whether the guidelines referred to in paragraph (1) have, by such time, been developed and adopted by nearly all States in a uniform manner. If the Secretary determines that such guidelines

have not been so developed and adopted, the Secretary shall consider adopting, and may adopt, such guidelines on a national basis in a manner that would supercede any State law regarding maintenance of reserves against such risks.

(c) **GUIDELINES REGARDING DISCLOSURE OF PRICING AND TERMS OF COVERAGE.**—

(1) **SENSE OF CONGRESS.**—It is the sense of the Congress that the States should require, by laws or regulations governing the provision of commercial property and casualty insurance that includes coverage for acts of terrorism, that the price of any such terrorism coverage, including the costs of any terrorism related assessments or surcharges under this Act, be separately disclosed.

(2) **ADOPTION OF NATIONAL GUIDELINES.**—If the Secretary determines that the States have not enacted laws or adopted regulations adequately providing for the disclosures described in paragraph (1) within a reasonable period of time after the date of the enactment of this Act, the Secretary shall, after consultation with the NAIC, adopt guidelines on a national basis requiring such disclosure in a manner that supercedes any State law regarding such disclosure.

SEC. 14. CONSULTATION WITH STATE INSURANCE REGULATORS AND NAIC.

(a) **IN GENERAL.**—The Secretary shall consult with the State insurance regulators and the NAIC in carrying out this Act.

(b) **FINANCIAL ASSISTANCE, ASSESSMENTS, AND SURCHARGES.**—The Secretary may take such actions, including entering into such agreements and providing such technical and organizational assistance to insurers and State insurance regulators, as may be necessary to provide for the distribution of financial assistance under section 6 and the collection of assessments under section 7 and surcharges under section 8.

(c) **INVESTIGATING AND AUDITING CLAIMS.**—The Secretary may, in consultation with the State insurance regulators and the NAIC, investigate and audit claims of insured losses by commercial insurers.

SEC. 15. SOVEREIGN IMMUNITY PROTECTIONS.

(a) **FEDERAL CAUSE OF ACTION FOR DAMAGES FROM TERRORIST ACTS RESULTING IN TRIGGERING DETERMINATION.**—

(1) **IN GENERAL.**—If a triggering determination occurs requiring an assessment under section 7 or a surcharge under section 8, there shall exist a Federal cause of action, which shall be the exclusive remedy, for damages claimed pursuant to, or in connection with, any acts of terrorism that caused the insured losses resulting in such triggering determination.

(2) **SUBSTANTIVE LAW.**—The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such act of terrorism occurred, unless such law is inconsistent with or preempted by Federal law.

(3) **JURISDICTION.**—Pursuant to each triggering determination, the Judicial Panel on Multidistrict Litigation shall designate one or more district courts of the United States which shall have original and exclusive jurisdiction over all actions brought pursuant to this subsection that arise out of the triggering event involved.

(4) **OFFSET FOR RELIEF PAYMENTS.**—Any recovery by a plaintiff in an action under this subsection shall be offset by the amount, if any, received by the plaintiff from the United States pursuant to any emergency or disaster relief program, or from any other collateral source, for compensation of losses related to the act of terrorism involved.

(b) **DAMAGES IN ACTIONS REGARDING INSURANCE CLAIMS.**—In an action brought under this section for damages or coverage claimed by or against an insured pursuant to, or in connection with, any commercial property and casualty insurance providing coverage for acts of terrorism that resulted in a triggering determination:

(1) **PROHIBITION OF PUNITIVE DAMAGES.**—No punitive damages intended to punish or deter may be awarded.

(2) **NONECONOMIC DAMAGES.**—

(A) **IN GENERAL.**—Each defendant in such an action shall be liable only for the amount of noneconomic damages allocated to the defendant in direct proportion to the percentage of responsibility of the defendant for the harm to the claimant.

(B) **DEFINITION.**—For purposes of subparagraph (A), the term “noneconomic damages” means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other non-pecuniary losses.

Nothing in this subsection may be construed to limit an action by an injured party for damages other than a claim for commercial property and casualty insurance resulting from an act of terrorism causing a triggering determination.

(c) **RIGHT OF SUBROGATION.**—The United States shall have the right of subrogation with respect to any claim paid by the United States under this Act.

(d) **PROTECTIVE ORDERS.**—The United States or the Secretary may seek protective orders or assert privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege.

(e) **EXCLUSION.**—Nothing in this section shall apply to, or in any way limit, the liability of any person who—

(1) attempts to commit, knowingly participates in, knowingly and intentionally aids and abets, or commits, any act of terrorism or any criminal act related to or resulting from an act of terrorism that caused the insured losses resulting in the triggering determination; or

(2) knowingly participates in a conspiracy to commit any act of terrorism or any criminal act resulting from or related to an act of terrorism that caused the insured losses resulting in the triggering determination.

(f) **SATISFACTION OF JUDGMENTS FROM SEIZED ASSETS OF TERRORISTS.**—All assets of terrorists or terrorist organizations seized or frozen by the United States in accordance with law shall be liable for satisfaction of judgments rendered for acts of terrorism, in proportions determined by the courts.

SEC. 16. STUDY OF POTENTIAL EFFECTS OF TERRORISM ON LIFE INSURANCE INDUSTRY.

(a) **ESTABLISHMENT.**—Not later than 30 days after the date of enactment of this Act, the President shall establish a commission (in this section referred to as the “Commission”) to study and report on the potential effects of an act or acts of terrorism on the life insurance industry in the United States and the markets served by such industry.

(b) **MEMBERSHIP AND OPERATIONS.**—

(1) **APPOINTMENT.**—The Commission shall consist of 7 members, as follows:

(A) The Secretary of the Treasury or the designee of the Secretary.

(B) The Chairman of the Board of Governors of the Federal Reserve System or the designee of the Chairman.

(C) The Assistant to the President for Homeland Security.

(D) 4 members appointed by the President, who shall be—

(i) a representative of direct underwriters of life insurance within the United States;

(ii) a representative of reinsurers of life insurance within the United States;

(iii) an officer of the NAIC; and

(iv) a representative of insurance agents for life underwriters.

(2) **OPERATIONS.**—The chairperson of the Commission shall determine the manner in which the Commission shall operate, including funding, staffing, and coordination with other governmental entities.

(c) **STUDY.**—The Commission shall conduct a study of the life insurance industry in the United States, which shall identify and make recommendations regarding—

(1) possible actions to encourage, facilitate, and sustain provision by the life insurance industry in the United States of coverage for losses due to death or disability resulting from an act or acts of terrorism, including in the face of threats of such acts; and

(2) possible actions or mechanisms to sustain or supplement the ability of the life insurance industry in the United States to cover losses due to death or disability resulting from an act or acts of terrorism in the event that—

(A) such acts significantly affect mortality experience of the population of the United States over any period of time;

(B) such losses jeopardize the capital and surplus of the life insurance industry in the United States as a whole; or

(C) other consequences from such acts occur, as determined by the Commission, that may significantly affect the ability of the life insurance industry in the United States to independently cover such losses.

(d) **RECOMMENDATIONS.**—The Commission may make a recommendation pursuant to subsection (c) only upon the concurrence of a majority of the members of the Commission.

(e) **REPORT.**—Not later than 120 days after the date of enactment of this Act, the Commission shall submit to the House of Representatives and the Senate a report describing the results of the study and any recommendations developed under subsection (c).

(f) **TERMINATION.**—The Commission shall terminate 60 days after submission of the report as provided for in subsection (e).

SEC. 17. RAILROAD INSURANCE STUDY.

The Secretary of the Treasury shall conduct a study to determine how the Federal Government can address a possible crisis in the availability and affordability of railroad insurance by making such insurance for acts of terrorism available on commercially reasonable terms. Not later than 120 days after the date of the enactment of this Act the Secretary shall submit to the Congress a report regarding the results and conclusions of the study.

SEC. 18. STUDY OF REINSURANCE POOL SYSTEM FOR FUTURE ACTS OF TERRORISM.

(a) **STUDY.**—The Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Comptroller General of the United States shall jointly conduct a study on—

(1) the advisability and effectiveness of establishing a reinsurance pool system relating to future acts of terrorism to replace the Program provided for under this Act; and

(2) the potential effects of the amendments made by section 11 of this Act on the availability of terrorism insurance coverage.

(b) **CONSULTATION.**—In conducting the study under subsection (a), the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Comptroller General shall consult with (1) academic experts, (2) the United Nations Secretariat for Trade and Development, (3) representatives from the property and casualty insurance industry, (4) representatives from the reinsurance industry, (5) the NAIC, and (6) such consumer organizations as the Secretary considers appropriate.

(c) **REPORT.**—Not later than 6 months after the date of the enactment of this Act, the Secretary, the Board of Governors of the Federal Reserve System, and the Comptroller General shall jointly submit a report to the Congress on the results of the study under subsection (a).

SEC. 19. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) **ACT OF TERRORISM.**—

(A) **IN GENERAL.**—The term “act of terrorism” means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary in consultation with the NAIC.

(B) **REQUIREMENTS.**—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States flag vessel, in or outside the United States;

(iii) is committed by a person or group of persons or associations who are recognized, either before or after such act, by the Department of State or the Secretary as a terrorist group or have conspired with such a group or the group’s agents or surrogates;

(iv) has as its purpose to overthrow or destabilize the government of any country or to influence the policy or affect the conduct of the government of the United States by coercion; and

(v) is not considered an act of war.

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

(3) **AGGREGATE WRITTEN PREMIUM.**—The term “aggregate written premium” means, with respect to a year, the aggregate premium amount of all commercial property and casualty insurance coverage written during such year for persons or properties in the United States under all lines of commercial property and casualty insurance.

(4) **COMMERCIAL INSURER.**—The term “commercial insurer” means any corporation, association, society, order, firm, company, mutual, partnership, individual, aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurer.

(5) **COMMERCIAL PROPERTY AND CASUALTY INSURANCE.**—

(A) **IN GENERAL.**—The term “commercial property and casualty insurance” means insurance or reinsurance, or retrocessional reinsurance, for persons or properties in the United States against—

- (i) loss of or damage to property;
- (ii) loss of income or extra expense incurred because of loss of or damage to property;
- (iii) third party liability claims caused by negligence or imposed by statute or contract, including workers compensation; or
- (iv) loss resulting from debt or default of another.
- (B) EXCLUSIONS.—Such term does not include—
 - (i) insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, or other insurance for personal, family, or household needs;
 - (ii) insurance for professional liability, including medical malpractice, errors and omissions, or directors' and officers' liability; or
 - (iii) health or life insurance.
- (6) CONTROL.—A company has control over another company if—
 - (A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company;
 - (B) the company controls in any manner the election of a majority of the directors or trustees of the other company; or
 - (C) the Secretary determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the other company.
- (7) COVERED PERIOD.—The term “covered period” has the meaning given such term in section 5(b).
- (8) INDUSTRY-WIDE LOSSES.—The term “industry-wide losses” means the aggregate insured losses sustained by all insurers, from coverage written for persons or properties in the United States under all lines of commercial property and casualty insurance.
- (9) INSURED LOSS.—The term “insured loss” means any loss in the United States covered by commercial property and casualty insurance.
- (10) NAIC.—The term “NAIC” means the National Association of Insurance Commissioners.
- (11) NET PREMIUM.—The term “net premium” means, with respect a commercial insurer and a year, the aggregate premium amount collected by such commercial insurer for all commercial property and casualty insurance coverage written during such year for persons or properties in the United States under all lines of commercial property and casualty insurance by such commercial insurer, less any premium paid by such commercial insurer to other commercial insurers to insure or reinsure those risks.
- (12) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.
- (13) STATE.—The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.
- (14) STATE INSURANCE REGULATOR.—The term “State insurance regulator” means, with respect to a State, the principal insurance regulatory authority of the State.
- (15) TRIGGERING DETERMINATION.—The term “triggering determination” has the meaning given such term in section 5(a).
- (16) TRIGGERING EVENT.—The term “triggering event” means, with respect to a triggering determination, the occurrence of an act of terrorism, or the occurrence of such acts, that caused the insured losses resulting in such triggering determination.
- (17) UNITED STATES.—The term “United States” means, collectively, the States (as such term is defined in this section).

SEC. 20. EXTENSION OF PROGRAM.

- (a) AUTHORITY.—If the Secretary determines that action under this section is necessary to ensure the adequate availability in the United States of commercial property and casualty insurance coverage for acts of terrorism, the Secretary may, subject to subsection (c), provide that the provisions of this Act shall continue to apply with respect to calendar year 2003. If the Secretary extends such applicability to 2003, the Secretary may, in addition, extend such applicability to calendar year 2004.
- (b) COVERED PERIOD.—If the Secretary exercises the authority under subsection (a), notwithstanding section 5(b) and 19(7), each of the calendar years to which the Secretary extends the applicability of this Act shall be considered to be a covered period for purposes of this Act.

(c) REPORT.—The Secretary may exercise the authority under subsection (a) to extend the applicability of this Act to 2003 or 2004 only if the Secretary submits a report to the Congress providing notice of and setting forth the reasons for such extension for such specific year.

SEC. 21. REGULATIONS.

The Secretary shall issue any regulations necessary to carry out this Act.

PURPOSE AND SUMMARY

H.R. 3210, The Terrorism Risk Protection Act of 2001, will create a temporary industry risk spreading program to ensure the continued availability of commercial property and casualty insurance and reinsurance for terrorism-related risks to limit immediate market disruptions, encourage economic stabilization, and facilitate a transition to a viable market for private terrorism risk insurance.

Modeled in part on existing State insurance programs for solvency guarantee funds and catastrophic disaster pools, when the Secretary of the Treasury determines that losses from one or more acts of terrorism result in insurance claims industry wide of over \$1 billion and up to \$20 billion during the coverage period of the Act, the Treasury will pay 90 percent of the claims (with 10 percent of losses retained by the insurers) on the first dollar of the coverage. The Secretary of the Treasury must thereafter assess all commercial property and casualty insurers to recoup the costs of the Treasury payments. If losses in the coverage period are less than \$1 billion industry wide, the bill provides company specific trigger levels for cost sharing with a per company deductible to protect smaller insurance companies. If losses exceed \$20 billion industry-wide, the Treasury will pay 90 percent of all claims up to financial assistance of \$100 billion over the covered period. The legislation gives the Secretary the power to recoup these payments through surcharges on commercial property and casualty policy premiums upon a weighing of economic conditions and other factors. These provisions expire at the end of 2002, although the Secretary may extend the program through 2004.

Further, the legislation establishes a Federal cause of action which is the exclusive remedy for actions brought under this legislation. Additionally, actions may only be brought in certain courts and additional protections are provided to limit the obligations of the United States only to actual damages in the case of a terrorist incident that results in a triggering determination.

The legislation also amends portions of the tax law which discourage the insurance market from developing the necessary reserves to handle possible future losses due to acts of terrorism. Finally, the bill includes 3 studies on the effects of terrorism on various sectors of the insurance industry.

BACKGROUND AND NEED FOR LEGISLATION

The terrorist attacks of September 11, 2001, resulted in a tragic number of deaths and injuries, destruction and damage to buildings, and the interruption of business operations. In addition to the incalculable loss of human resources, the attacks inflicted possibly the largest losses ever incurred by insurers and reinsurers from a single set of events, with estimates of losses currently ranging from \$25–60 billion.

For the most part, these losses are being borne by the commercial property and casualty insurance industry. Commercial property and casualty insurance covers a wide range of risk exposure for businesses, including without limitation: damage to property, third party liability, workers compensation, and business interruption. The policies written for commercial property and casualty insurance only pay claims for “covered perils,” meaning there are only certain causes of loss for which the insurer will reimburse the business owner. Traditionally, acts of war have been excluded as covered perils, while acts of terrorism have been included as part of the comprehensive commercial property and casualty insurance coverage.

More broadly speaking, property and casualty insurance is a mechanism by which economies respond efficiently to risks in the environment. Insurance allows businesses to reduce large, relatively incalculable risks (in terms of dollars and timing) to a set of smaller, known premium payments. Insurers examine the risks of individual businesses and use actuarial methods to assess these risks in light of like risks of other businesses and the historical frequency and severity of loss to determine premiums.

In order to meet regulatory capital requirements and further spread risk so that they can continue to write coverage, primary insurance companies buy reinsurance, i.e. insurance for insurance companies. In 2000, the entire property and casualty insurance industry ceded over 26 percent of its written premium to reinsurers.

The events of September 11, 2001 have caused great uncertainty for insurance underwriters. The commercial property and casualty insurance companies have little to no experience in underwriting for the type or severity of terrorist attacks experienced. In particular, the ongoing uncertainty in the current United States war against terrorism significantly impairs the ability of underwriters to forecast either the likely frequency or magnitude of future attacks.

Commercial property and casualty insurance is usually written on a one or two year basis, with approximately 70 percent of reinsurance contracts up for renewal on January 1, 2002. Unable to forecast and account for losses due to terrorist attacks, commercial property and casualty insurers and reinsurers have indicated to brokers and insureds that they plan either to exclude terrorism coverage entirely or offer only very limited coverage at very high costs. They simply cannot insure against infinite risk with finite capital.

The potential unavailability of terrorism risk coverage for businesses comes at precisely the time of greatest demand for the insurance. While some businesses might choose to go without terrorism risk insurance in this environment, many businesses, large and small, do not have this choice. Insurance coverage is almost universally a requirement of any commercial lending contract. Lenders will simply not provide financing for new or existing construction without certainty that the properties and businesses that they are funding have adequate insurance to protect the lenders’ investment. Thus, the lack of available insurance for terrorism risk has adverse consequences that would spread throughout the entire economy and stifle its growth.

There is a high probability that the economy as a whole would suffer tremendously without meaningful and affordable terrorism coverage. Accordingly, the Committee believes that Congress must create the temporary program established by this legislation 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. While the insurance industry might be facing an underwriting conundrum, it is healthy and well capitalized. Accordingly, there is no need for any government assistance prior to a significant loss of industry capital or individual company capital due to a terrorist attack. Additionally, this legislation does not create an unnecessary preoccurrence Federal bureaucracy to administer a program prior to a triggering determination by the Secretary. To prevent a moral hazard, the commercial property and casualty insurance industry must share in the losses paid by any program offering temporary assistance. Funds paid by the Federal government under any program must be repaid by the insurance industry over time as economic circumstances permit, and the beneficiaries of the insurance product, i.e. the commercial insurers and insureds, not the taxpayer, should bear the ultimate financial costs.

The Committee also responded to requests by the State insurance commissioners to improve the current tax policy governing long term reserving for terrorism risk, to help the industry improve its capacity to provide terrorism coverage in the future. Specifically, the National Association of Insurance Commissioners (NAIC) stated in its governing principles for Federal terrorism insurance legislation that "tax law changes should be encouraged to avoid penalties on and encourage the accumulation of reserves for the portion of terrorism losses insurable in the private marketplace." Furthermore, at a hearing before the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises on October 24, 2001, Scott Harrington, Professor of Insurance and Finance, Moore School of Business, University of South Carolina, testified that allowing insurers and reinsurers to accumulate some amount of capital reserves on a tax-deferred basis would expand private sector capacity to insure potentially large losses from terrorism. Tax deferred reserving and a temporary system of ex post assessments to help private insurers spread the risk of loss from terrorist attacks comprised Professor Harrington's two-pronged approach to mitigate the inherent problems of funding potentially large losses from terrorism.

The fact that most reinsurance capacity is offshore is due in no small part to the fact that the United States Tax Code prevents insurers from reserving funds for more than one year without paying taxes on those funds as income unless they are used to pay claims.

Many foreign jurisdictions permit insurance companies to set aside long term reserves without tax penalties for discrete catastrophic purposes. Removing this prohibition in the tax code to allow insurers to reserve funds solely for terrorism risk (and to avoid insolvency) with stringent restrictions and caps would allow the United States insurance industry to build up and pool with other insurers private reserves to respond to large terrorism losses without any Federal involvement or taxpayer liability. Because insurance companies have not previously reserved for terrorism risks to any significant degree and because what reinsurance capacity exists is primarily overseas, the establishment of tax-free terrorist risk reserves would discourage capital flight resulting from tax avoidance and make it more difficult for underwriting capacity to exit the United States market in times of distress. Further, because reserve funds may only be used for terrorism losses, there is a built-in disincentive for private insurers to “game” these reserves funds. This long term solution should be coupled with any short term program to foster private sector solutions to terrorism coverage and obviate the need for the Federal government to return to this issue in the future.

HEARINGS

The House Committee on Financial Services held a hearing on September 26, 2001, entitled, “America’s Insurance Industry: Keeping the Promise.” The Committee received testimony from: Gregory V. Serio, Superintendent, New York Insurance Department; Kathleen Sebelius, Commissioner, Kansas Department of Insurance, President, National Association of Insurance Commissioners, on behalf of the National Association of Insurance Commissioners; Sy Sternberg, Chairman, President and CEO, New York Life Insurance Company; Robert H. Benmosche, Chairman and CEO, MetLife, Inc.; Dean R. O’Hare, Chairman and CEO, The Chubb Corporation; Matthew C. Mosher, Group Vice President, Property-Casualty Rating, A.M. Best Company; Ronald Ferguson, Chairman and CEO, General Reinsurance Corporation

The Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a hearing October 24, 2001, entitled, “Protecting Policyholders from Terrorism: Private Sector Solutions.” The Subcommittee received testimony from: Paul H. O’Neill, Secretary, Department of the Treasury; Mr. Glenn Hubbard, Chairman, Council of Economic Advisors; David B. Mathis, Chairman and CEO, Kemper Insurance Companies; Richard J. Hillman, Director, Financial Markets and Community Investment, U.S. General Accounting Office; Marjorie S. Nordlinger, Senior Attorney, Office of the General Counsel, Nuclear Regulatory Commission; Constantinos Iordanou, Senior Executive Vice President of Group Operations and Business Development, Zurich Financial Services Group; Scott Harrington, Professor of Insurance and Finance, Moore School of Business, University of South Carolina; J. David Cummins, Harry J. Loman Professor of Insurance & Risk Management at The Wharton School, University of Pennsylvania; David Keating, Senior Counselor, National Taxpayers Union; John T. Sinnott, CEO, Marsh, Inc.; Roy A. Williams, Director of Aviation, Louis Armstrong New Orleans International Airport.

The Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a Roundtable Discussion on Terrorism Risk Insurance on October 31, 2001. Participating in the Roundtable were: Sheila C. Bair, Assistant Secretary, Financial Institutions, Department of the Treasury; Bill Pollard, Executive Vice President & General Manager, North Carolina Farm Bureau Mutual Insurance Company, on behalf of the National Association of Mutual Insurance Companies and the National Association of Independent Insurers; Tom Gallagher, Treasurer, Insurance Commissioner and State Fire Marshal, State of Florida, Member of the National Association of Insurance Commissioners; Edmund F. Kelly, President & CEO, Liberty Mutual Group; John T. Sinnott, Chairman & CEO, Marsh, Inc.; Franklin W. Nutter, President, Reinsurance Association of America; Terry Broderick, President & CEO, Royal SunAlliance USA, Inc.; Travis Plunkett, Consumer Federation of America; Larry Cluff, Government Accounting Office; Tom Miller, Cato Institute; David Keating, Senior Counselor & Board of Directors Member, National Taxpayers Union; Steve Wechsler, President and CEO, National Association of Real Estate Investment Trusts.

COMMITTEE CONSIDERATION

The Committee met in open session on November 7, 2001, and ordered H.R. 3210 reported to the House with a favorable recommendation, with an amendment, by a voice vote.

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. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

Record votes were taken on the following amendments. The names of Members voting for and against follow:

An amendment to the amendment in the nature of a substitute by Mr. Cox, no. 1a, clarifies the application of the liability protections to an insured party, was agreed to by a record vote of 26 yeas and 21 nays (Record vote no. 18).

YEAS

Mr. Oxley
Mr. Leach
Mrs. Roukema
Mr. Bereuter
Mr. Baker
Mr. Bachus
Mr. Castle
Mr. Royce
Mr. Ney
Mrs. Kelly
Mr. Cox
Mr. Weldon of Florida
Mr. Ryun of Kansas

NAYS

Mr. LaFalce
Mr. Kanjorski
Mr. Sanders
Mrs. Maloney of New York
Ms. Velazquez
Mr. Watt of North Carolina
Mr. Ackerman
Mr. Bentsen
Mr. Maloney of Connecticut
Ms. Hooley of Oregon
Mr. Sherman
Mr. Sandlin
Ms. Lee

Mr. LaTourette	Mr. Inslee
Mr. Manzullo	Mr. Moore
Mr. Jones of North Carolina	Mr. Gonzalez
Mrs. Biggert	Mr. Capuano
Mr. Green of Wisconsin	Mr. Shows
Mr. Toomey	Mr. Crowley
Mr. Shadegg	Mr. Israel
Mr. Gary G. Miller of California	Mr. Ross
Mr. Cantor	
Ms. Hart	
Mrs. Capito	
Mr. Tiberi	
Mr. Lucas of Kentucky	

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1b, striking the liability provisions, was not agreed to by a record vote of 24 yeas and 32 nays, 1 member voting present (Record vote no. 19).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Kanjorski	Mr. Leach
Ms. Waters	Mrs. Roukema
Mr. Sanders	Mr. Bereuter
Mrs. Maloney of New York	Mr. Baker
Ms. Velazquez	Mr. Bachus
Mr. Watt of North Carolina	Mr. Castle
Mr. Ackerman	Mr. Royce
Mr. Bentsen	Mr. Lucas of Oklahoma
Mr. Maloney of Connecticut	Mr. Barr of Georgia
Ms. Hooley of Oregon	Mrs. Kelly
Ms. Carson of Indiana	Mr. Gillmor
Mr. Sherman	Mr. Cox
Mr. Sandlin	Mr. Weldon of Florida
Ms. Lee	Mr. Ryun of Kansas
Mr. Mascara	Mr. Riley
Mr. Inslee	Mr. LaTourette
Ms. Schakowsky	Mr. Manzullo
Mr. Moore	Mr. Jones of North Carolina
Mr. Gonzalez	Mrs. Biggert
Mr. Capuano	Mr. Green of Wisconsin
Mr. Shows	Mr. Toomey
Mr. Israel	Mr. Shays
Mr. Ross	Mr. Shadegg
present	Mr. Cantor
Mr. King	Mr. Grucchi
	Ms. Hart
	Mrs. Capito
	Mr. Ferguson
	Mr. Rogers of Michigan
	Mr. Tiberi
	Mr. Lucas of Kentucky

An amendment to the amendment in the nature of a substitute by Ms. Lee, no. 1h, conditioning the assistance

in the bill on the agreement of the recipient to provide certain information to the Administrator, was not agreed to by a record vote of 24 yeas and 35 nays (Record vote no. 20).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Ms. Waters	Mrs. Roukema
Mr. Sanders	Mr. Bereuter
Mrs. Maloney of New York	Mr. Baker
Ms. Velazquez	Mr. Bachus
Mr. Watt of North Carolina	Mr. Castle
Mr. Ackerman	Mr. King
Mr. Bentsen	Mr. Royce
Mr. Maloney of Connecticut	Mr. Lucas of Oklahoma
Ms. Hooley of Oregon	Mr. Ney
Ms. Carson of Indiana	Mr. Barr of Georgia
Mr. Sherman	Mrs. Kelly
Mr. Sandlin	Mr. Gillmor
Ms. Lee	Mr. Cox
Mr. Mascara	Mr. Weldon of Florida
Mr. Inslee	Mr. Ryun of Kansas
Ms. Schakowsky	Mr. Riley
Mr. Moore	Mr. LaTourette
Mr. Gonzalez	Mr. Manzullo
Mr. Capuano	Mr. Jones of North Carolina
Mr. Shows	Mrs. Biggert
Mr. Crowley	Mr. Green of Wisconsin
Mr. Clay	Mr. Toomey
Mr. Ross	Mr. Shays
	Mr. Shadegg
	Mr. Gary G. Miller of California
	Mr. Cantor
	Mr. Grucci
	Ms. Hart
	Mrs. Capito
	Mr. Ferguson
	Mr. Rogers of Michigan
	Mr. Tiberi
	Mr. Kanjorski
	Mr. Lucas of Kentucky

An amendment to the amendment in the nature of a substitute by Mr. LaTourette, no. 1i, allocating the amount of punitive damages to be in proportion to the percentage of the harm to the claimant for which the defendant was responsible, was not agreed to by a record vote of 28 yeas and 29 nays (Record vote no. 21).

YEAS	NAYS
Mr. King	Mr. Oxley
Mr. LaTourette	Mr. Leach
Mr. Grucci	Mrs. Roukema
Mr. LaFalce	Mr. Bereuter
Mr. Kanjorski	Mr. Baker

Ms. Waters	Mr. Bachus
Mr. Sanders	Mr. Royce
Mrs. Maloney of New York	Mr. Lucas of Oklahoma
Ms. Velazquez	Mr. Barr of Georgia
Mr. Watt of North Carolina	Mrs. Kelly
Mr. Ackerman	Mr. Gillmor
Mr. Bentsen	Mr. Cox
Mr. Maloney of Connecticut	Mr. Weldon of Florida
Ms. Hooley of Oregon	Mr. Ryun of Kansas
Ms. Carson of Indiana	Mr. Riley
Mr. Sherman	Mr. Manzullo
Mr. Sandlin	Mr. Jones of North Carolina
Ms. Lee	Mrs. Biggert
Mr. Mascara	Mr. Green of Wisconsin
Mr. Inslee	Mr. Toomey
Mr. Moore	Mr. Shays
Mr. Gonzalez	Mr. Shadegg
Mr. Capuano	Mr. Gary G. Miller of
Mr. Lucas of Kentucky	California
Mr. Shows	Mr. Cantor
Mr. Crowley	Ms. Hart
Mr. Clay	Mrs. Capito
Mr. Israel	Mr. Ferguson
	Mr. Rogers of Michigan
	Mr. Tiberi

An amendment to the amendment in the nature of a substitute by Mr. Watt, no. 1j, striking recovery from other collateral sources from offsetting relief payments under the Act and allowing punitive damages to be awarded, was not agreed to by a record vote of 24 yeas and 32 nays (Record vote no. 22).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Kanjorski	Mr. Leach
Ms. Waters	Mrs. Roukema
Mr. Sanders	Mr. Bereuter
Mrs. Maloney of New York	Mr. Baker
Ms. Velazquez	Mr. Bachus
Mr. Watt of North Carolina	Mr. Castle
Mr. Ackerman	Mr. King
Mr. Bentsen	Mr. Royce
Mr. Maloney of Connecticut	Mr. Lucas of Oklahoma
Ms. Hooley of Oregon	Mr. Barr of Georgia
Ms. Carson of Indiana	Mrs. Kelly
Mr. Sherman	Mr. Cox
Mr. Sandlin	Mr. Weldon of Florida
Ms. Lee	Mr. Ryun of Kansas
Mr. Mascara	Mr. Riley
Mr. Inslee	Mr. LaTourette
Mr. Moore	Mr. Manzullo
Mr. Gonzalez	Mr. Jones of North Carolina
Mr. Capuano	Mrs. Biggert
Mr. Shows	Mr. Green of Wisconsin
Mr. Crowley	Mr. Toomey

Mr. Clay
Mr. Israel

Mr. Shays
Mr. Shadegg
Mr. Gary G. Miller of
California
Mr. Cantor
Ms. Hart
Mrs. Capito
Mr. Ferguson
Mr. Rogers of Michigan
Mr. Tiberi
Mr. Lucas of Kentucky

A motion to reconsider the vote on amendment no. 1d by Mr. Barr was not agreed to by a record vote of 27 yeas and 32 nays (Record vote no. 23)

YEAS

Mr. Leach
Mrs. Roukema
Mr. Bereuter
Mr. Baker
Mr. Royce
Mr. Lucas of Oklahoma
Mr. Ney
Mr. Barr of Georgia
Mrs. Kelly
Mr. Gillmor
Mr. Cox
Mr. Weldon of Florida
Mr. Ryun of Kansas
Mr. Riley
Mr. Manzullo
Mr. Jones of North Carolina
Mrs. Biggert
Mr. Green of Wisconsin
Mr. Toomey
Mr. Shays
Mr. Shadegg
Mr. Cantor
Ms. Hart
Mrs. Capito
Mr. Ferguson
Mr. Rogers of Michigan
Mr. Tiberi

NAYS

Mr. Oxley
Mr. Bachus
Mr. Castle
Mr. King
Mr. LaTourette
Mr. LaFalce
Mr. Kanjorski
Ms. Waters
Mr. Sanders
Mrs. Maloney of New York
Ms. Velazquez
Mr. Watt of North Carolina
Mr. Ackerman
Mr. Bentsen
Mr. Maloney of Connecticut
Ms. Hooley of Oregon
Ms. Carson of Indiana
Mr. Sherman
Mr. Sandlin
Mr. Meeks of New York
Ms. Lee
Mr. Mascara
Mr. Inslee
Mr. Moore
Mr. Gonzalez
Mr. Capuano
Mr. Lucas of Kentucky
Mr. Shows
Mr. Crowley
Mr. Clay
Mr. Israel
Mr. Ross

The following amendments were also considered by the Committee:

An amendment in the nature of a substitute by Mr. Oxley, no. 1, making various technical changes, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mrs. Roukema, no. 1c, limiting the liability

for damages arising out of the crashes on September 11, 2001, was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Bachus, no. 1e, directing the Secretary of the Treasury to conduct a study on a possible crisis in the availability and affordability of railroad insurance, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Ackerman, no. 1f, extending the definition of a terrorist act to include acts against domestic air carriers and U.S. flagged vessels overseas, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Weldon of Florida, no. 1g, directing the General Accounting Office to conduct a study of natural disasters on insurer solvency, was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Watt, no. 1k, permitting the satisfaction of judgments from seized assets of terrorists and terrorist organizations, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Manzullo, no. 1m, excluding terrorists from liability protections, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Bentsen, no. 1l, enabling the Administrator to extend the authorities of the Act on a yearly basis for 3 years after reporting to Congress on the reasons and need for the extension, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Inslee, no. 1n, establishing a 2 percent interest rate for all assessments paid by commercial insurers to the appropriate administrator, was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Crowley, no. 1o, expanding the scope of the legislation to include personal lines of property and casualty insurance, was withdrawn by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Capuano, no. 1p, extending authority to the Administrator to direct the use of the terrorism business reserve to pay claims as part of a plan of a company to avoid insolvency, an amendment to the amendment in the nature of a substitute by Mr. Capuano, no. 1q, striking recovery from other collateral sources from offsetting relief payments under the Act, and an amendment to the amendment in the nature of a substitute by Mr. Capuano, no. 1r, directing the Administrator to take into consideration the effect of assessments and surcharges on urban commercial centers, were offered en bloc and were withdrawn. Amendment no. 1r was later offered again, and agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Baker, Mr. LaFalce, and Mr. Kanjorski no. 1s, empowering the Secretary of the Treasury to carry out the authorities of the Act and establishing the struc-

ture for terrorism less repayment surcharges, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing 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 establishes the following performance related goals and objectives for this legislation:

The Secretary of the Treasury will establish a temporary risk spreading program to ensure the continued availability of commercial property and casualty insurance and reinsurance for terrorism-related risks. The Secretary will make every effort to ensure that insurers use the tools provided by this legislation to reserve properly for these risks and eliminate the need for this or similar programs in the future.

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 finds that this legislation would result in new budget authority, entitlement authority, or tax expenditures or revenues consistent with 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 ESTIMATE

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, November 16, 2001.

Hon. MICHAEL G. OXLEY,
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. 3210, the Terrorism Risk Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Megan Carroll (for federal costs), Susan Sieg Tompkins (for the

state and local impact), and Jean Talarico (for the private-sector impact).

Sincerely,

DAN L. CRIPPEN, *Director*.

Enclosure.

H.R. 3210—Terrorism Risk Protection Act

Summary: H.R. 3210 would require the Secretary of the Treasury to provide up to \$100 billion in financial assistance to commercial property and casualty insurers for losses from terrorist acts committed after enactment of the bill and prior to January 1, 2003. (The Secretary would have the authority to extend the program for two more years.) The Secretary would provide such assistance only after insured losses exceed \$1 billion for the entire industry (or lesser amounts if individual insurance companies are particularly affected as specified by the bill). After either threshold is met, the Secretary would pay insurance companies 90 percent of subsequent covered losses. Under the bill, if insured losses from a terrorist act required the Secretary to provide financial assistance, the Secretary could recoup that cost through charges assessed on the insurance industry and purchasers of commercial property and casualty insurance. In addition, the bill would amend the Internal Revenue Code as it applies to insurance companies.

CBO cannot predict how much insured damage terrorists would cause in any specific year. Instead our estimate of the cost of financial assistance provided under H.R. 3210 represents an expected value of payments from the program—a weighed average that reflects the probabilities of various outcomes, from zero damages up to very large damages due to 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 risk of providing this insurance; indeed, our estimate of the expected cost for H.R. 3210 is based on premiums collected for terrorism insurance in the United Kingdom and insurance practices in the United States.

On this basis, CBO estimates that enacting section 6 of H.R. 3210 would increase direct spending by about \$7.3 billion over the 2002–2006 period and by \$8.5 billion over the next 10 years. Under the bill, the Secretary could recoup the costs of providing financial assistance through assessments and surcharges; hence, over many years, CBO expects that an increase in spending for financial assistance would be nearly offset (on a cash basis) by a corresponding increase in governmental receipts (revenues). We assume, however, that the Secretary would not impose any assessments or surcharges until one year after federal assistance is provided and that those amounts would be collected over several years. Thus, CBO estimates that sections 7 and 8 of H.R. 3210 would increase governmental receipts by about \$1.4 billion over the 2002–2006 period and by \$5.3 billion over the next 10 years.

In addition, the Joint Committee on Taxation (JCT) estimates that enacting section 10 of H.R. 3210 would reduce revenues by \$10.9 billion over the 2002–2006 period and by \$12.4 billion over the 2002–2011 period. In total, we estimate the net reduction in revenues under H.R. 3210 would be \$9.5 billion over the 2002–2006 period and \$7.1 billion over the 2002–2011 period. Because H.R.

3210 would affect direct spending and receipts, pay-as-you-go procedures would apply.

H.R. 3210 contains several intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on insurers and policyholders of commercial property and casualty insurance. CBO estimates that the aggregate net costs of complying with those mandates would not exceed the annual thresholds established by UMRA (\$56 million for intergovernmental mandates and \$113 million for private-sector mandates in 2001, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3210 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN DIRECT SPENDING					
Estimated budget authority	800	1,700	2,200	1,700	900
Estimated outlays	800	1,700	2,200	1,700	900
CHANGES IN REVENUES					
Assessments and surcharge	0	100	200	500	600
Tax provisions ¹	–1,600	–4,100	–3,100	–1,300	–800
Total changes in revenues	–1,600	–4,000	–2,900	–800	–200

¹ Estimate provided by JCT.

Basis of estimate

For this estimate, CBO assumes that H.R. 3210 will be enacted by the end of 2001 and its provisions will remain in effect until December 31, 2004. We estimate that H.R. 3210 would increase direct spending by \$8.5 billion and would reduce governmental receipts by \$7.1 billion over 2002–2011 period.

Direct spending

H.R. 3210 would require the secretary of the treasury to provide up to \$100 billion in financial assistance to commercial property and casualty insurers for losses above certain thresholds due to future terrorist acts. Under the bill, the Secretary would provide such assistance as a result of terrorist acts that occur before January 1, 2003, but the Secretary could extend the program to cover events through calendar year 2004. (If the program is extended beyond 2002, we interpret the \$100 billion as being an annual limit.) For this estimate, CBO assumes that the Secretary would extend the program through 2004.

By offering financial assistance to commercial property and casualty insurers for acts of terrorism, H.R. 3210 would expose the federal government to potentially huge liabilities. For any year, CBO has no basis for estimating the likelihood of terrorist attacks or the amount of insured damage they may cause. Instead, our estimate of the cost of these provisions reflects how much the government might be expected to pay to insurers on average.

In the following sections, we describe our method for estimating the expected-value cost of providing financial assistance under H.R. 3210, explain how we convert that expected-value cost to annual

estimates of cash outlays, and discuss some of the reasons why the cost to the federal government is so uncertain.

Terrorism Insurance in the United Kingdom.—Because very limited information is available about how the insurance industry would set premiums for terrorism insurance in the United States, we examined the government-backed insurance pool that spreads the risk of terrorist acts among insurers in the United Kingdom (this program is called Pool Re).

CBO could not estimate the cost of H.R. 3210 to the federal government by examining the U.S. insurance industry's perception of the likelihood of terrorist acts. Representatives of the insurance industry have testified that estimating the risk of terrorist acts is nearly impossible because sufficient historical data do not exist. We explored the possibility of using premiums paid in the U.S. for terrorism insurance prior to September 11, 2001, to estimate the minimum premium required to compensate the government for its risk; however, such information is not available. This led us to examine the United Kingdom's experience with terrorism insurance.

In 1993, the British government created Pool Re to provide terrorism reinsurance (insurance for insurance companies) to the commercial property insurance market in the United Kingdom. Participating insurers must offer terrorism coverage at risk-based rates established by Pool Re and then remit any premiums collected from their customers to the pool. After a small deductible, Pool Re pays 100 percent of the costs of a terrorist act. If claims from terrorist acts exhaust the pool's resources, the British government is liable for the shortfall.

Calculating the Expected Value of Claims.—Over the 1993–2000 period, annual premiums collected by Pool Re have ranged from about \$530 million in the early years of the program to about \$75 million in 2000. On average, annual premiums have been roughly \$325 million. The pool has reduced its premium rates in recent years as the number of terrorist attacks in the United Kingdom (and the perceived threat of future attacks) dropped. For this estimate, CBO assumes that the average premiums over the eight-year period accurately reflect the terrorist risk to covered losses in the United Kingdom. In some years, there may be many costly attacks; in others, there may be none.

To compare premiums collected by Pool Re to those that would be required to compensate the federal government for its risk under H.R. 3210, we made adjustments to account for differences between Pool Re and the proposed U.S. program. CBO expects that, if premiums were charged to cover the potential costs of H.R. 3210, they would have to be significantly larger than those collected by Pool Re. Pool Re covers losses only for property damage and business interruption, while the program proposed under the bill also would cover casualty and related risks. Based on information from the insurance industry about the relative proportion of property and casualty insurance, we estimate that including these lines would roughly double the premiums required under Pool Re. In addition, CBO increased the average premium amount for Pool Re by a factor of 7 to account for differences in the sizes of the two countries' economies and insurance markets. We did not make any adjustments for differences in the risk of terrorist acts that each country faces because we cannot quantify such differences.

After making the adjustments described above, CBO estimates that the expected-value cost of a federal program that is analogous to Pool Re would be about \$4.5 billion a year. However, two key differences between Pool Re and the program outlined in H.R. 3210 require additional adjustments. First, H.R. 3210 would require the industry to absorb losses of \$1 billion before the Secretary would provide any assistance. By comparison, deductibles required by Pool Re are negligible. Second, H.R. 3210 would cap federal assistance at \$100 billion a year; coverage under Pool Re has no cap.

To make these further adjustments, we assumed that the probability of terrorist attacks is skewed toward events that would cost less than \$4.5 billion a year. After taking into account the \$1 billion industry-wide deductible and the \$100 billion cap on federal assistance, CBO estimates that the Secretary would need to charge about \$3 billion annually for coverage over the 2002–2004 period to fully compensate the government for the risk it would assume under H.R. 3210. Assuming the program operates for three years, the expected cost to the government would total \$9 billion. Those outlays, however, would be spread out over many years, as explained below.

Timing of Federal Spending.—To estimate federal spending for this program on a cash basis, CBO used information from insurance experts on historical rates at which property and casualty claims are paid. Based on such information, CBO estimates that the expected value of federal spending under H.R. 3210 would total \$8.5 billion over the 2002–2011 period, and about \$500 million after 2011. 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. For this estimate, we assumed that financial assistance to property and casualty insurers would be paid over several years, with most of the spending occurring within the first five years.

Costs Are Uncertain.—While this estimate reflects CBO’s best judgment on the basis of available information, costs are a function of inherently unpredictable future terrorist attacks. As such, actual costs could cover an extremely broad range. Moreover, there is a greater risk that our estimated costs are too low rather than too high.

Our expected losses under this program could be too low because we assumed losses would have to exceed \$1 billion before the Secretary would provide assistance. Under the bill, however, the Secretary also could provide assistance if aggregate losses exceed \$100 million and at least one company is particularly adversely affected. In addition, there are a number of differences between Pool Re and the program that would be established under this legislation that are unknown—for example, the difference between U.S. and British tort law—but these differences would push the likely cost of the bill higher.

Revenues

CBO estimates that under H.R. 3210 the Secretary of the Treasury would collect \$5.3 billion over the 2002–2011 period through assessments on the insurance industry and surcharges on policy holders. In addition, the JCT estimates that the bill’s changes to

the Internal Revenue Code would reduce revenues by \$12.4 billion over the next 10 years.

Assessments.—If a terrorist act requires the Secretary to provide financial assistance, the Secretary would recoup that cost through charges paid by the insurance industry and purchasers of commercial property and casualty insurance. The first \$20 billion of financial assistance could be recovered by assessing each insurer based on its portion of aggregate property and casualty insurance premiums for the preceding calendar year. Each company's assessment would be limited to 3 percent of net premiums (the company's premiums less any amount paid to reinsurers to assume a portion of the risk). The Secretary could delay when a company would be required to pay the assessment if such a delay were necessary to prevent the insurer from becoming insolvent. Because we assume the probability of terrorist attacks would be skewed toward events that would cost less than \$4.5 billion, we anticipate that assessments would account for most of the amounts the Secretary would collect. On an expected-value basis, CBO estimates that assessments to recover the cost of federal assistance would generate revenues totaling \$4.5 billion over the next 10 years.

Surcharges.—The Secretary would recover any assistance provided between \$20 billion and \$100 billion by imposing a surcharge on all premiums for commercial property and casualty insurance. Surcharges would apply to insurance sold following a terrorist attack that necessitated federal assistance and could not exceed 3 percent of the annual premium for such coverage. H.R. 3210 would require the Secretary to impose surcharges for as long as is necessary to recover the aggregate financial assistance. Thus, the government could collect surcharges for many years depending on the level of financial assistance. We estimate that surcharges would total \$800 million over the next 10 years.

Timing.—CBO expects that the Secretary probably would not recoup the entire cost of financial assistance during the 2002–2011 period. Based on information from the insurance industry on aggregate premiums collected in recent years, CBO estimates that the Secretary could recoup no more than about \$10 billion a year. The bill would allow the Secretary to reduce annual charges to avoid unreasonable economic disruption, excessive market instability, or undue burdens on small businesses. Therefore, if annual losses are very high, we expect that the Secretary would limit annual collections by spreading them over many years. CBO assumes it would take the Secretary at least 10 years to recoup the costs of any financial assistance provided under H.R. 3210. Thus, we estimate that many of the collections from assessments and surcharges would occur after 2011.

Risk of Insolvency.—In addition, although the bill would allow the Secretary to delay when an insurance company pays its assessment, the bill would not provide the Secretary with the authority to increase the assessment on the remaining insurance companies if a company is unable to pay. Thus, the federal government also would bear the risk that an insurance company would become insolvent during the assessment period. Historically, the credit risk of insurance companies has been very low, but the government would be exposed to such risk only following a very costly attack. Because we expect the probability of such a costly attack is very

low, we included a small adjustment for the risk of insolvency in our estimate.

Credit Reform Does Not Apply.—The provisions of the Federal Credit Reform Act do not apply to H.R. 3210. Under the act, a direct loan is defined as a disbursement of funds to a nonfederal borrower under a contract that requires the repayment. A disbursement cannot be considered a direct loan, however, if the duty to repay the government arises from an exercise of sovereign power, tort liability, or some other noncontract obligation. H.R. 3210 would require insurance companies and potential policyholders to compensate the government for its costs, but it would do so through an exercise of sovereign power, not through loan repayment contracts. Therefore, CBO believes that the financial assistance and subsequent collections would not constitute a loan program.

Other Tax Provisions.—H.R. 3210 would amend the Internal Revenue Code to permit non-life insurance companies to establish reserves for terrorism coverage. The JCT estimates these provisions would reduce revenues by \$12.4 billion over the next 10 years.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. Only the effects in the current year and the following four years are counted for pay-as-you-go purposes.

	By fiscal year, in millions of dollars—									
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays	800	1,700	2,200	1,700	900	500	300	200	100	100
Changes in receipts	–1,600	–4,000	–2,900	–800	–200	400	500	500	500	500

Intergovernmental and private-sector impact

H.R. 3210 contains several intergovernmental and private-sector mandates as defined by UMRA. CBO estimates that the net costs to comply with all of the mandates in the bill would not exceed the thresholds established by UMRA (\$56 million for intergovernmental mandates and \$113 for private-sector mandates in 2001, adjusted annually for inflation).

Assessments and surcharges

The bill would require the Secretary, through the use of the federal government's sovereign power, to recoup the costs of financial assistance provided to certain insurers through assessments paid by the insurance industry and surcharges paid by purchasers of commercial property and casualty insurance. This requirement to pay the federal government for financial assistance received would be both an intergovernmental and private-sector mandate under UMRA because both private entities and state and local governments would be affected.

Specifically, section 7 would require commercial property and casualty insurers as well as self-insured risk pools to pay back the first \$20 billion in federal assistance provided under the bill through an assessment. Taken individually, some insurers might benefit from the financial assistance while others would face only

the cost of the assessment. But for the insurance industry as a whole, the cost of the assessment would be no greater than the financial assistance received, so the net cost of this mandate would be zero.

In addition, section 8 would require purchasers of commercial property and casualty insurance to repay, in the form of a surcharge, any federal assistance provided to certain insurers between \$20 billion and \$100 billion. Some purchasers of commercial property and casualty insurance would not receive a direct benefit under the bill or protection from higher premiums in its absence. Therefore, the surcharge would be a mandate that imposes costs on both private-sector purchasers and state and local governments (in their capacity as purchasers of insurance). CBO estimates that the expected value of the surcharges on policyholders would total less than \$90 million annually over the next five years.

Preemptions

Section 12 would preempt certain state insurance laws by providing that any insurer that complies with the provisions of the bill would be deemed to comply with any state law that regulates insurance for acts of terrorism. This section also would expressly preempt any state laws that limit the amount an insurer could add to premiums to recover any assessments, and laws that require certain actions by insurers in order for rates or policies to be effective.

Section 13 of the bill would require states to adopt uniform guidelines for maintaining certain reserves and disclosing premium costs. Should states fail to adopt these guidelines, the Secretary of the Treasury could adopt them on a national basis, superseding any related state laws. Neither the preemptions in section 12 nor the requirements of section 13, which are intergovernmental mandates as defined by UMRA, would impose significant costs on state, local, or tribal governments.

Other impacts

Section 11 would amend the Internal Revenue Code to authorize and account for the financial activities of a commercial reserve for terrorism losses. This provision would provide a significant benefit to certain commercial insurers by lowering the amount of income used to compute taxes owed to the federal government.

Estimate prepared by: Federal costs: Mark Hadley, Megan Carroll, and Ken Johnson; Impact on State, local, and tribal governments: Susan Sieg Tompkins; impact on the private sector: Jean Talarico.

Estimate approved by: Robert A. Sunshine, 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.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

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 section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title and table of contents

This section sets forth the short title of the bill, the “Terrorism Risk Protection Act,” and provides a table of contents.

Section 2. Congressional findings

This section provides Congressional findings about the damage from the September 11, 2001 terrorist attack, the resulting market disruption and potential unavailability of future terrorism insurance coverage, and the need for a temporary industry risk sharing program to facilitate transition back to a viable private insurance and reinsurance market.

Section 3. Authority of Secretary of the Treasury

This section provides that the Secretary of the Treasury will be responsible for carrying out the temporary risk-sharing program for the commercial property and casualty insurance industry.

Section 4. Submission of premium information to Secretary

This section recognizes that insurance premium information is already provided to State insurance commissioners and the NAIC, but allows the Secretary, to the extent that such information is not otherwise available, to require insurers to submit their aggregate U.S. commercial property and casualty insurance premium data to the NAIC or the Secretary.

Section 5. Triggering determination and covered period

This section directs the Secretary to determine whether insured losses from acts of terrorism over a 12 month period exceed the triggering thresholds. The section provides for an industry-wide trigger and an individual insurer trigger. The Secretary will make a triggering determination for the entire commercial property and casualty insurance industry if industry-wide losses exceed \$1 billion. The Secretary will make a company specific triggering determination if industry-wide losses exceed \$100 million and the portion of those losses for any one commercial insurer exceed both 10 percent of the company’s capital surplus and net premiums. The lower \$100 million threshold does not apply to any commercial in-

surer that was not providing commercial property and casualty coverage prior to September 11, 2001.

Subsection (b) provides that the period covered by this trigger is from the date of enactment to the end of 2002, although section 20 allows the Secretary the option of extending the application of this bill by up to 2 years.

Subsection (c) gives the Secretary sole authority to determine whether a loss was caused by an act of terrorism, whether the losses were caused by one or multiple occurrences, and whether the terrorist attack occurred during the period of time covered by this legislation. The ability of the Secretary to make such determinations under this subsection is not limited to commercial property and casualty insurance, but rather is intended to apply for all lines of insurance.

Section 6. Federal cost-sharing for commercial insurers

Once the Secretary makes an industry-wide triggering determination in section 5, then financial cost sharing is provided to cover 90 percent of any insured terrorist losses (without respect to any trigger amounts). If the industry-wide triggering determination is not reached, but the Secretary makes a company specific triggering determination, then financial cost-sharing is provided to that insurer in an amount equal to the difference of 90 percent of the amount of the insured losses of the insurer as a result of such triggering event and 10 percent of the net commercial property and casualty premiums written by such commercial insurer. Federal assistance is capped at \$100 billion. Any Federal assistance provided will be repaid through the assessments and surcharges provided for in section 7 and 8, and may be designated by the President as emergency budget authority and outlays. Federal assistance received by an insurer should not be treated as a loan for balance sheet purposes. Furthermore, Federal assistance will be available for all commercial property and casualty insurance companies with policies in force during the coverage period of this legislation as long as the insurer was providing terrorism risk coverage (or not excluding terrorism risk coverage) on or before September 11, 2001.

Section 7. Assessments

This section is modeled after the State insurance guarantee funds that exist in almost every State to address the possibility of insurer insolvencies, as well as numerous State catastrophic insurance funds. After the Secretary makes a triggering determination in section 5, every commercial insurer is subject to an assessment of up to 3 percent of its commercial premiums for that year. The assessments go back into the general fund of the Treasury to repay any Federal cost-sharing assistance provided under section 6. If the amount assessed is insufficient to cover that Federal assistance, then the Secretary will make a new assessment in each following year until the amount is recouped. The aggregate amount assessed will be equal to the lesser of \$20 billion (which would take approximately 4 years to recoup in its entirety based on premium data from calendar year 2000) or the amount of financial assistance paid under section 6. Each year's assessments are to be based on an insurer's commercial insurance premiums for that year, thus applying to new entrants as well based on their market share. The Sec-

retary may delay the assessment of an insurer to avoid an insolvency and may adjust or delay assessments generally as provided in Section 9.

Section 8. Terrorism loss repayment surcharge

This section applies only to terrorist losses that exceed \$20 billion, and is modeled after several State catastrophic insurance programs. To recoup Federal assistance provided in section 6 for amounts above the Federal share of the \$20 billion, the Secretary has the authority to impose a commercial policyholder surcharge to the extent that economic and market conditions permit. The factors to be weighed in determining the extent of the surcharge are the ultimate costs to taxpayers if a surcharge is not established, the economic conditions in the commercial marketplace, the affordability of commercial insurance for small and medium-sized business, and such other factors the Secretary considers appropriate. The terrorism repayment surcharge will be on all commercial insurance premiums based on a percentage of any coverage amounts but in any given year may not exceed the amount equal to 3 percent of the premium charged for such coverage. For purposes of this section, commercial property and casualty insurance does not include any reinsurance provided to primary insurance companies, so as to avoid a double surcharge.

Section 9. Administration of assessments and surcharges

This section provides the Secretary with significant flexibility in establishing the manner and method of carrying out any assessments or surcharges, in particular as necessary to protect the national interest, avoid unreasonable economic disruption and market instability, and avoid undue burdens on small businesses. The Secretary must also take into consideration the economic impact of any of these assessments and surcharges on commercial centers of urban areas. The Secretary may also make special adjustments to provide for commercial insurers and policies that are not based on a calendar year.

Section 10. Application to self-insurance arrangements and offshore insurers and reinsurers

In consultation with the NAIC, the Secretary may apply the provisions of this bill to self-insurance arrangements by municipalities and other entities, but only if that determination is made before the occurrence of a triggering event and all of the provisions of this legislation are applied uniformly to such entities. The Committee expects that many types of self-insuring entities may desire or need risk-sharing coverage for terrorism attacks, while for others participation may be inappropriate. The Secretary is given authority to determine which of these entities should be participating, so long as application of the benefits and costs are applied equally. The Secretary must also ensure that the provisions of this bill are applied as appropriate to any offshore or non-admitted entities that provide commercial property and casualty insurance. Both provisions of this section are intended in part to prevent evasion of assessments.

Section 11. Reserve for terrorism coverage under commercial lines of business

This section amends section 832 of the Internal Revenue Code of 1986 by eliminating the adverse tax consequences of long term insurance reserving, but only to the extent that such reserves are set aside in a segregated account and used only for the purposes of paying a terrorist-caused loss (including assessments) or as directed by a State insurance commissioner as part of a plan to avoid insolvency. The rationale for creating company-specific reserve funds is to encourage self-sufficiency in the marketplace by allowing insurers with commercial terrorism exposure to set aside and potentially pool with other insurers their own capital (on a tax-deferred basis) to pay any future claims from terrorism losses. The terrorism reserves are required to be held in segregated accounts from insurers' other reserves, although they may be pooled together in the same account as other insurers' terrorism reserves. Each company's reserves are limited by the ratio of an insurer's commercial insurance premiums that provide terrorism coverage to the entire commercial insurance market (regardless of terrorism coverage), as a percentage of \$40 billion, the national aggregate cap for the life of the fund. Thus, if no commercial insurer were to exclude coverage for terrorism, and a company underwrites 1 percent of the commercial insurance market, the company could over the long-term set aside up to \$400 million in a segregated terrorism-losses-only account without incurring any tax consequences on such reserves. Only one-third of this amount may be reserved in 2002. Any reduction in an insurer's terrorism reserves for terrorist losses or insolvency is included in a company's gross income. Furthermore, if an insurer's terrorism reserves exceed its eligible amount because of interest income or a reduction in market share, the excess amount must be included in income for tax purposes. The \$40 billion industry-wide cap is indexed for inflation.

Section 12. State preemption

This section preempts certain State laws to ensure uniform compliance with the bill. Subsection (a) preempts State laws that would conflict with the provision of coverage for acts of terror under the definitions of this legislation. Subsection (b) establishes a narrow preemption to allow insurers to adjust premiums only as necessary to recover the amounts of any assessments under section 7. Subsection (c) preempts State pre-filing approval requirements for commercial property and casualty insurance policies covering acts of terrorism due to the insufficient time between enactment of this legislation and January 1, 2002, but expressly preserves the ability of the States to undertake any subsequent review or action on those policies.

Section 13. Consistent State guidelines for coverage for acts of terrorism

This section establishes the sense of Congress that the NAIC and the Secretary should consult with each other and develop appropriate definitions for acts of terrorism and standards for determining the number of terrorist events or occurrences. Each State and the Secretary should then adopt such definitions and standards. A further sense of the Congress is provided that the NAIC

should develop appropriate guidelines governing insurers' terrorism reserves, including any pooling of those reserves. The Secretary is directed to promulgate those guidelines on a nationwide basis if the States have not adopted guidelines in a uniform manner. A sense of the Congress is also provided that the States should establish regulations requiring separate disclosure to consumers of the costs of any terrorism-related coverage. If the States have not adequately adopted such disclosures within a reasonable period of time, the Secretary is directed to consult with the NAIC and adopt national guidelines requiring such disclosure.

Section 14. Consultation with State insurance regulators and the NAIC

The Secretary is directed to consult with the State insurance regulators and the NAIC in carrying out this bill, and may enter into agreements with the States and the NAIC to provide for the distribution of financial assistance, or the collection of any assessments or surcharges. The Secretary, may, in consultation with the State insurance regulators and the NAIC, investigate and audit claims of insured losses by commercial insurers.

Section 15. Sovereign immunity protections

This section ensures that the United States will not be liable for extraordinary damages in the case of a terrorist incident. Subsection (a) creates a Federal cause of action for lawsuits arising in connection with a terrorist event that results in a triggering determination by the Secretary. This cause of action will be the exclusive remedy for damages claimed in connection with any such terrorist incident. Paragraph (2) provides that the substantive law in any such case shall be the law of the State in which the incident occurs, unless that law is inconsistent with or preempted by Federal law. Paragraph (3) of this subsection requires the Judicial Panel on Multidistrict Litigation to designate one or more district courts of the United States to hear those actions, and gives those courts original and exclusive jurisdiction over the actions. Paragraph (4) invokes the "collateral source" rule and provides that any recovery by a plaintiff in an action created by this subsection will be offset by any payments received by the plaintiff, whether such payments come under emergency or disaster relief programs, or from any other source.

Subsection (b) involves actions arising pursuant to the cause of action created by subsection (a) which involve claims by or against an insured party which is insured under a commercial property or casualty policy that provides coverage for acts of terrorism of a kind that caused the triggering determination. In such a cause of action, paragraph (1) states that no punitive damages may be awarded. This paragraph protects the Federal taxpayers and insurers from subsidizing punitive damage awards relating to acts of terrorism. Most States already either prohibit or impose at least some limits on the insurability of punitive damages. This paragraph limits the application of punitive damages where the costs of an award would be subject to the bill's risk-spreading mechanism.

Paragraph (2) similarly protects the Federal taxpayer from awards of noneconomic damages that are not in amounts equal to

an insured's direct proportional percentage of responsibility for harm to the claimant. This paragraph essentially prevents an award and pass through of joint-and-several liability for non-economic "pain and suffering" damages, particularly to avoid having responsibility for damages caused primarily by actions of terrorists passed through to the Federal risk-sharing program.

Subsection (b) also contains a provision stating that the subsection does not limit actions by injured parties for damages other than a claim for commercial property and casualty insurance.

Subsection (c) gives the United States the right of subrogation with respect to any claim paid by the United States under the bill. Subsection (d) ensures that the United States, or the Secretary, may seek protective orders or assert privileges which are ordinarily available to the United States to protect against the disclosure of classified information, including military and State secrets privileges.

Subsection (e) excludes certain persons from liability protection under section 15. Paragraph (1) states that section 15 does not limit the liability of persons who attempt to commit, knowingly participate in, knowingly and intentionally aid and abet, or commit any terrorist act or any criminal act related to or resulting from a terrorist act that causes the insured losses resulting in a triggering determination. Paragraph (2) states that section 15 does not exclude from liability any person who knowingly participates in any terrorist act or any criminal act related to or resulting from a terrorist act that causes the insured losses resulting in a triggering determination.

Subsection (f) provides that all assets of terrorists or terrorist organizations seized or frozen by the United States shall be liable for satisfaction of judgments rendered for acts of terrorism, in proportions determined by the court.

Section 16. Study of potential effects of terrorism on life insurance industry

This section directs the President to establish a commission to study and report within 120 days after the enactment of the bill on the potential effects of acts of terrorism on the life insurance industry in the U.S. and markets served by such industry. The membership of this commission shall include: the Secretary of the Treasury; the Chairman of the Federal Reserve System; the Assistant to the President for Homeland Security; and four members appointed by the President from the insurance community.

Section 17. Railroad insurance study

This section directs the Secretary of the Treasury to conduct a study to determine the availability of commercially reasonable railroad insurance for acts of terrorism. The Secretary must submit a report to Congress within 120 days after enactment of this legislation.

Section 18. Study of reinsurance pool system for future acts of terrorism

This section directs the Secretary of the Treasury, the Federal Reserve Board of Governors, and the Comptroller General to jointly conduct a study on (1) the advisability and effectiveness of estab-

lishing a terrorism reinsurance pool system in lieu of the program created by this bill, and (2) the effects of creating terrorism reserve funds on the availability of terrorism insurance coverage. The study must utilize a variety of informational sources and be jointly submitted to Congress not later than 6 months after enactment.

Section 19. Definitions

This section establishes various definitions. The term “Act of terrorism” is defined as an act that is unlawful, causes harm to persons or property in the United States or to any U.S. air carrier of U.S. flagged vessel outside the United States committed by persons who are recognized (prior or subsequently) by the Department of State or the Secretary as a terrorist group, or who conspire with the surrogates of a recognized terrorist group, and has the purpose of destabilizing any country or to influence the United States by coercion. As defined, an act of terrorism is not an act of war. The Secretary is directed to consult with the NAIC to further refine this definition. This section further provides that the bill only applies to commercial property and casualty insurance.

Section 20. Extension of program

This section grants the Secretary authority to extend the coverage period of the bill through the 2004 calendar year, if the extension is necessary to ensure the adequate availability in the United States of commercial property and casualty insurance coverage for acts of terror. Extensions are to be made on a year-by-year basis and the Secretary is required to report to Congress on the reasons for any extensions beyond the 2002 calendar year.

Section 21. Regulations

This section grants the Secretary authority to issue regulations as necessary to implement this legislation.

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):

SECTION 832 OF THE INTERNAL REVENUE CODE OF 1986

SEC. 832. INSURANCE COMPANY TAXABLE INCOME.

(a) * * *

(b) DEFINITIONS.—In the case of an insurance company subject to the tax imposed by section 831—

(1) GROSS INCOME.—The term “gross income” means the sum of—

(A) * * *

* * * * *

(D) in the case of a mutual fire or flood insurance company whose principal business is the issuance of policies—

(i) * * *

* * * * *

an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to such policies after deduction of premium deposits returned or credited during the same taxable year, [and]

(E) in the case of a company which writes mortgage guaranty insurance, the amount required by subsection (e)(5) to be subtracted from the mortgage guaranty account[.], and

(F) each net decrease in reserves which is required by paragraph (1) or (3) of subsection (h) to be taken into account under this subparagraph.

* * * * *

(c) DEDUCTIONS ALLOWED.—In computing the taxable income of an insurance company subject to the tax imposed by section 831, there shall be allowed as deductions:

(1) * * *

* * * * *

(12) the special deductions allowed by part VIII of subchapter B (sec. 241 and following, relating to dividends received); [and]

(13) in the case of a company which writes mortgage guaranty insurance, the deduction allowed by subsection (e)[.]; and

(14) each net increase in reserves which is required by subsection (h)(1) to be taken into account under this paragraph.

* * * * *

(h) TERRORISM RESERVE FOR COMMERCIAL LINES OF BUSINESS.—In the case of an insurance company subject to tax under section 831(a)—

(1) INCLUSION FOR DECREASES, AND DEDUCTION FOR INCREASES, IN BALANCE OF RESERVE.—

(A) DECREASE TREATED AS GROSS INCOME.—If for any taxable year—

(i) the opening balance for the terrorism commercial business reserve exceeds

(ii) the closing balance for such reserve,
such excess shall be included in gross income under subsection (b)(1)(F).

(B) INCREASE TREATED AS DEDUCTION.—If for any taxable year—

(i) the closing balance for the terrorism commercial business reserve exceeds

(ii) the opening balance for such reserve,
such excess shall be taken into account as a deduction under subsection (c)(14).

(2) TERRORISM COMMERCIAL BUSINESS RESERVE.—For purposes of this section, the term “terrorism commercial business reserve” means amounts held in a segregated account (or other separately identifiable arrangement or joint pooled account) which are set aside exclusively—

(A) to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from declared terrorism losses under commercial lines of business, and

(B) if so directed by the insurance commissioner of any State, to pay other claims as part of a plan of the company to avoid insolvency.

(3) LIMITATION ON AMOUNT OF RESERVE.—

(A) IN GENERAL.—If the closing balance of any terrorism commercial business reserve for any taxable year exceeds such reserve's limit for such year—

(i) such excess shall be included in gross income under subsection (b)(1)(F) for the following taxable year, and

(ii) if such excess is distributed during such following taxable year, the opening balance of such reserve for such following taxable year shall be determined without regard to such excess.

(B) RESERVE LIMIT.—

(i) IN GENERAL.—For purposes of subparagraph (A), a reserve's limit for any taxable year is such reserve's allocable share of the national limit for the calendar year in which such taxable year begins.

(ii) NATIONAL LIMIT.—The national limit is \$40,000,000,000 (\$13,340,000,000 for 2002).

(iii) ALLOCATION OF LIMIT.—

(I) IN GENERAL.—A reserve's allocable share of the national limit for any calendar year is the amount which bears the same ratio to the national limit for such year as the company's net premium for insurance for commercial lines of business which does not exclude coverage for acts of terrorism bears to the aggregate written premium for insurance (without regard to terrorism coverage) for all companies for commercial lines of business.

(II) DETERMINATION OF NET WRITTEN PREMIUMS.—Except as otherwise provided in this section, all determinations under this subsection shall be made on the basis of the amounts required to be set forth on the annual statement approved by the National Association of Insurance Commissioners.

(III) AGGREGATE WRITTEN PREMIUMS AND NET PREMIUMS.—For purposes of this clause, the terms "aggregate written premium" and "net premium" have the meanings given such terms in section 19 of the Terrorism Risk Protection Act.

(iv) INFLATION ADJUSTMENT OF LIMIT.—In the case of any calendar year after 2002, the \$40,000,000,000 amount in clause (ii) shall be increased by an amount equal to the product of—

(I) such dollar amount, and

(II) the cost-of-living adjustment determined under subsection (f)(3) for such calendar year, determined by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

If any amount after adjustment under the preceding sentence is not a multiple of \$1,000,000, such amount shall be rounded to the nearest multiple of \$1,000,000.

(4) *DECLARED TERRORISM LOSSES.*—For purposes of this subsection—

(A) *IN GENERAL.*—The term “declared terrorism losses” means, with respect to a taxable year—

(i) the amount of net losses and loss adjustment expenses incurred in commercial lines of business that are attributable to 1 or more declared terrorism events, plus

(ii) any nonrecoverable assessments, surcharges, or other liabilities that are borne by the company and are attributable to such events.

(B) *DECLARED TERRORISM EVENT.*—The term “declared terrorism event” means any event declared by the Secretary of the Treasury to be an act of terrorism against the United States for purposes of this section.

(5) *REGULATIONS.*—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, and shall prescribe such regulations after consultation with the National Association of Insurance Commissioners.

ADDITIONAL VIEWS

As a result of the September 11th attacks, we are faced with numerous economic dislocations that could have devastating consequences for our economy. In particular, the withdrawal of terrorism coverage by reinsurers may force primary insurers to increase premiums for policyholders radically or to withdraw coverage entirely. Without such insurance, banks and investors will also likely become reluctant to lend or invest in many types of businesses and specific areas of the country, exacerbating an already slowing economy. The shortage of terrorism reinsurance is therefore not an insurance industry problem, but rather an economic problem with potentially devastating consequences for our Nation.

Given the implications for our economy, the bill we are considering is of enormous significance. We also believe that Congress must act to address this problem before we finish our business for the year. While we would strongly prefer the development of a comprehensive, long-term solution that will ensure that terrorism insurance is available and affordable for all consumers, we recognize that time constraints prevent us from crafting such an approach. Consequently, action before adjournment means that we must devise a short-term fix that will keep terrorism insurance coverage against any future attacks available and affordable, until either private reinsurance markets stabilize or we can determine the necessity and appropriateness of a longer-term policy response.

While the Committee made some improvements to the bill during our deliberations, we continue to have serious reservations about the approach taken in H.R. 3210. The bill in some respects contains components more closely resembling a loan program than an insurance program. Of the several countries that have extensive experience with terrorism insurance programs, none has chosen the type of model reflected in the underlying bill. There is uncertainty as to how accounting firms and rating agencies would assess the liabilities of companies under such a model. We also believe that at the present time there is a very strong case for developing a private-public partnership to share and spread the risks of terrorist attacks broadly as the private markets discern how to price and manage this new menace to our economy.

In our view, an appropriate risk-sharing plan must require the insurance industry to pay the first dollar associated with any additional terrorist attacks, before any federal program comes into play. After all, most home, automobile, and health insurance policies require individuals to exceed a specified deductible level before an insurance company will cover any of the costs. These deductibles reduce moral hazard by ensuring that policyholders have an incentive to protect themselves. The insurance industry must also continue to bear a tangible share of the risk of any future terrorist event through cost-sharing arrangements with the federal govern-

ment. We believe that this retention of risk by insurers remains essential to the development of sound underwriting standards and the re-emergence of a private market for terrorism risks. In the days ahead, we will continue to work diligently to incorporate these sensible insurance principles into any product that we will enact.

The insurance industry has indicated that it is willing and able to assume an obligation to cover as much as \$10 billion of losses from future terrorism events before the federal government steps in as a backstop. As reported out of Committee, however, H.R. 3210 does not impose such an obligation on the industry. The insurance industry is well-capitalized and profitable, and it must assume a fair and substantial burden. While the Oxley-Baker bill purports to ensure that the government is paid back for what it expends, the terms and timing of repayment are totally indefinite. In the original bill, a substantial portion of that burden was passed on to consumers, calling the availability and affordability of insurance into question, particularly for small and medium-sized businesses.

We are committed to working with Chairman Oxley and Mr. Baker to include such a mechanism in the bill that goes to the floor. As part of that mechanism, we would seek to include safeguards to ensure that losses due to an act of terrorist do not fall disproportionately on individual companies.

We are further pleased that the legislation approved by the Committee includes several improvements over the introduced bill as the result of acceptance of Democratic amendments:

- The bill now designates the Secretary of the Treasury as Administrator of the program and clearly authorizes auditing powers. We believe these changes will help ensure that the program is subject to an appropriate level of meaningful regulatory oversight and accountability.
- The authority to impose a surcharge on commercial policyholders has now been made discretionary, and the amount of surcharge that can be imposed has been capped, which should help ensure that terrorism coverage remains broadly available and affordable. The Secretary will now be required to take into consideration the condition of the economy, the availability of insurance, and the impact on small businesses before imposing such surcharges. Providing the Secretary with this discretion will help to mitigate the potential effects of imposing such charges on consumers of insurance at a time when the economy may already be experiencing enormous pressures.
- The bill also calls for a study by the Secretary and others within six months of enactment regarding the advisability of structuring a terrorism reinsurance pool to ensure the availability of terrorism insurance in the long term. The bill contains a provision giving the insurance industry greater authority to accumulate tax-free reserves to help cover losses related to further terrorism attacks. We opposed the inclusion of the tax provisions. The study which has now been included must also assess whether this new authority to accumulate tax-free reserves is being abused and whether it is in fact essential to the development of a pooling mechanism. Such a study will help Congress to take a more serious look at such proposals when we return next year.

Given the need for swift and resolute action on this problem, however, we remain dismayed about the extraneous measures contained in the bill. From our perspective, we should develop a narrowly crafted bill designed to address only the problem at hand. The approach must be straightforward, streamlined, and workable. We therefore should analyze every element in our proposed bill to ensure that it is either needed to keep terrorism insurance available, to provide appropriate oversight, or to help us gather information to develop a long-term response to this problem.

The Democratic substitute we proposed took this approach. This substitute would have provided for an appropriate private/public risk sharing, required the insurance industry to be responsible for a significant level of losses associated with any future terrorist attack before any taxpayer funds were committed, and provided appropriate protections to ensure that an individual insurer would not be disproportionately affected. While ensuring that an undue level of costs were not passed on to consumers, the substitute omitted the tax provisions of H.R. 3210, as well as those provisions concerning victims' recovery rights. Although certain important features of the substitute have been included in the provisions of the bill, more should be done.

In particular, while H.R. 3210 purports to recover money from industry, the tax provision can be seen as providing the industry with a long-term subsidy that could well exceed what it pays. While we are pleased by the addition of provisions to protect against the fraudulent use of such reserves to manage earnings, we believe that the sections of the bill that establish tax-free reserves for terrorism risks should be removed from the bill. It may prove necessary to include such provisions in a long-term solution to reestablish stability in the terrorism risk reinsurance marketplace, but we should not hastily write into law such advantages without first seriously considering their costs and benefits. The study on a terrorism pool included in the bill is the appropriate mechanism for determining whether maintaining such a reserve mechanism is advisable as part of a longer term solution, and we are pleased that it will examine whether the tax-free reserves provided by this bill should be retained or eliminated.

It is important to note that the insurance industry has not asked for this tax benefit and it is not asking to be, and does not need to be, bailed out. We must be certain that in our creation of a government backstop we do not inadvertently "bail them out" through unnecessary tax relief. Moreover, the establishment of sizable tax-free reserves could have the effect of hindering the re-emergence of the private reinsurance market. We therefore should think carefully before taking this step.

We also have very serious concerns with section 15 of the bill, the misnamed "Sovereign Immunity" section. Section 15(a) would force every legal action involving a terrorism-related claim (including those which are not seeking insurance coverage) into federal court, and mandate collateral source offset in all such cases. Section 15(b) would eliminate punitive damages and joint and several liability for non-economic damages in insurance coverage cases for property and casualty insurance. We are concerned that, rather

than protecting the insurance market, these changes will harm the legitimate legal rights of the victims of terrorism.

Section 15(a) is problematic for several reasons. First, federalizing all terrorism related cases¹ does not appear to be justified. What this provision does is take hundreds and thousands of potential tort actions that would ordinarily go into state court and funnel them into already overburdened federal courts having little or no expertise in the state law subject matter of the tort claim. We have seen no evidence that the current system of federalism, which has served our nation well for over two hundred years, is not able to deal with future terrorism related cases. Certainly, there have been precedents for federalizing very limited forms of legal actions. That has generally been limited, however, to situations where the federal government is also assuming direct liability for the legal action. This was the case in the recently enacted Air Transportation Safety and System Stabilization Act, which federalized legal actions arising from the September 11 terrorist attack against airlines, but did so in the context of creating a federal fund to pay for the victims' damages. In the present legislation, the federal government will not be assuming any direct liability for victim claims, so there is no clear quid pro quo that would justify the federal intrusion into traditional state law prerogatives.

Second, we are concerned the critical term "act of terrorism" is undefined within the text of the legislation and thus grants far too much bureaucratic latitude to the administrator to designate an event an "act of terrorism." For example, under the bill the administrator could go too far in making such designations, such that losses incurred due to a hoax or practical joke could be considered acts of terrorism.

Third, we have concerns regarding the collateral offset provision which overrides state law to require that a victim's recovery for any terrorism-related loss be offset by any funds received pursuant to an emergency or disaster relief program, or other collateral source. Under this provision losses caused by negligence or wrongdoing would be shifted from negligent defendants to private insurers or others who made the "collateral source" payment. In our view, mandating offsets for collateral source benefits is just plain bad public policy. Such offsets (1) allow a negligent defendant to profit from the victims prudent investment in insurance; (2) undermine the deterrent effect of our civil justice system by allowing defendants to escape full liability for their negligence; and (3) provide a disincentive for persons to obtain and maintain adequate insurance or other protections. Moreover, the provision overreaches because any funding given to the victim, even funds from a voluntary organization, would have to be used to offset relief payments made by culpable defendants. We see no reason why victim relief funds received from the Red Cross or other humanitarian group should be used to offset damage payments and reduce a wrongdoer's culpability. Such a system could only discourage the efforts of disaster

¹The proposed change is written so broadly that it would limit victims' rights in every terrorism-related civil action, whether state or Federal, even if the insurer is not a party to the action. This is because almost all losses are subject to insurance, even if the coverage is negligible or the cost to the insurer minimal.

relief and other non-profit organizations at times when they are desperately needed.

At the outset we note that section 15(b) was improved at the markup through the Bentsen amendment to specify that the damage limitations would apply only to “a claim for commercial property and casualty insurance resulting from an act of terrorism causing a triggering determination.”² This means that the damage limits of section 15(b) would not apply to non-insurance claims. Nonetheless, it is still difficult to justify the damage limitations set forth in this section.

As amended by the Bentsen amendment, the subsection would prohibit a business from buying insurance to protect itself from liability for punitive damages and joint and several liability for non-economic damages in actions against insurers. Under the American system of insurance regulation and the American legal regime governing tort actions, the authority to restrict the types of losses that may be insured have been left to the states. In fact, only about half of the states prohibit a person from purchasing insurance to cover claims from punitive damages. States also permit a business to purchase insurance to protect itself from joint and several liability for non-economic damages. Section 15(b) would overturn several states’ laws that permit businesses to protect themselves from these types of claims.

The premise of the bill is that the taxpayers will be repaid any financial assistance by the insurers and the purchases of commercial policies. As a result, there is no justification for overturning state law under the guise of protecting the Federal taxpayers. We are concerned that these limitations on insurance policies will deprive businesses of protection that they can purchase today. Ultimately, this will unfairly penalize victims that are harmed by defendants without sufficient assets to pay punitive or non-economic damages.

Given our concerns, it is difficult to understand the justification for section 15 of the legislation, other than perhaps creating a new precedent for broad “tort reform.” Unfortunately, in pursuing that objective the majority has created a confused and awkward new legal regime, which is very likely to cause more harm than good. We hope that these provisions are deleted on the floor or in conference with the Senate.

In sum, we believe that we must temporarily intervene in the re-insurance marketplace to safeguard against a cascading economic crisis, and we must quickly act on this legislation. Although we are pleased that the Committee made a number of substantial and perfecting modifications to the bill during its deliberations, we can and should make additional improvements to H.R. 3210 as it continues its path through the legislative process. Time is of the essence, and we will continue to work with all interested parties on these matters in the upcoming days.

JOHN J. LaFALCE.
PAUL E. KANJORSKI.

²The Bentsen amendment superseded the Cox amendment also added at the markup. The Cox amendment appeared to say that the bill affords its protections not only to insurers but also to businesses insured by them.

CAROLYN B. MALONEY.
LUIS V. GUTIERREZ.
BRAD SHERMAN.
BARBARA LEE.
JANICE D. SCHAKOWSKY.
STEPHANIE TUBBS JONES.
MICHAEL E. CAPUANO.
HAROLD E. FORD, JR.
JOSEPH CROWLEY.
STEVE ISRAEL.

ADDITIONAL VIEWS OF MESSRS. CROWLEY, WATT, AND
GUTIERREZ

We are pleased that the Committee has recognized the importance of expedited action on the issue of terrorism insurance coverage. Additionally, while we have some concerns about the Oxley-Baker proposal that passed through the Committee, it did represent a solid, bipartisan start to crafting a workable piece of legislation to address this insurance crisis in America.

One of the key faults, though, with the Oxley-Baker proposal is the lack of language stipulating inclusion of personal property and casualty lines, as opposed to just commercial P&C lines, in this back-stop legislation.

The goal of the underlying legislation is to ensure that commercial insurance carriers do not attach a terrorism exclusion in their policies, price insurance for terrorism out of reach, or depart the market all together. This represents a serious and legitimate concern. Unfortunately, these same problems will exist with respect to personal P&C lines without any Federal action.

To this end, an amendment was offered and withdrawn at markup on this issue. While the understanding at the time was that the Chairman was unprepared to accept any such language, he was open to the idea.

It is imperative that personal lines be included in this legislation.

The basic purpose of this legislation is to serve as a Federal back-stop for the property and casualty insurance industry; thereby keeping coverage accessible and premiums affordable.

Excluding personal lines will lead to increased costs for policy holders and a potential lack of accessibility for coverage, particularly for those Americans living in high-risk areas.

As our nation braces itself for possible future attacks on our soil, we could be exposed to millions of dollars in personal P&C claims if another urban area is attacked and results in great damage to the neighborhoods surrounding that targeted area.

Congress cannot advance legislation where large commercial enterprises can afford insurance and their residential neighbors are left exposed.

Additionally, as the reinsurance industry often does not differentiate between personal or commercial lines, without a Federal back stop for personal P&C, insurance risks for personal P&C coverage will significantly increase, inviting possible exclusions from terrorism for personal lines, greatly increased premiums to homeowners or a complete fleeing from the market—the same justified fears we have about the commercial lines.

While insurance itself is a concept based on risk, the insurance industry is based on risk avoidance, hence the reasoning behind actuarial models and reinsurance.

Without enveloping personal P&C into any back-stop legislation, there is little chance that the insurance industry will continue to provide personal lines of coverage at an affordable price, as carriers will not know the risks associated with this coverage and would lack any Federal back-stop protections.

To support this argument, the Independent Insurance Agents Association of New York specifically requested that both commercial and personal lines be covered under any terrorism insurance package, stating that without such, Americans could see large increases in personal line premiums.

Furthermore, without the inclusion of personal lines, personal P&C carriers would not be subject to the uniform definition of terrorism outlined in H.R. 3210. Again, this would threaten personal policy holders.

While the point is made by some that inclusion of personal lines in this legislation would drive up personal premiums, a key fact to take note of is that personal, as well as commercial, P&C premiums will increase next year.

The issue then becomes one where without the presence of a Federal back-stop, personal P&C premiums, particularly in high-risk areas, will not only increase but skyrocket.

Now is the time for Congress to work together for sound legislation to ensure that terrorism insurance can and will be both accessible and affordable to US commercial and personal property and casualty holders.

JOSEPH CROWLEY.
MELVIN L. WATT.
LUIS V. GUTIERREZ.

ADDITIONAL VIEWS OF MS. LEE, AND MESSRS. ISRAEL,
SANDERS, FORD, CAPUANO, AND FRANK

During committee consideration of H.R. 3210, Representative Lee offered an amendment, cosponsored by Representatives Gutierrez, Frank, and Meeks, to require that any insurance company wishing to benefit from the provisions in the bill would have to first provide information on the policies they provide on the basis of race, ethnicity, gender, and location to ensure that minorities and individuals in low-income communities are not discriminated against. While we are disappointed that this amendment failed, on a mostly party-line vote, we continue to believe that data disclosure by the insurance industry is essential.

It is only logical that if we are to provide the insurance industry with billions of taxpayer dollars that we should require them to provide this important data which the Administration, Congress, and American public can use to determine if any insurance company is engaging in the discriminatory practice of redlining.

The federal government currently has no access to this data from the insurance industry. The data provisions in the 1977 Home Mortgage Disclosure Act (HMDA) that require banks and other depository institutions to submit annual reports do not apply to insurance. This HMDA data is an extremely valuable tool in rooting out discriminatory practices by banks. Currently, only 8 states (CA, IL, MD, MA, MN, MO, TX, and WI) require this kind of beneficial data.

A number of civil rights, business, consumer, and labor groups support data disclosure in as a condition of any reinsurance legislation. Those groups are:

ACORN

Center for Community Change

Center for Public Dialog

Coalition for Indian Housing and Development

Consumers Union

The Enterprise Foundation

Filipino American Political Association

Greenlining Institute

International Union, UAW

Leadership Conference on Civil Rights

McAuley Institute

National Black Business Council

National Community Reinvestment Coalition

National Council of Asian American Business Associations

National Council of La Raza

National Fair Housing Alliance

National Housing Trust

National League of Cities

National Low Income Housing Coalition

National Neighborhood Coalition
National Puerto Rican Coalition
National Training and Information Center
Woodstock Institute

Opponents of the Lee amendment to H.R. 3210 in committee stated that we could not require data collection from the insurance industry because there was no federal role for insurance. We would argue that H.R. 3210 in and of itself creates a federal role in insurance and thus data disclosure is appropriate and needed.

We hope that the Members of the Financial Services Committee will consider adding the data disclosure provisions in the Lee amendment in the final version of H.R. 3210.

Signed,

BARBARA LEE.
STEVE ISRAEL.
BERNARD SANDERS.
HAROLD E. FORD, JR.
MICHAEL E. CAPUANO.
BARNEY FRANK.

ADDITIONAL VIEWS OF MR. BENTSEN

I support H.R. 3210, the Terrorism Risk Protection Act, because I believe that it balances the need to address the impending crisis in the reinsurance market and its effect on the economy while protecting the interests of the taxpayers. The bill is not perfect legislation but it is the best that can be accomplished in the short period of time available to address the problem of pricing risk of terrorism without catastrophic economic consequences. The bill combines aspects of all proposals put forward including those of the Administration and the reinsurance industry. Rather than providing first dollar coverage by the taxpayers of insurance company losses, the bill implements a deductible provision which will not distort the market more so than necessary. The bill additionally provides for taxpayers to recoup any losses paid from the industry. These measures combine both the immediate need for a federal backstop to insure that policies are written this year along with recoupment not dissimilar from the pooled premium model advanced by some in the industry. While arguments concerning the low level of the deductible and tax-exempt status of reserves are legitimate, they continue to be outweighed by lack of viable alternatives to ensure equity among insurers regardless of size and protection of the taxpayers' interests.

Additionally, legitimate concerns are raised with respect to the liability sections in the bill. Here again, balance is necessary for the benefit of the taxpayers. Given the unique nature of both the insured incident, terrorism, and the underwriting of that risk by the taxpayers, some restrictions may well be in order. In addition, it is assumed that this legislation and the federal involvement will be temporary and so should any limitation with respect to liability. Adoption of the amendment I offered preserving the rights of injured parties except with respect to claims against property and casualty insurance policies covered under this act is necessary in ensuring that balance. Limiting the exposure of the taxpayers in return for underwriting the risk of terrorism should not be assumed as limiting the exposure of property owners or other defendants for negligent actions. The Bentsen amendment clearly underscores the Committee's intent that liability for negligent actions are not shielded. Nor should any liability limitations contained in a final bill be considered precedent setting or less extraordinary than the underlying bill itself.

The Committee also adopted my amendment which would limit any extension within the three-year period of the legislation to no more than one year at a time. Given the uncertainty of the reinsurance market in the aftermath of September 11, 2001 and the lack of time for Congress to fully study the implications and structures of federal involvement, any measure ultimately adopted must be short term.

The failure of Congress to act to ensure stability in the reinsurance market for property and casualty insurance would be devastating to many sectors of our economy. The inability to price risk for terrorism insurance in the aftermath of September 11 could very well lead to a wholesale withdrawal from the marketplace or dramatic increase in costs with negative consequences to the economy at exactly the wrong time. Any characterization of this legislation as a “bail out” is inaccurate. In fact, the Committee-adopted bill makes strong provision toward ensuring against taxpayer bail-out and loss. The bill, while not perfect, strikes the appropriate balance erring to benefit of the taxpayers.

KEN BENTSEN.

DISSENTING VIEWS

No one doubts that the government has a role to play in compensating American citizens who are victimized by terrorist attacks. However, Congress should not lose sight of fundamental economic and constitutional principles when considering how best to provide the victims of terrorist attacks just compensation. I am afraid that H.R. 3210, the Terrorism Risk Protection Act, violates several of those principles and therefore passage of this bill is not in the best interests of the American people.

Under H.R. 3210, taxpayers are responsible for paying for 90% of the costs of a terrorist incident when the total cost of those incidents exceeds a certain threshold. While insurance companies are technically responsible for paying back monies received from the Treasury, the administrator of this program may defer the repayment in order to “avoid the likely insolvency of the commercial insurer.” This language may cause administrators to indefinitely defer paying back loans, thus causing taxpayers to permanently bear this loss. This scenario is especially likely when one considers that “avoid . . . likely insolvency” is a highly subjective standard, and that any administrator who attempts to enforce a strict repayment schedule will likely come under heavy political pressure to be more “flexible” in collecting debts owed to the taxpayers.

The drafters of H.R. 3210 claim that this creates a “temporary” government program. Those who may be persuaded to vote for this bill on the grounds that it is only a “temporary” program should ask themselves what will happen in two years if industry lobbyists come to Capitol Hill to explain that there is still a need for this program because of the continuing threat of terrorist attacks. Does anyone seriously believe that Congress will fail to reauthorize this “temporary” insurance program or provide some other form of taxpayer help to the insurance industry? My colleagues should remember that the federal budget is full of expenditures for long-lasting programs that were originally intended to be “temporary.”

H.R. 3210 further compounds the danger to the taxpayer because of what economists call the “moral hazard” problem. A moral hazard is created when individuals have the costs incurred from a risky action subsidized by a third party. In such a case individuals may engage in unnecessary risks or fail to take steps to minimize their risks. After all, if a third party will bear the costs of negative consequences of risky behavior why should individuals invest their resources in avoiding or minimizing risk?

While no one can plan for terrorist attacks, individuals and businesses can take steps to enhance security. For example, I think we would all agree that industrial plants in the United States enjoy reasonably good security. They are protected not by the local police but by owners putting up barbed wire fences, hiring guards with guns, and requiring identification cards to enter. One reason pri-

vate firms put these security measures in place is because insurance companies provide them with incentives, in the form of lower premiums, to adopt security measures. H.R. 3210 contains no incentives for that type of private activity. In fact, H.R. 3210 exacerbates the potential moral hazard problem by not making insurance companies pay a deductible before they can receive taxpayer funds! This bill gives no indication of even recognizing the important role insurance plays in providing incentives to minimize risks. By removing an incentive for private parties to avoid or at least mitigate the damage from a future terrorist attack, the government is inadvertently increasing the damage that will be inflicted by future attacks!

Instead of forcing taxpayers to subsidize the costs of terrorism insurance, Congress should consider creating a tax credit or deduction for premiums paid for terrorism insurance, as well as a deduction for claims and other costs borne by the insurance industry connected with offering terrorism insurance. A tax credit approach reduces government's control over the insurance market. Furthermore, since a tax credit approach encourages people to devote more of their own resources to terrorism insurance, a tax credit approach avoids the moral hazard problems associated with federally-funded insurance. H.R. 3210 does take a good first step in this direction by repealing the tax penalty which prevents insurance companies from properly reserving funds for human-created catastrophes, however, Congress should do more to provide tax deductions and credits for terrorism insurance.

In conclusion, H.R. 3210 may reduce the risk to insurance companies from future losses, but it increases the costs incurred by American taxpayer. More significantly, by ignoring the moral hazard problem this bill may have the unintended consequence of increasing the losses suffered in any future terrorist attacks. Therefore, passage of this bill is not in the long-term interests of the American people.

RON PAUL.

