BCC Proposal

A Proposal from the Policyholder Community

- Title -- To be determined

- Definitions: Same as H.R. 7011 incl., e.g., definitions of "Covered Lines" and "Insurer"

- Establishes Federal Pandemic Insurance Corporation (FPIC) (a federal government corporation subject to Government Corporation Control Act of 1945, as amended), and housed at Treasury Department.

- Two Reinsurance Programs to be offered by FPIC:
  - Reinsurance of Business Expense Insurance Program (BIP), including the BEI Pool
  - Reinsurance of other Covered Lines[1] (including Event Cancellation Insurance)

- **Business Expense Insurance Program (BIP)**

  - Objective: Provide immediate cash assistance to all participating businesses and non-profits so that they can better meet payroll, rent, utilities, and all other fixed operating costs, thereby limiting economic disruption for initial 3-months of pandemic lockdown.

  - No policy of commercial multi-peril property insurance or similar property insurance may be issued or delivered or, renewed by any PRIA-eligible insurer (same insurers as subject to TRIA) unless the named insured is offered coverage substantially equivalent to BIP Parametric Insurance Policy described in this proposal. Such pandemic business interruption coverage may be provided in the commercial property insurance itself, either by specific policy provision or endorsement, or in a separate policy or certificate of insurance which specifically provides coverage for pandemic business interruption alone or in combination with other perils.

  - Nothing contained in this proposal shall require an insurer to issue a policy of commercial property insurance except in accordance with the insurer's usual underwriting standards. However, those standards shall not permit an insurer to provide a policy of commercial property insurance unless the offer of pandemic business interruption coverage required by this proposal is made.

  - An insurer which issues or delivers a policy of commercial property insurance can comply with that make-available provision in any of the following ways:
    (a) By offering to underwrite directly the risk of loss of business interruption from pandemic.

[1] Covered Lines, eligible to be reinsured for pandemic risk exposure by FPIC, would be as defined in H.R. 7011, including Non-Damage Business Interruption, Event Cancellation, Workers Compensation, Commercial General Liability, and Directors & Officers Liability.

(b) By arranging for pandemic business interruption coverage to be offered by an affiliated insurer.
(c) By arranging for the pandemic business interruption coverage to be offered through an insurance agent or broker under a policy or certificate of insurance issued by a non-affiliated insurer, including the BEI Pool established hereunder.

- Insurers which choose to underwrite directly the pandemic business interruption coverage on behalf of their own policyholders or those of an affiliated insurer would be given, similar to federal crop insurance model,[2] two options for reinsuring pandemic business interruption coverage exposure, on a policy-by-policy basis, into FPIC:
  - 95% Portfolio -- FPIC reinsures 95% of losses; insurer retains 5% co-share liability
  - 90% Portfolio - FPIC reinsures 90% of losses; insurer retains 10% co-share liability

- The servicing fees (or ceding commission) for each portfolio would be structured to incentivize insurers to retain maximum policy risk where consistent with their underwriting programs and surplus capacity.

- **BEI Pool:** Insurers that do not wish to underwrite or issue pandemic business interruption coverage on their own books would be given the option of subscribing to support of the Business Expense Insurance Pool (BEI Pool).

  Subscribing insurers would be entitled to have the BEI Pool offer pandemic business interruption coverage, in the form of a BIP Parametric Insurance Policy endorsement, to the subscribing insurer's commercial policyholders, subject to the BEI Pool's own underwriting guidelines. This would satisfy the subscribing insurer's make-available mandate under this proposal.
  - Each subscribing insurer would be required to purchase surplus notes to be issued by the BEI Pool in an amount that is the proportion that its premium base bears to that of all other subscribing insurers, but not exceeding x% of the subscribing insurer's own capital and surplus.
  - BEI Pool surplus notes would be guaranteed by U.S. Treasury against default or non-payment of coupon for x years.
  - Subscribing insurers would elect governing board of directors, subject to disapproval by Secretary of Treasury who would also serve on the Board.
  - The governing board would select State of domicile and supervision, subject to approval by Secretary of Treasury
  - The BEI Pool would be provided 80% quota share plus stop-loss reinsurance by FPIC for its pandemic business interruption coverage.

Description of the BIP Parametric Insurance Policy

[2] Under Federal Crop Insurance Program, participating insurers now can chose to assign policies that they are ceding to the Federal Crop Insurance Corporation (FCIC) into either the "commercial pool" where the private insurer retains the majority of the risk or the "assigned risk pool" where the FCIC assumes the majority of the risk. We propose three risk-retention categories for FPIC, but otherwise structure similarly to FCIC standard reinsurance agreements (SRAs).

- In the event of a government–declared pandemic and ensuing lockdown (at national, state or local level), BIP policyholders will receive a pre–determined payment based upon a percentage of their 3-months' fixed operating expenses as reported on previous year's tax return. This simple (parametric) structure provides for an accelerated claims payment process.
- Rating handbook for participating insurers to be developed by FPIC in consultation with actuarial societies and NAIC.
- SMEs will be able to purchase coverage to replace up to 80% of 3-mpnths operating expenses, decreasing to 50% replacement for policyholders with larger operating budgets (i.e., policyholder retentions).
- For multi-state businesses or organizations, the applicant allocates its operating-expense benefit by State at time of application [can be adjusted annually]
- Trigger:
  - States can request a federal public health emergency declaration because of viral infection
  - Presidential emergency declaration triggers payments
  - Closure applies to the bus. types/NAIC codes identified in the declaration
- Simplified application: previous tax returns for operating expenses plus applicant's commercial sector code (NAICS)(adjustable annually); applicants certify they will only use funds for allowed purposes (e.g., retain employees and pay operating expenses)
- Claims pay-out simplified: (i) parametric trigger; and (ii) formulaic payment; pay-out rapid and certain upon triggering event; possible audit/claw-back if funds not applied to payroll and other operating expenses.
- Policyholders that decline BIP coverage must acknowledge they will not be covered for pandemic BI losses and that they may not be eligible for Federal pandemic disaster assistance (Similar to current conditionality in Federal crop assistance programs.) This opt–out is intended to encourage broad participation.

- **Reinsurance Program for Private Covered Lines Markets.**

  - Similar to original PRIA, voluntary reinsurance program for private insurers designed to facilitate development and availability of additional or specialized insurance products for pandemic risk, including excess-layer BI policy limits and write-back of viral exclusions in Covered Lines for policyholders of any size with pandemic risk exposures not addressed adequately by parametric BIP. For example, "essential" business which do not suffer revenue loss during shutdown but incur extraordinary expenses or other catastrophic impacts for which protection is needed. Also Event Cancellation Insurance (ECI), film/TV cast insurance, and D&O liability would be supported.
  - Standard reinsurance agreements would be developed (cf. Federal Crop SRAs)
  - Both parametric and more traditional indemnity policies could be reinsured.
  - FPIC would offer both (1) quota share reinsurance of up 95% (i.e., 5% insurer co-share) and (2) stop-loss reinsurance protection on line-of-business portfolio basis or all-lines catastrophe basis.

- **Pricing of FPIC Reinsurance Protection**
  FPIC would be directed to establish pricing for its reinsurance protection for both BIP and Other Covered Lines to ensure affordability of the direct products offered to the commercial policyholder community, and therefore the economy. To that end, FPI would be required to establish an Underwriting Advisory Committee in conjunction with leading actuarial and epidemiological authorities to develop predictive catastrophe modeling taking into account lessons learned form COVID-19 pandemic as well as historical frequency. Treasury will be directed to finance an Affordability Discount of __ % to encourage participation in early years.

- **Liquidity Facility for Participating Commercial Insurers and Pools**
  The Federal Reserve Bank of New York would be directed to establish a line of credit facility which participating insurers and pools could access to for immediate liquidity to the extent of reinsurance proceeds owed to it by FPIC to fund immediate payment of BIP parametric pay-outs and to secure the reinsurance payable on Covered Lines losses ceded to FPIC.

- **Pool Participation in Both BIP and Covered Lines Programs**
  In addition to "insurers" defined in H.R. 7011, FPIC would be authorized to foster establishment of and to reinsure pools, in addition to BEI Pool, which offer either (i) to issue BIP policies at 5% or 10% retention or (ii) to underwrite policies in Covered Lines. FPIC, in consultation with the NAIC, would establish pool eligibility criteria (e.g., geographic diversity, underwriting qualification, financial strength.)

- **Private Market Reinsurance**
  FPIC would be authorized to secure reinsurance or retrocessional protection from the private market at rates and on terms determined by the FPIC to be reasonable and appropriate, in an amount sufficient to maintain the ability of the program to pay claims. FPIC would also be directed to assess the capacity of capital and financial markets to provide insurance-linked securities (ILS) or other alternative risk-transfer products to supplement reinsurance capacity.[3]

[3] See Section 100232 of the Biggert-Waters Act, PL 112-141.