

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Terrorism Risk Insurance Act of 2002”.

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

Sec. 1. Short title; table of contents.

TITLE I—TERRORISM INSURANCE PROGRAM

- Sec. 101. Congressional findings and purpose.
- Sec. 102. Definitions.
- Sec. 103. Terrorism Insurance Program.
- Sec. 104. General authority and administration of claims.
- Sec. 105. Preemption and nullification of pre-existing terrorism exclusions.
- Sec. 106. Preservation provisions.
- Sec. 107. Litigation management.
- Sec. 108. Termination of Program.

TITLE II—TREATMENT OF TERRORIST ASSETS

Sec. 201. Satisfaction of judgments from blocked assets of terrorists, terrorist organizations, and State sponsors of terrorism.

TITLE III—FEDERAL RESERVE BOARD PROVISIONS

Sec. 301. Certain authority of the Board of Governors of the Federal Reserve System.

6 **TITLE I—TERRORISM**
7 **INSURANCE PROGRAM**

8 **SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.**

9 (a) **FINDINGS.**—The Congress finds that—

10 (1) the ability of businesses and individuals to
 11 obtain property and casualty insurance at reasonable
 12 and predictable prices, in order to spread the risk of
 13 both routine and catastrophic loss, is critical to eco-
 14 nomic growth, urban development, and the construc-
 15 tion and maintenance of public and private housing,
 16 as well as to the promotion of United States exports

1 and foreign trade in an increasingly interconnected
2 world;

3 (2) property and casualty insurance firms are
4 important financial institutions, the products of
5 which allow mutualization of risk and the efficient
6 use of financial resources and enhance the ability of
7 the economy to maintain stability, while responding
8 to a variety of economic, political, environmental,
9 and other risks with a minimum of disruption;

10 (3) the ability of the insurance industry to
11 cover the unprecedented financial risks presented by
12 potential acts of terrorism in the United States can
13 be a major factor in the recovery from terrorist at-
14 tacks, while maintaining the stability of the econ-
15 omy;

16 (4) widespread financial market uncertainties
17 have arisen following the terrorist attacks of Sep-
18 tember 11, 2001, including the absence of informa-
19 tion from which financial institutions can make sta-
20 tistically valid estimates of the probability and cost
21 of future terrorist events, and therefore the size,
22 funding, and allocation of the risk of loss caused by
23 such acts of terrorism;

24 (5) a decision by property and casualty insurers
25 to deal with such uncertainties, either by termi-

1 nating property and casualty coverage for losses
2 arising from terrorist events, or by radically esca-
3 lating premium coverage to compensate for risks of
4 loss that are not readily predictable, could seriously
5 hamper ongoing and planned construction, property
6 acquisition, and other business projects, generate a
7 dramatic increase in rents, and otherwise suppress
8 economic activity; and

9 (6) the United States Government should pro-
10 vide temporary financial compensation to insured
11 parties, contributing to the stabilization of the
12 United States economy in a time of national crisis,
13 while the financial services industry develops the sys-
14 tems, mechanisms, products, and programs nec-
15 essary to create a viable financial services market for
16 private terrorism risk insurance.

17 (b) PURPOSE.—The purpose of this title is to estab-
18 lish a temporary Federal program that provides for a
19 transparent system of shared public and private com-
20 pensation for insured losses resulting from acts of ter-
21 rorism, in order to—

22 (1) protect consumers by addressing market
23 disruptions and ensure the continued widespread
24 availability and affordability of property and cas-
25 ualty insurance for terrorism risk; and

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

6 **SEC. 102. DEFINITIONS.**

7 In this title, the following definitions shall apply:

8 (1) ACT OF TERRORISM.—

9 (A) CERTIFICATION.—The term “act of
10 terrorism” means any act that is certified by
11 the Secretary, in concurrence with the Sec-
12 retary of State, and the Attorney General of the
13 United States—

14 (i) to be an act of terrorism;

15 (ii) to be a violent act or an act that
16 is dangerous to—

17 (I) human life;

18 (II) property; or

19 (III) infrastructure;

20 (iii) to have resulted in damage within
21 the United States, or outside of the United
22 States in the case of—

23 (I) an air carrier or vessel de-
24 scribed in paragraph (5)(B); or

1 (II) the premises of a United
2 States mission; and

3 (iv) to have been committed by an in-
4 dividual or individuals acting on behalf of
5 any foreign person or foreign interest, as
6 part of an effort to coerce the civilian pop-
7 ulation of the United States or to influence
8 the policy or affect the conduct of the
9 United States Government by coercion.

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

12 (i) the act is committed as part of the
13 course of a war declared by the Congress,
14 except that this clause shall not apply with
15 respect to any coverage for workers' com-
16 pensation; or

17 (ii) property and casualty insurance
18 losses resulting from the act, in the aggre-
19 gate, do not exceed \$5,000,000.

20 (C) DETERMINATIONS FINAL.—Any certifi-
21 cation of, or determination not to certify, an act
22 as an act of terrorism under this paragraph
23 shall be final, and shall not be subject to judi-
24 cial review.

1 (D) NONDELEGATION.—The Secretary
2 may not delegate or designate to any other offi-
3 cer, employee, or person, any determination
4 under this paragraph of whether, during the ef-
5 fective period of the Program, an act of ter-
6 rorism has occurred.

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

11 (3) CONTROL.—An entity has “control” over
12 another entity, if—

13 (A) the entity directly or indirectly or act-
14 ing through 1 or more other persons owns, con-
15 trols, or has power to vote 25 percent or more
16 of any class of voting securities of the other en-
17 tity;

18 (B) the entity controls in any manner the
19 election of a majority of the directors or trust-
20 ees of the other entity; or

21 (C) the Secretary determines, after notice
22 and opportunity for hearing, that the entity di-
23 rectly or indirectly exercises a controlling influ-
24 ence over the management or policies of the
25 other entity.

1 (4) DIRECT EARNED PREMIUM.—The term “di-
2 rect earned premium” means a direct earned pre-
3 mium for property and casualty insurance issued by
4 any insurer for insurance against losses occurring at
5 the locations described in subparagraphs (A) and
6 (B) of paragraph (5).

7 (5) INSURED LOSS.—The term “insured loss”
8 means any loss resulting from an act of terrorism
9 (including an act of war, in the case of workers’
10 compensation) that is covered by primary or excess
11 property and casualty insurance issued by an insurer
12 if such loss—

13 (A) occurs within the United States; or

14 (B) occurs to an air carrier (as defined in
15 section 40102 of title 49, United States Code),
16 to a United States flag vessel (or a vessel based
17 principally in the United States, on which
18 United States income tax is paid and whose in-
19 surance coverage is subject to regulation in the
20 United States), regardless of where the loss oc-
21 curs, or at the premises of any United States
22 mission.

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

25 (A) that is—

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

4 (ii) not licensed or admitted as de-
5 scribed in clause (i), if it is an eligible sur-
6 plus line carrier listed on the Quarterly
7 Listing of Alien Insurers of the NAIC, or
8 any successor thereto;

9 (iii) approved for the purpose of offer-
10 ing property and casualty insurance by a
11 Federal agency in connection with mari-
12 time, energy, or aviation activity;

13 (iv) a State residual market insurance
14 entity or State workers' compensation
15 fund; or

16 (v) any other entity described in sec-
17 tion 103(f), to the extent provided in the
18 rules of the Secretary issued under section
19 103(f);

20 (B) that receives direct earned premiums
21 for any type of commercial property and cas-
22 ualty insurance coverage, other than in the case
23 of entities described in sections 103(d) and
24 103(f); and

1 (C) that meets any other criteria that the
2 Secretary may reasonably prescribe.

3 (7) INSURER DEDUCTIBLE.—The term “insurer
4 deductible” means—

5 (A) for the Transition Period, the value of
6 an insurer’s direct earned premiums over the
7 calendar year immediately preceding the date of
8 enactment of this Act, multiplied by 1 percent;

9 (B) for Program Year 1, the value of an
10 insurer’s direct earned premiums over the cal-
11 endar year immediately preceding Program
12 Year 1, multiplied by 7 percent;

13 (C) for Program Year 2, the value of an
14 insurer’s direct earned premiums over the cal-
15 endar year immediately preceding Program
16 Year 2, multiplied by 10 percent;

17 (D) for Program Year 3, the value of an
18 insurer’s direct earned premiums over the cal-
19 endar year immediately preceding Program
20 Year 3, multiplied by 15 percent; and

21 (E) notwithstanding subparagraphs (A)
22 through (D), for the Transition Period, Pro-
23 gram Year 1, Program Year 2, or Program
24 Year 3, if an insurer has not had a full year of
25 operations during the calendar year imme-

1 diately preceding such Period or Program Year,
2 such portion of the direct earned premiums of
3 the insurer as the Secretary determines appro-
4 priate, subject to appropriate methodologies es-
5 tablished by the Secretary for measuring such
6 direct earned premiums.

7 (8) NAIC.—The term “NAIC” means the Na-
8 tional Association of Insurance Commissioners.

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

15 (10) PROGRAM.—The term “Program” means
16 the Terrorism Insurance Program established by
17 this title.

18 (11) PROGRAM YEARS.—

19 (A) TRANSITION PERIOD.—The term
20 “Transition Period” means the period begin-
21 ning on the date of enactment of this Act and
22 ending on December 31, 2002.

23 (B) PROGRAM YEAR 1.—The term “Pro-
24 gram Year 1” means the period beginning on

1 January 1, 2003 and ending on December 31,
2 2003.

3 (C) PROGRAM YEAR 2.—The term “Pro-
4 gram Year 2” means the period beginning on
5 January 1, 2004 and ending on December 31,
6 2004.

7 (D) PROGRAM YEAR 3.—The term “Pro-
8 gram Year 3” means the period beginning on
9 January 1, 2005 and ending on December 31,
10 2005.

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

13 (A) means commercial lines of property
14 and casualty insurance, including excess insur-
15 ance, workers’ compensation insurance, and
16 surety insurance; and

17 (B) does not include—

18 (i) Federal crop insurance issued or
19 reinsured under the Federal Crop Insur-
20 ance Act (7 U.S.C. 1501 et seq.), or any
21 other type of crop or livestock insurance
22 that is privately issued or reinsured;

23 (ii) private mortgage insurance (as
24 that term is defined in section 2 of the

1 Homeowners Protection Act of 1998 (12
2 U.S.C. 4901)) or title insurance;

3 (iii) financial guaranty insurance
4 issued by monoline financial guaranty in-
5 surance corporations;

6 (iv) insurance for medical malpractice;

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

9 (vi) flood insurance provided under
10 the National Flood Insurance Act of 1968
11 (42 U.S.C. 4001 et seq.); or

12 (vii) reinsurance or retrocessional re-
13 insurance.

14 (13) SECRETARY.—The term “Secretary”
15 means the Secretary of the Treasury.

16 (14) STATE.—The term “State” means any
17 State of the United States, the District of Columbia,
18 the Commonwealth of Puerto Rico, the Common-
19 wealth of the Northern Mariana Islands, American
20 Samoa, Guam, each of the United States Virgin Is-
21 lands, and any territory or possession of the United
22 States.

23 (15) UNITED STATES.—The term “United
24 States” means the several States, and includes the
25 territorial sea and the continental shelf of the

1 United States, as those terms are defined in the Vio-
2 lent Crime Control and Law Enforcement Act of
3 1994 (18 U.S.C. 2280, 2281).

4 (16) RULE OF CONSTRUCTION FOR DATES.—
5 With respect to any reference to a date in this title,
6 such day shall be construed—

7 (A) to begin at 12:01 a.m. on that date;

8 and

9 (B) to end at midnight on that date.

10 **SEC. 103. TERRORISM INSURANCE PROGRAM.**

11 (a) ESTABLISHMENT OF PROGRAM.—

12 (1) IN GENERAL.—There is established in the
13 Department of the Treasury the Terrorism Insur-
14 ance Program.

15 (2) AUTHORITY OF THE SECRETARY.—Notwith-
16 standing any other provision of State or Federal
17 law, the Secretary shall administer the Program,
18 and shall pay the Federal share of compensation for
19 insured losses in accordance with subsection (e).

20 (3) MANDATORY PARTICIPATION.—Each entity
21 that meets the definition of an insurer under this
22 title shall participate in the Program.

23 (b) CONDITIONS FOR FEDERAL PAYMENTS.—No
24 payment may be made by the Secretary under this section

1 with respect to an insured loss that is covered by an in-
2 surer, unless—

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

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

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

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

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

23 (3) the insurer processes the claim for the in-
24 sured loss in accordance with appropriate business

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

3 (4) the insurer submits to the Secretary, in ac-
4 cordance with such reasonable procedures as the
5 Secretary may establish—

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

9 (B) written certification—

10 (i) of the underlying claim; and

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

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

15 (c) MANDATORY AVAILABILITY.—

16 (1) INITIAL PROGRAM PERIODS.—During the
17 period beginning on the first day of the Transition
18 Period and ending on the last day of Program Year
19 2, each entity that meets the definition of an insurer
20 under section 102—

21 (A) shall make available, in all of its prop-
22 erty and casualty insurance policies, coverage
23 for insured losses; and

24 (B) shall make available property and cas-
25 ualty insurance coverage for insured losses that

1 does not differ materially from the terms,
2 amounts, and other coverage limitations appli-
3 cable to losses arising from events other than
4 acts of terrorism.

5 (2) PROGRAM YEAR 3.—Not later than Sep-
6 tember 1, 2004, the Secretary shall, based on the
7 factors referred to in section 108(d)(1), determine
8 whether the provisions of subparagraphs (A) and
9 (B) of paragraph (1) should be extended through
10 Program Year 3.

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

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

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

21 (A) a State residual market insurance enti-
22 ty that does not share its profits and losses
23 with private sector insurers shall be treated as
24 a separate insurer; and

1 (B) a State residual market insurance enti-
2 ty that shares its profits and losses with private
3 sector insurers shall not be treated as a sepa-
4 rate insurer, and shall report to each private
5 sector insurance participant its share of the in-
6 sured losses of the entity, which shall be in-
7 cluded in each private sector insurer's insured
8 losses.

9 (3) TREATMENT OF PARTICIPATION IN CERTAIN
10 ENTITIES.—Any insurer that participates in sharing
11 profits and losses of a State residual market insur-
12 ance entity shall include in its calculations of pre-
13 miums any premiums distributed to the insurer by
14 the State residual market insurance entity.

15 (e) INSURED LOSS SHARED COMPENSATION.—

16 (1) FEDERAL SHARE.—

17 (A) IN GENERAL.—The Federal share of
18 compensation under the Program to be paid by
19 the Secretary for insured losses of an insurer
20 during the Transition Period and each Program
21 Year shall be equal to 90 percent of that por-
22 tion of the amount of such insured losses that
23 exceeds the applicable insurer deductible re-
24 quired to be paid during such Transition Period
25 or such Program Year.

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

8 (2) CAP ON ANNUAL LIABILITY.—

9 (A) IN GENERAL.—Notwithstanding para-
10 graph (1) or any other provision of Federal or
11 State law, if the aggregate insured losses exceed
12 \$100,000,000,000, during the period beginning
13 on the first day of the Transition Period and
14 ending on the last day of Program Year 1, or
15 during Program Year 2 or Program Year 3
16 (until such time as the Congress may act other-
17 wise with respect to such losses)—

18 (i) the Secretary shall not make any
19 payment under this title for any portion of
20 the amount of such losses that exceeds
21 \$100,000,000,000; and

22 (ii) no insurer that has met its insurer
23 deductible shall be liable for the payment
24 of any portion of that amount that exceeds
25 \$100,000,000,000.

1 (B) INSURER SHARE.—For purposes of
2 subparagraph (A), the Secretary shall deter-
3 mine the pro rata share of insured losses to be
4 paid by each insurer that incurs insured losses
5 under the Program.

6 (3) NOTICE TO CONGRESS.—The Secretary
7 shall notify the Congress if estimated or actual ag-
8 gregate insured losses exceed \$100,000,000,000 dur-
9 ing the period beginning on the first day of the
10 Transition Period and ending on the last day of Pro-
11 gram Year 1, or during Program Year 2 or Program
12 Year 3, and the Congress shall determine the proce-
13 dures for and the source of any payments for such
14 excess insured losses.

15 (4) FINAL NETTING.—The Secretary shall have
16 sole discretion to determine the time at which claims
17 relating to any insured loss or act of terrorism shall
18 become final.

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

23 (6) INSURANCE MARKETPLACE AGGREGATE RE-
24 TENTION AMOUNT.—For purposes of paragraph (7),

1 the insurance marketplace aggregate retention
2 amount shall be—

3 (A) for the period beginning on the first
4 day of the Transition Period and ending on the
5 last day of Program Year 1, the lesser of—

6 (i) \$10,000,000,000; and

7 (ii) the aggregate amount, for all in-
8 surers, of insured losses during such pe-
9 riod;

10 (B) for Program Year 2, the lesser of—

11 (i) \$12,500,000,000; and

12 (ii) the aggregate amount, for all in-
13 surers, of insured losses during such Pro-
14 gram Year; and

15 (C) for Program Year 3, the lesser of—

16 (i) \$15,000,000,000; and

17 (ii) the aggregate amount, for all in-
18 surers, of insured losses during such Pro-
19 gram Year.

20 (7) RECOUPMENT OF FEDERAL SHARE.—

21 (A) MANDATORY RECOUPMENT AMOUNT.—

22 For purposes of this paragraph, the mandatory
23 recoupment amount for each of the periods re-
24 ferred to in subparagraphs (A), (B), and (C) of
25 paragraph (6) shall be the difference between—

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

4 (ii) the aggregate amount, for all in-
5 surers, of insured losses during such period
6 that are not compensated by the Federal
7 Government because such losses—

8 (I) are within the insurer deduct-
9 ible for the insurer subject to the
10 losses; or

11 (II) are within the portion of
12 losses of the insurer that exceed the
13 insurer deductible, but are not com-
14 pensated pursuant to paragraph (1).

15 (B) NO MANDATORY RECOUPMENT IF UN-
16 COMPENSATED LOSSES EXCEED INSURANCE
17 MARKETPLACE RETENTION.—Notwithstanding
18 subparagraph (A), if the aggregate amount of
19 uncompensated insured losses referred to in
20 clause (ii) of such subparagraph for any period
21 referred to in subparagraph (A), (B), or (C) of
22 paragraph (6) is greater than the insurance
23 marketplace aggregate retention amount under
24 paragraph (6) for such period, the mandatory
25 recoupment amount shall be \$0.

1 (C) MANDATORY ESTABLISHMENT OF SUR-
2 CHARGES TO RECOUP MANDATORY
3 RECOUPMENT AMOUNT.—The Secretary shall
4 collect, for repayment of the Federal financial
5 assistance provided in connection with all acts
6 of terrorism (or acts of war, in the case of
7 workers compensation) occurring during any of
8 the periods referred to in subparagraph (A),
9 (B), or (C) of paragraph (6), terrorism loss
10 risk-spreading premiums in an amount equal to
11 any mandatory recoupment amount for such pe-
12 riod.

13 (D) DISCRETIONARY RECOUPMENT OF RE-
14 MAINDER OF FINANCIAL ASSISTANCE.—To the
15 extent that the amount of Federal financial as-
16 sistance provided exceeds any mandatory
17 recoupment amount, the Secretary may recoup,
18 through terrorism loss risk-spreading pre-
19 miums, such additional amounts that the Sec-
20 retary believes can be recouped, based on—

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

23 (ii) the economic conditions in the
24 commercial marketplace, including the cap-
25 italization, profitability, and investment re-

1 turns of the insurance industry and the
2 current cycle of the insurance markets;

3 (iii) the affordability of commercial in-
4 surance for small- and medium-sized busi-
5 nesses; and

6 (iv) such other factors as the Sec-
7 retary considers appropriate.

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

10 (A) POLICYHOLDER PREMIUM.—Any
11 amount established by the Secretary as a ter-
12 rorism loss risk-spreading premium shall—

13 (i) be imposed as a policyholder pre-
14 mium surcharge on property and casualty
15 insurance policies in force after the date of
16 such establishment;

17 (ii) begin with such period of coverage
18 during the year as the Secretary deter-
19 mines appropriate; and

20 (iii) be based on a percentage of the
21 premium amount charged for property and
22 casualty insurance coverage under the pol-
23 icy.

24 (B) COLLECTION.—The Secretary shall
25 provide for insurers to collect terrorism loss

1 risk-spreading premiums and remit such
2 amounts collected to the Secretary.

3 (C) PERCENTAGE LIMITATION.—A ter-
4 rorism loss risk-spreading premium (including
5 any additional amount included in such pre-
6 mium on a discretionary basis pursuant to
7 paragraph (7)(D)) may not exceed, on an an-
8 nual basis, the amount equal to 3 percent of the
9 premium charged for property and casualty in-
10 surance coverage under the policy.

11 (D) ADJUSTMENT FOR URBAN AND SMALL-
12 ER COMMERCIAL AND RURAL AREAS AND DIF-
13 FERENT LINES OF INSURANCE.—

14 (i) ADJUSTMENTS.—In determining
15 the method and manner of imposing ter-
16 rorism loss risk-spreading premiums, in-
17 cluding the amount of such premiums, the
18 Secretary shall take into consideration—

19 (I) the economic impact on com-
20 mercial centers of urban areas, includ-
21 ing the effect on commercial rents and
22 commercial insurance premiums, par-
23 ticularly rents and premiums charged
24 to small businesses, and the avail-

1 ability of lease space and commercial
2 insurance within urban areas;

3 (II) the risk factors related to
4 rural areas and smaller commercial
5 centers, including the potential expo-
6 sure to loss and the likely magnitude
7 of such loss, as well as any resulting
8 cross-subsidization that might result;
9 and

10 (III) the various exposures to ter-
11 rorism risk for different lines of insur-
12 ance.

13 (ii) RECOUPMENT OF ADJUST-
14 MENTS.—Any mandatory recoupment
15 amounts not collected by the Secretary be-
16 cause of adjustments under this subpara-
17 graph shall be recouped through additional
18 terrorism loss risk-spreading premiums.

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

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

13 (g) REINSURANCE TO COVER EXPOSURE.—

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

21 (2) LIMITATION ON FINANCIAL ASSISTANCE.—

22 The amount of financial assistance provided pursu-
23 ant to this section shall not be reduced by reinsur-
24 ance paid or payable to an insurer from other
25 sources, except that recoveries from such other

1 sources, taken together with financial assistance for
2 the Transition Period or a Program Year provided
3 pursuant to this section, may not exceed the aggregate
4 amount of the insurer's insured losses for such
5 period. If such recoveries and financial assistance for
6 the Transition Period or a Program Year exceed
7 such aggregate amount of insured losses for that pe-
8 riod and there is no agreement between the insurer
9 and any reinsurer to the contrary, an amount in ex-
10 cess of such aggregate insured losses shall be re-
11 turned to the Secretary.

12 (h) GROUP LIFE INSURANCE STUDY.—

13 (1) STUDY.—The Secretary shall study, on an
14 expedited basis, whether adequate and affordable ca-
15 tastrophe reinsurance for acts of terrorism is avail-
16 able to life insurers in the United States that issue
17 group life insurance, and the extent to which the
18 threat of terrorism is reducing the availability of
19 group life insurance coverage for consumers in the
20 United States.

21 (2) CONDITIONAL COVERAGE.—To the extent
22 that the Secretary determines that such coverage is
23 not or will not be reasonably available to both such
24 insurers and consumers, the Secretary shall, in con-
25 sultation with the NAIC—

1 (A) apply the provisions of this title, as ap-
2 propriate, to providers of group life insurance;
3 and

4 (B) provide such restrictions, limitations,
5 or conditions with respect to any financial as-
6 sistance provided that the Secretary deems ap-
7 propriate, based on the study under paragraph
8 (1).

9 (i) STUDY AND REPORT.—

10 (1) STUDY.—The Secretary, after consultation
11 with the NAIC, representatives of the insurance in-
12 dustry, and other experts in the insurance field,
13 shall conduct a study of the potential effects of acts
14 of terrorism on the availability of life insurance and
15 other lines of insurance coverage, including personal
16 lines.

17 (2) REPORT.—Not later than 9 months after
18 the date of enactment of this Act, the Secretary
19 shall submit a report to the Congress on the results
20 of the study conducted under paragraph (1).

21 **SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF**
22 **CLAIMS.**

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

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

3 (2) to prescribe regulations and procedures to
4 effectively administer and implement the Program,
5 and to ensure that all insurers and self-insured enti-
6 ties that participate in the Program are treated com-
7 parably under the Program.

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

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

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

17 (3) the Secretary may, at any time, seek repay-
18 ment from or reimburse any insurer, based on esti-
19 mates of insured losses under the Program, to effec-
20 tuate the insured loss sharing provisions in section
21 103; and

22 (4) the Secretary will determine any final net-
23 ting of payments under the Program, including pay-
24 ments owed to the Federal Government from any in-
25 surer and any Federal share of compensation for in-

1 sured losses owed to any insurer, to effectuate the
2 insured loss sharing provisions in section 103.

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

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

9 (e) CIVIL PENALTIES.—

10 (1) IN GENERAL.—The Secretary may assess a
11 civil monetary penalty in an amount not exceeding
12 the amount under paragraph (2) against any insurer
13 that the Secretary determines, on the record after
14 opportunity for a hearing—

15 (A) has failed to charge, collect, or remit
16 terrorism loss risk-spreading premiums under
17 section 103(e) in accordance with the require-
18 ments of, or regulations issued under, this title;

19 (B) has intentionally provided to the Sec-
20 retary erroneous information regarding pre-
21 mium or loss amounts;

22 (C) submits to the Secretary fraudulent
23 claims under the Program for insured losses;

24 (D) has failed to provide the disclosures
25 required under subsection (f); or

1 (E) has otherwise failed to comply with the
2 provisions of, or the regulations issued under,
3 this title.

4 (2) AMOUNT.—The amount under this para-
5 graph is the greater of \$1,000,000 and, in the case
6 of any failure to pay, charge, collect, or remit
7 amounts in accordance with this title or the regula-
8 tions issued under this title, such amount in dispute.

9 (3) RECOVERY OF AMOUNT IN DISPUTE.—A
10 penalty under this subsection for any failure to pay,
11 charge, collect, or remit amounts in accordance with
12 this title or the regulations under this title shall be
13 in addition to any such amounts recovered by the
14 Secretary.

15 (f) SUBMISSION OF PREMIUM INFORMATION.—

16 (1) IN GENERAL.—The Secretary shall annually
17 compile information on the terrorism risk insurance
18 premium rates of insurers for the preceding year.

19 (2) ACCESS TO INFORMATION.—To the extent
20 that such information is not otherwise available to
21 the Secretary, the Secretary may require each in-
22 surer to submit to the NAIC terrorism risk insur-
23 ance premium rates, as necessary to carry out para-
24 graph (1), and the NAIC shall make such informa-
25 tion available to the Secretary.

1 ment of this Act, shall be void to the extent that it ex-
2 cludes losses that would otherwise be insured losses.

3 (c) REINSTATEMENT OF TERRORISM EXCLUSIONS.—

4 Notwithstanding subsections (a) and (b) or any provision
5 of State law, an insurer may reinstate a preexisting provi-
6 sion in a contract for property and casualty insurance that
7 is in force on the date of enactment of this Act and that
8 excludes coverage for an act of terrorism only—

9 (1) if the insurer has received a written state-
10 ment from the insured that affirmatively authorizes
11 such reinstatement; or

12 (2) if—

13 (A) the insured fails to pay any increased
14 premium charged by the insurer for providing
15 such terrorism coverage; and

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

18 (i) the increased premium for such
19 terrorism coverage; and

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

1 **SEC. 106. PRESERVATION PROVISIONS.**

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

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

7 and

8 (2) except that—

9 (A) the definition of the term “act of ter-
10 rorism” in section 102 shall be the exclusive
11 definition of that term for purposes of com-
12 pensation for insured losses under this title,
13 and shall preempt any provision of State law
14 that is inconsistent with that definition, to the
15 extent that such provision of law would other-
16 wise apply to any type of insurance covered by
17 this title;

18 (B) during the period beginning on the
19 date of enactment of this Act and ending on
20 December 31, 2003, rates and forms for ter-
21 rorism risk insurance covered by this title and
22 filed with any State shall not be subject to prior
23 approval or a waiting period under any law of
24 a State that would otherwise be applicable, ex-
25 cept that nothing in this title affects the ability
26 of any State to invalidate a rate as excessive,

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

5 (C) during the period beginning on the
6 date of enactment of this Act and for so long
7 as the Program is in effect, as provided in sec-
8 tion 108, including authority in subsection
9 108(b), books and records of any insurer that
10 are relevant to the Program shall be provided,
11 or caused to be provided, to the Secretary, upon
12 request by the Secretary, notwithstanding any
13 provision of the laws of any State prohibiting or
14 limiting such access.

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

21 **SEC. 107. LITIGATION MANAGEMENT.**

22 (a) **PROCEDURES AND DAMAGES.**—

23 (1) **IN GENERAL.**—If the Secretary makes a de-
24 termination pursuant to section 102 that an act of
25 terrorism has occurred, there shall exist a Federal

1 cause of action for property damage, personal injury,
2 or death arising out of or resulting from such act of
3 terrorism, which shall be the exclusive cause of ac-
4 tion and remedy for claims for property damage,
5 personal injury, or death arising out of or relating
6 to such act of terrorism, except as provided in sub-
7 section (b).

8 (2) PREEMPTION OF STATE ACTIONS.—All
9 State causes of action of any kind for property dam-
10 age, personal injury, or death arising out of or re-
11 sulting from an act of terrorism that are otherwise
12 available under State law are hereby preempted, ex-
13 cept as provided in subsection (b).

14 (3) SUBSTANTIVE LAW.—The substantive law
15 for decision in any such action described in para-
16 graph (1) shall be derived from the law, including
17 choice of law principles, of the State in which such
18 act of terrorism occurred, unless such law is other-
19 wise inconsistent with or preempted by Federal law.

20 (4) JURISDICTION.—For each determination de-
21 scribed in paragraph (1), not later than 90 days
22 after the occurrence of an act of terrorism, the Judi-
23 cial Panel on Multidistrict Litigation shall designate
24 1 district court or, if necessary, multiple district
25 courts of the United States that shall have original

1 and exclusive jurisdiction over all actions for any
2 claim (including any claim for loss of property, per-
3 sonal injury, or death) relating to or arising out of
4 an act of terrorism subject to this section. The Judi-
5 cial Panel on Multidistrict Litigation shall select and
6 assign the district court or courts based on the con-
7 venience of the parties and the just and efficient
8 conduct of the proceedings. For purposes of personal
9 jurisdiction, the district court or courts designated
10 by the Judicial Panel on Multidistrict Litigation
11 shall be deemed to sit in all judicial districts in the
12 United States.

13 (5) PUNITIVE DAMAGES.—Any amounts award-
14 ed in an action under paragraph (1) that are attrib-
15 utable to punitive damages shall not count as in-
16 sured losses for purposes of this title.

17 (b) EXCLUSION.—Nothing in this section shall in any
18 way limit the liability of any government, an organization,
19 or person who knowingly participates in, conspires to com-
20 mit, aids and abets, or commits any act of terrorism with
21 respect to which a determination described in subsection
22 (a)(1) was made.

23 (c) RIGHT OF SUBROGATION.—The United States
24 shall have the right of subrogation with respect to any

1 payment or claim paid by the United States under this
2 title.

3 (d) RELATIONSHIP TO OTHER LAW.—Nothing in this
4 section shall be construed to affect—

5 (1) any party's contractual right to arbitrate a
6 dispute; or

7 (2) any provision of the Air Transportation
8 Safety and System Stabilization Act (Public Law
9 107–42; 49 U.S.C. 40101 note.).

10 (e) EFFECTIVE PERIOD.—This section shall apply
11 only to actions described in subsection (a)(1) that arise
12 out of or result from acts of terrorism that occur or oc-
13 curred during the effective period of the Program.

14 **SEC. 108. TERMINATION OF PROGRAM.**

15 (a) TERMINATION OF PROGRAM.—The Program shall
16 terminate on December 31, 2005.

17 (b) CONTINUING AUTHORITY TO PAY OR ADJUST
18 COMPENSATION.—Following the termination of the Pro-
19 gram, the Secretary may take such actions as may be nec-
20 essary to ensure payment, recoupment, reimbursement, or
21 adjustment of compensation for insured losses arising out
22 of any act of terrorism occurring during the period in
23 which the Program was in effect under this title, in ac-
24 cordance with the provisions of section 103 and regula-
25 tions promulgated thereunder.

1 (c) REPEAL; SAVINGS CLAUSE.—This title is re-
2 pealed on the final termination date of the Program under
3 subsection (a), except that such repeal shall not be
4 construed—

5 (1) to prevent the Secretary from taking, or
6 causing to be taken, such actions under subsection
7 (b) of this section, paragraph (4), (5), (6), (7), or
8 (8) of section 103(e), or subsection (a)(1), (c), (d),
9 or (e) of section 104, as in effect on the day before
10 the date of such repeal, or applicable regulations
11 promulgated thereunder, during any period in which
12 the authority of the Secretary under subsection (b)
13 of this section is in effect; or

14 (2) to prevent the availability of funding under
15 section 104(g) during any period in which the au-
16 thority of the Secretary under subsection (b) of this
17 section is in effect.

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

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

1 mination of the Program, and the availability and
2 affordability of such insurance for various policy-
3 holders, including railroads, trucking, and public
4 transit.

5 (2) REPORT.—The Secretary shall submit a re-
6 port to the Congress on the results of the study con-
7 ducted under paragraph (1) not later than June 30,
8 2005.

9 **TITLE II—TREATMENT OF**
10 **TERRORIST ASSETS**

11 **SEC. 201. SATISFACTION OF JUDGMENTS FROM BLOCKED**
12 **ASSETS OF TERRORISTS, TERRORIST ORGA-**
13 **NIZATIONS, AND STATE SPONSORS OF TER-**
14 **RORISM.**

15 (a) IN GENERAL.—Notwithstanding any other provi-
16 sion of law, and except as provided in subsection (b), in
17 every case in which a person has obtained a judgment
18 against a terrorist party on a claim based upon an act
19 of terrorism, or for which a terrorist party is not immune
20 under section 1605(a)(7) of title 28, United States Code,
21 the blocked assets of that terrorist party (including the
22 blocked assets of any agency or instrumentality of that
23 terrorist party) shall be subject to execution or attachment
24 in aid of execution in order to satisfy such judgment to

1 the extent of any compensatory damages for which such
2 terrorist party has been adjudged liable.

3 (b) PRESIDENTIAL WAIVER.—

4 (1) IN GENERAL.—Subject to paragraph (2),
5 upon determining on an asset-by-asset basis that a
6 waiver is necessary in the national security interest,
7 the President may waive the requirements of sub-
8 section (a) in connection with (and prior to the en-
9 forcement of) any judicial order directing attach-
10 ment in aid of execution or execution against any
11 property subject to the Vienna Convention on Diplo-
12 matic Relations or the Vienna Convention on Con-
13 sular Relations.

14 (2) EXCEPTION.—A waiver under this sub-
15 section shall not apply to—

16 (A) property subject to the Vienna Conven-
17 tion on Diplomatic Relations or the Vienna
18 Convention on Consular Relations that has been
19 used by the United States for any nondiplo-
20 matic purpose (including use as rental prop-
21 erty), or the proceeds of such use; or

22 (B) the proceeds of any sale or transfer for
23 value to a third party of any asset subject to
24 the Vienna Convention on Diplomatic Relations

1 or the Vienna Convention on Consular Rela-
2 tions.

3 (c) SPECIAL RULE FOR CASES AGAINST IRAN.—Sec-
4 tion 2002 of the Victims of Trafficking and Violence Pro-
5 tection Act of 2000 (Public Law 106–386; 114 Stat.
6 1542), as amended by section 686 of Public Law 107–
7 228, is further amended—

8 (1) in subsection (a)(2)(A)(ii), by striking “July
9 27, 2000, or January 16, 2002” and inserting “July
10 27, 2000, any other date before October 28, 2000,
11 or January 16, 2002”;

12 (2) in subsection (b)(2)(B), by inserting after
13 “the date of enactment of this Act” the following:
14 “(less amounts therein as to which the United
15 States has an interest in subrogation pursuant to
16 subsection (c) arising prior to the date of entry of
17 the judgment or judgments to be satisfied in whole
18 or in part hereunder)”;

19 (3) by redesignating subsections (d), (e), and
20 (f) as subsections (e), (f), and (g), respectively; and

21 (4) by inserting after subsection (c) the fol-
22 lowing new subsection (d):

23 “(d) DISTRIBUTION OF ACCOUNT BALANCES AND
24 PROCEEDS INADEQUATE TO SATISFY FULL AMOUNT OF
25 COMPENSATORY AWARDS AGAINST IRAN.—

1 “(1) PRIOR JUDGMENTS.—

2 “(A) IN GENERAL.—In the event that the
3 Secretary determines that 90 percent of the
4 amounts available to be paid under subsection
5 (b)(2) are inadequate to pay the total amount
6 of compensatory damages awarded in judg-
7 ments issued as of the date of the enactment of
8 this subsection in cases identified in subsection
9 (a)(2)(A) with respect to Iran, the Secretary
10 shall, not later than 60 days after such date,
11 make payment from such amounts available to
12 be paid under subsection (b)(2) to each party to
13 which such a judgment has been issued in an
14 amount equal to a share, calculated under sub-
15 paragraph (B), of 90 percent of the amounts
16 available to be paid under subsection (b)(2)
17 that have not been subrogated to the United
18 States under this Act as of the date of enact-
19 ment of this subsection.

20 “(B) CALCULATION OF PAYMENTS.—The
21 share that is payable to a person under sub-
22 paragraph (A), including any person issued a
23 final judgment as of the date of enactment of
24 this subsection in a suit filed on a date added
25 by the amendment made by section 686 of Pub-

1 lic Law 107–228, shall be equal to the propor-
2 tion that the amount of unpaid compensatory
3 damages awarded in a final judgment issued to
4 that person bears to the total amount of all un-
5 paid compensatory damages awarded to all per-
6 sons to whom such judgments have been issued
7 as of the date of enactment of this subsection
8 in cases identified in subsection (a)(2)(A) with
9 respect to Iran.

10 “(2) SUBSEQUENT JUDGMENT.—

11 “(A) IN GENERAL.—The Secretary shall
12 pay to any person awarded a final judgment
13 after the date of enactment of this subsection,
14 in the case filed on January 16, 2002, and
15 identified in subsection (a)(2)(A) with respect
16 to Iran, an amount equal to a share, calculated
17 under subparagraph (B), of the balance of the
18 amounts available to be paid under subsection
19 (b)(2) that remain following the disbursement
20 of all payments as provided by paragraph (1).
21 The Secretary shall make such payment not
22 later than 30 days after such judgment is
23 awarded.

24 “(B) CALCULATION OF PAYMENTS.—To
25 the extent that funds are available, the amount

1 paid under subparagraph (A) to such person
2 shall be the amount the person would have been
3 paid under paragraph (1) if the person had
4 been awarded the judgment prior to the date of
5 enactment of this subsection.

6 “(3) ADDITIONAL PAYMENTS.—

7 “(A) IN GENERAL.—Not later than 30
8 days after the disbursement of all payments
9 under paragraphs (1) and (2), the Secretary
10 shall make an additional payment to each per-
11 son who received a payment under paragraph
12 (1) or (2) in an amount equal to a share, cal-
13 culated under subparagraph (B), of the balance
14 of the amounts available to be paid under sub-
15 section (b)(2) that remain following the dis-
16 bursement of all payments as provided by para-
17 graphs (1) and (2).

18 “(B) CALCULATION OF PAYMENTS.—The
19 share payable under subparagraph (A) to each
20 such person shall be equal to the proportion
21 that the amount of compensatory damages
22 awarded that person bears to the total amount
23 of all compensatory damages awarded to all
24 persons who received a payment under para-
25 graph (1) or (2).

1 “(4) STATUTORY CONSTRUCTION.—Nothing in
2 this subsection shall bar, or require delay in, en-
3 forcement of any judgment to which this subsection
4 applies under any procedure or against assets other-
5 wise available under this section or under any other
6 provision of law.

7 “(5) CERTAIN RIGHTS AND CLAIMS NOT RELIN-
8 QUISHED.—Any person receiving less than the full
9 amount of compensatory damages awarded to that
10 party in a judgment to which this subsection applies
11 shall not be required to make the election set forth
12 in subsection (a)(2)(B) or, with respect to subsection
13 (a)(2)(D), the election relating to relinquishment of
14 any right to execute or attach property that is sub-
15 ject to section 1610(f)(1)(A) of title 28, United
16 States Code, except that such person shall be re-
17 quired to relinquish rights set forth—

18 “(A) in subsection (a)(2)(C); and

19 “(B) in subsection (a)(2)(D) with respect
20 to enforcement against property that is at issue
21 in claims against the United States before an
22 international tribunal or that is the subject of
23 awards by such tribunal.

24 “(6) GUIDELINES FOR ESTABLISHING CLAIMS
25 OF A RIGHT TO PAYMENT.—The Secretary may pro-

1 mulgate reasonable guidelines through which any
2 person claiming a right to payment under this sec-
3 tion may inform the Secretary of the basis for such
4 claim, including by submitting a certified copy of the
5 final judgment under which such right is claimed
6 and by providing commercially reasonable payment
7 instructions. The Secretary shall take all reasonable
8 steps necessary to ensure, to the maximum extent
9 practicable, that such guidelines shall not operate to
10 delay or interfere with payment under this section.”.

11 (d) DEFINITIONS.—In this section, the following defi-
12 nitions shall apply:

13 (1) ACT OF TERRORISM.—The term “act of ter-
14 rorism” means—

15 (A) any act or event certified under section
16 102(1); or

17 (B) to the extent not covered by subpara-
18 graph (A), any terrorist activity (as defined in
19 section 212(a)(3)(B)(iii) of the Immigration
20 and Nationality Act (8 U.S.C.
21 1182(a)(3)(B)(iii))).

22 (2) BLOCKED ASSET.—The term “blocked
23 asset” means—

24 (A) any asset seized or frozen by the
25 United States under section 5(b) of the Trading

1 With the Enemy Act (50 U.S.C. App. 5(b)) or
2 under sections 202 and 203 of the International
3 Emergency Economic Powers Act (50 U.S.C.
4 1701; 1702); and

5 (B) does not include property that—

6 (i) is subject to a license issued by the
7 United States Government for final pay-
8 ment, transfer, or disposition by or to a
9 person subject to the jurisdiction of the
10 United States in connection with a trans-
11 action for which the issuance of such li-
12 cense has been specifically required by
13 statute other than the International Emer-
14 gency Economic Powers Act (50 U.S.C.
15 1701 et seq.) or the United Nations Par-
16 ticipation Act of 1945 (22 U.S.C. 287 et
17 seq.); or

18 (ii) in the case of property subject to
19 the Vienna Convention on Diplomatic Rela-
20 tions or the Vienna Convention on Con-
21 sular Relations, or that enjoys equivalent
22 privileges and immunities under the law of
23 the United States, is being used exclusively
24 for diplomatic or consular purposes.

1 (3) CERTAIN PROPERTY.—The term “property
2 subject to the Vienna Convention on Diplomatic Re-
3 lations or the Vienna Convention on Consular Rela-
4 tions” and the term “asset subject to the Vienna
5 Convention on Diplomatic Relations or the Vienna
6 Convention on Consular Relations” mean any prop-
7 erty or asset, respectively, the attachment in aid of
8 execution or execution of which would result in a
9 violation of an obligation of the United States under
10 the Vienna Convention on Diplomatic Relations or
11 the Vienna Convention on Consular Relations, as the
12 case may be.

13 (4) TERRORIST PARTY.—The term “terrorist
14 party” means a terrorist, a terrorist organization (as
15 defined in section 212(a)(3)(B)(vi) of the Immigra-
16 tion and Nationality Act (8 U.S.C.
17 1182(a)(3)(B)(vi))), or a foreign state designated as
18 a state sponsor of terrorism under section 6(j) of the
19 Export Administration Act of 1979 (50 U.S.C. App.
20 2405(j)) or section 620A of the Foreign Assistance
21 Act of 1961 (22 U.S.C. 2371).

1 **TITLE III—FEDERAL RESERVE**
2 **BOARD PROVISIONS**

3 **SEC. 301. CERTAIN AUTHORITY OF THE BOARD OF GOV-**
4 **ERNORS OF THE FEDERAL RESERVE SYSTEM.**

5 Section 11 of the Federal Reserve Act (12 U.S.C.
6 248) is amended by adding at the end the following new
7 subsection:

8 “(r)(1) Any action that this Act provides may be
9 taken only upon the affirmative vote of 5 members of the
10 Board may be taken upon the unanimous vote of all mem-
11 bers then in office if there are fewer than 5 members in
12 office at the time of the action.

13 “(2)(A) Any action that the Board is otherwise au-
14 thorized to take under section 13(3) may be taken upon
15 the unanimous vote of all available members then in office,
16 if—

17 “(i) at least 2 members are available and all
18 available members participate in the action;

19 “(ii) the available members unanimously deter-
20 mine that—

21 “(I) unusual and exigent circumstances
22 exist and the borrower is unable to secure ade-
23 quate credit accommodations from other
24 sources;

1 “(II) action on the matter is necessary to
2 prevent, correct, or mitigate serious harm to the
3 economy or the stability of the financial system
4 of the United States;

5 “(III) despite the use of all means avail-
6 able (including all available telephonic, tele-
7 graphic, and other electronic means), the other
8 members of the Board have not been able to be
9 contacted on the matter; and

10 “(IV) action on the matter is required be-
11 fore the number of Board members otherwise
12 required to vote on the matter can be contacted
13 through any available means (including all
14 available telephonic, telegraphic, and other elec-
15 tronic means); and

16 “(iii) any credit extended by a Federal reserve
17 bank pursuant to such action is payable upon de-
18 mand of the Board.

19 “(B) The available members of the Board shall docu-
20 ment in writing the determinations required by subpara-
21 graph (A)(ii), and such written findings shall be included
22 in the record of the action and in the official minutes of
23 the Board, and copies of such record shall be provided as
24 soon as practicable to the members of the Board who were
25 not available to participate in the action and to the Chair-

1 man of the Committee on Banking, Housing, and Urban
2 Affairs of the Senate and to the Chairman of the Com-
3 mittee on Financial Services of the House of Representa-
4 tives.”.