

Aerospace Industries Association
American Association of Port Authorities
American Bankers Association
American Bankers Insurance Association
American Bankers Securities Association
American Council of Engineering Companies
American Gaming Association
American Hotel and Lodging Association
American Land Title Association
American Public Gas Association
American Public Power Association
American Resort Development Association
American Society of Association Executives
Associated Builders and Contractors
Associated General Contractors of America
Association of American Railroads
Association of Art Museum Directors
Building Owners and Managers Association International
Boston Properties
Calpine Corporation
Campbell Soup Company
Citigroup Inc.
Community Associations Institute
Cornerstone Real Estate Advisers, LLC
CRE Finance Council
CSX Corporation
Edison Electric Institute
Emerson
Financial Services Roundtable
Food Marketing Institute
Helicopter Association International
Hilton Worldwide
Host Hotels & Resorts, Inc.
Ikaria, Inc.
Institute of Real Estate Management
InterContinental Hotel Group
International Council of Shopping Centers
International Franchise Association
International Safety Equipment Association
International Speedway Corporation
Long Island Import Export Association
Marriott International
Mortgage Bankers Association
NAIOP
National Apartment Association
National Association of Chain Drug Stores
National Association of Home Builders
National Association of Manufacturers
National Association of REALTORS
National Association of Real Estate Investment Trusts
The National Association for Stock Car Auto Racing (NASCAR)
National Association of Waterfront Employers
National Basketball Association
National Collegiate Athletic Association
National Council of Chain Restaurants
National Electrical Contractors Association
National Football League
National Hockey League
National Multifamily Housing Council
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Rural Electric Cooperative Association
New England Council
Partnership for NYC
Public Utilities Risk Management Association
Office of the Commissioner of Baseball
The Real Estate Board of New York
The Real Estate Roundtable
Securities Industry and Financial Markets Association
Self-Insurance Institute of America, Inc.
Starwood Hotels and Resorts
Tenaska
Taxicab, Limousine & Paratransit Association
UJA-Federation of New York
United Airlines
Union Pacific
University Risk Management and Insurance Association
U.S. Chamber of Commerce
U.S. Travel Association

CIAT

COALITION TO INSURE AGAINST TERRORISM

www.insureagainstterrorism.org

April 30, 2018

U.S. Department of the Treasury
Federal Insurance Office, MT 1410
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: 2018 Report on the Terrorism Risk Insurance Program

To Whom It May Concern:

The Coalition to Insure Against Terrorism ("CIAT") files these comments in response to the request by the Federal Insurance Office ("FIO") published in the March 16, 2018 *Federal Register*. 83 Fed. Reg. 11815.

CIAT is a broad coalition of commercial insurance consumers formed immediately after 9/11 to ensure that American businesses could obtain comprehensive and affordable terrorism insurance. The diverse CIAT membership represents commercial real estate, banking, energy, construction, hotel and hospitality, higher education, manufacturing, transportation, entertainment, the major league sports and racing, as well as public sector buyers of insurance. The CIAT membership can be found at <http://www.insureagainstterrorism.org/who-we-are/>.

CIAT is pleased to have the opportunity to comment on the overall effectiveness of the Terrorism Risk Insurance Program ("TRIP," or "Program"). CIAT members, as policyholders rather than insurers, are not in a position to provide specific comments on all questions presented, but based upon input from members' risk managers and other representatives, CIAT offers the following comments to FIO for use in preparation of the 2018 report.

Question 1. The overall effectiveness of TRIP.

CIAT and its members were early and enthusiastic supporters of the Terrorism Risk Insurance Act ("TRIA"), believing that it was essential and we continue to believe that TRIP remains extremely effective in achieving its primary purpose, which was to stabilize the market following 9/11 and to ensure the continued availability of terrorism coverage for commercial policyholders going forward. As part of its economic national security, America needs a stable, reliable, and competitive terrorism insurance market so that employers can invest in assets and create jobs without assuming unprotected the risk and liabilities of a terrorist attack. TRIP has been the key factor in ensuring that the private insurance market remained intact and has continued to meet the American economy's needs in this respect largely through private risk capacity backstopped by this Program.

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Question 3. Whether any aspects of TRIP have the effect of discouraging or impeding insurers from providing commercial property casualty insurance coverage or coverage for acts of terrorism.

CIAT believes that the TRIP design has, on the whole, proved successful: rather than simply shift cost onto the federal government, the plan requires insurers to make available an offer of coverage but leaves the pricing to the market because the Program is designed so that losses from all but the very largest events will be borne by policyholders, insurers, private reinsurers and other capital providers rather than taxpayers. Even for the very large events when the Program's backstop would be triggered, the Federal share payments that ensure the insurance industry does not become insolvent would be recouped retrospectively from a policy surcharge, so that taxpayers are ultimately protected.

All published surveys suggested that TRIP stabilizes private markets and that the retention levels are sufficiently high that there is plenty of space for private reinsurers with no evidence of being crowded out in any way by the Federal level-backstop. Put another way, while private reinsurance capacity for terrorism risk has grown, current reinsurance capacity does not even meet the full demands of direct insurers to cover their current retentions under TRIA.

One feature of TRIP which should perhaps be reconsidered is its duration: consideration should be given to making the Program permanent. The threat of expiration or non-renewal is not productive and probably discourages greater investment in the sector. Most if not all other countries' national terrorism insurance programs are, we believe, of continuous duration, and it would benefit market stability to make TRIP permanent as well.

Question 5. The availability and affordability of terrorism risk insurance coverage, both nationally and in particular geographic areas

Because of TRIA, it has been possible for businesses to purchase terrorism risk coverage continuously since its enactment. As the principal commercial buyers of terrorism insurance, CIAT members remember all too well the economic environment that led to it. In the aftermath of 9/11, it was virtually impossible for commercial policyholders to secure coverage against terrorism risk; however, banks and other capital providers would not provide financing without it. According to a Real Estate Roundtable survey, over \$15 billion in real estate-related transactions were stalled or even cancelled because of a lack of terrorism risk insurance in the 14 months between 9/11 and TRIA's enactment. Additionally, due to deferred construction investment, the White House Council of Economic Advisors estimated that there was a direct loss of 300,000 jobs during that period. In short, the lack of availability of terrorism insurance for commercial policyholders had a very real and far-reaching impact on the economy.

There has been no evidence that private markets can develop adequate terrorism risk capacity without some type of federal participation. Without TRIA in place, the availability of terrorism risk coverage will dwindle — it is likely that insurers will simply stop offering the coverage. CIAT members saw evidence of this each time that TRIA has been up for renewal (most recently in 2014): policy renewals often included "springing exclusions" which would have voided terrorism coverage upon the expiration of TRIA.

Simply put, TRIP -- and in particular its "make available" requirement -- remains the principal reason CIAT members are able to purchase terrorism risk insurance today.

Question 7. The market for standalone terrorism risk insurance that is written outside of TRIP, the reasons such coverage is offered and obtained, and whether the existence of such insurance provides any insights into the effectiveness of the Program

CIAT members see capacity and competitive pricing in the standalone terrorism market, and it can be a competitive alternative to TRIA coverage. Some of the reasons CIAT members have seen standalone coverage purchased include: (1) such policies do not require the government to certify an act of terrorism to

cover a claim, and (2) insurers offering standalone coverage can be innovative in defining “act of terrorism” -- often being more inclusive than the TRIA statute’s definition. Standalone coverage allows access to coverage that might be otherwise excluded from combined risk policies. In all, members have found standalone coverage to be affordably priced, with sufficient capacity to meet their needs and lender requirements.

While the standalone terrorism market can be a useful alternative, it is clear that the market exists only due to the stability provided by the TRIP program. It is likely that standalone capacity would evaporate and premiums would skyrocket were the TRIP program to go away. It is important to keep in mind that standalone insurance is simply single-peril insurance written by an insurer other than the insurer which is writing the coverage of other perils (fire, wind, theft, quake) for the same structure or business and therefore outside the “make available” mandate for that structure or operation. The insurer offering the stand-alone coverage is almost certainly an eligible insurer under the TRIP Program and therefore its capacity to offer this or any other coverage is itself a function of the TRIP backstop.

Question 11. The availability of terrorism risk insurance coverage for losses arising from nuclear, biological, chemical, or radiological (NBCR) exposures, and the availability of private reinsurance or capital markets support for such terrorism risk insurance

NBCR availability remains challenging for policyholders. While some coverage is usually available, it does not cover the breadth or extent of potential losses allowed under the TRIP program. CIAT members needing some level of NBCR coverage have often looked to captive insurance companies for this type of risk transfer.

Because TRIA does not mandate that insurers provide NBCR coverage (so long as it is being excluded for non-terrorism perils), without the protection of the federal backstop we believe that the availability of terrorism-risk NBCR coverage would be virtually non-existent and in any event prohibitively expensive.

Question 12. Terrorism risk insurance issues presented by cyber-related losses, the impact of TRIP in connection with such exposures, and any reforms that would encourage the take up of insurance for cyber-related losses arising from acts of terrorism within the meaning of TRIA

With the rapidly evolving threat landscape in the cyber world including the covert involvement of state-sponsored actors, it is difficult to predict whether the TRIP program as it currently stands is adequate. The inclusion of cyber liability policies under TRIA should help drive the development of specialized cyber policies covering catastrophic losses caused by terrorism, but there are a number of areas of uncertainty, including:

- *Definition of cyber.* It is unclear whether it would be beneficial for TRIA to include a specific definition of cyber terrorism (distinct from the “act of terrorism” definition), and if so, whether TRIA should adopt the definition currently in use by leading insurers in that market.
- *International events.* Cyber terrorism has the potential to cross borders in ways that could create uncertainty about how the TRIP program might apply. Hacking outside the US could affect a US location, and vice versa, and damage to property in the US could cause supplemental loss outside the US (e.g. physical damage to equipment that is controlled by software run from a separate location). As the cyber insurance market continues to evolve, it may be helpful for FIO to provide additional guidance relating to these questions if such uncertainty has a material impact on the cyber insurance market’s development.
- *War.* The causes of deliberate damage range along a spectrum from malicious damage to war, with imprecise boundaries as to where terrorism fits. There is a risk that a government sponsored

cyber-attack could be classified as beyond terrorism and closer to war, thus being beyond the scope of TRIP. This risk could be heightened due to the political nature of the decision-making process for certifying acts of terrorism under the program.

Question 14. Any other issues relating to TRIP or terrorism risk insurance or reinsurance that may be relevant to an assessment of the effectiveness of TRIP in the report.

Overall, TRIP has been a tremendous success. It is a comprehensive plan to provide for economic continuity and recovery in the wake of a major terrorist attack, and it ensures that a significant portion of the costs of recovery will be borne by the private sector. While achieving this through a contingent backstop, it has cost the Federal government and taxpayers nothing. Contrasting this to the ad hoc nature of prior federal disaster responses, having TRIP in place likely decreases taxpayer exposure to terrorism risk. There will always be room for debate over potential changes to the program, and CIAT generally keeps an open mind in such discussions -- but we are certain that a public-private partnership like TRIA remains necessary to ensure a functioning terrorism insurance marketplace.

Sincerely,

The Coalition to Insure Against Terrorism