

Aerospace Industries Association
American Association of Port Authorities
American Bankers Association
American Council on Education
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 General Contractors of America
Association of American Railroads
Association of Art Museum Directors
Bank Policy Institute
Building Owners and Managers Association International
Boston Properties
Citigroup Inc.
Community Associations Institute
CRE Finance Council
CSX Corporation
Edison Electric Institute
Emerson
Food Marketing Institute
Hilton Worldwide
Host Hotels & Resorts, 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 College and University Business
Officers (NACUBO)
National Association of Home Builders
National Association of REALTORS
Nareit
The National Association for Stock Car Auto Racing
(NASCAR)
National Association of Waterfront Employers
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
Tenaska
Taxicab, Limousine & Paratransit Association
United Airlines
Union Pacific
University Risk Management and Insurance Association
U.S. Chamber of Commerce
U.S. Travel Association



June 11, 2020

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

RE: 2020 Report on the Effectiveness of the Terrorism Risk Insurance Program

Dear Mr. Ifft:

The Coalition to Insure Against Terrorism ("CIAT") files these comments in response to the Request for Comment (RFC) published in the April 27, 2020 *Federal Register*. 85 Fed. Reg. 23435.

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 by FIO, but it is important that the policyholder perspective be heard as Treasury considers this important program.

Question 1. The Overall Effectiveness of TRIP.

CIAT believes TRIP has been a success. CIAT and its members were early supporters of the Terrorism Risk Insurance Act ("TRIA") prior to its enactment, and have supported each subsequent reauthorization, including the 2019 reauthorization. TRIP remains extremely effective in achieving its primary purpose, which is to ensure the continued availability of terrorism coverage for commercial policyholders. 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 2. The Availability and Affordability of Terrorism Risk Insurance.

CIAT members report that, due to TRIA, terrorism risk coverage has been available to commercial policyholders since the law's 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.

TRIA's "make available" requirement remains the principal reason that CIAT members are able to access coverage. We have seen no evidence that the private market would be able to devote the necessary capacity to terrorism risk absent the TRIA backstop. Indeed, we continue to see evidence that capacity would dwindle without TRIA. During each reauthorization cycle of TRIA, CIAT members have seen policy renewals with "springing exclusions" that would void terrorism cover if TRIA were to expire during the policy term. In the 2019 reauthorization, Congress acted over a year in advance of TRIA's planned expiration, so such exclusions were less apparent, but CIAT members report they were still largely in place for multi-year policies that extended into 2021.

Question 7. The Market for Standalone Terrorism Insurance.

CIAT members see capacity and competitive pricing in the standalone terrorism market, and it can be a competitive alternative to terrorism risk coverage offered in a multi-peril policy subject to a TRIA "make-available requirement." Some of the reasons CIAT members have chosen to access standalone coverage may include: (1) such policies do not require the government to certify an act of terrorism to cover a claim, so that insurers offering standalone coverage can be innovative in defining "act of terrorism" -- often being more inclusive than the TRIA statute's definition, and (2) the policyholder finds it more efficient for buying different limits (higher or lower) or other conditions than otherwise available initially under the TRIA "same terms and conditions" mandate on the make-available offer from the multi-peril insurer. Thus, standalone coverage allows access to coverage that might be otherwise excluded from combined risk policies. In all, CIAT 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. Availability of Terrorism Risk Insurance for NBCR Exposures.

Availability of terrorism cover for NBCR risk remains a challenge for commercial policyholders. This is not a challenge that is unique to terrorism, as NBCR risk is generally excluded for non-terrorism perils as well.

Coverage remains available for NBCR terrorism in workers compensation due to state laws that prohibit its exclusion, and in some cases, CIAT members utilize captive insurers to secure limited NBCR coverage that is then backstopped by TRIA. Without the TRIA backstop, much if not most of this coverage would go away. What coverage might be available would probably be in the standalone market and would likely be very limited and very expensive.

Again, CIAT believes that issues with the availability of NBCR cover are not -- have never been -- unique to terrorism risk, and therefore do not represent any particular flaw in the TRIA model.

Question 12. Issues Presented by Cyber-Related Losses.

Legislative history demonstrates¹ Congressional intention that the TRIA backstop be available for cyber terrorism, and there is nothing in the statute that specifically excludes cyber coverage. However, the issues that have emerged regarding cyber vis-à-vis TRIA are generally twofold: (1) whether the cyber cover is written in a TRIA-eligible line; and (2) whether the cyber event will be eligible for certification as an “act of terrorism” under TRIA.

FIO’s guidance issued in late 2016 provides additional clarity on the question of eligible lines, though we note that cyber insurance remains an evolving market and additional guidance may be necessary pending future developments.

On the question of certification, TRIA requires that an act be “violent” or “dangerous [to life, property, or infrastructure]” and that it cause “damage.” In the cyber-terrorism context, whether the “dangerous” and the “damage” conditions are met presumably may turn upon whether, for example, destruction of financial accounts, would be considered “damage” to “property.” Massive infrastructure interruptions, such as electric grid, rails, pipelines, and air traffic control, presumably would present more straight-forward application. While we recognize Treasury’s need to maintain some flexibility in certification decisions, it would be helpful for FIO to provide additional guidance on the application of certain aspects of the “act of terrorism” definition in the cyber context -- in particular, the scope of what may constitute “damage,” and additionally a requirement relating to intent or motivation of the perpetrator.

Question 13. Potential Changes to Encourage Take-up of Cyber-Terrorism Insurance.

Cyber insurance, and in particular cyber-terrorism insurance, is an evolving market. As noted above, among the chief issues presented in the context of TRIA is the lack of clarity over whether a cyber-terrorism event would be certified as an “act of terrorism” under TRIA. One aspect of TRIA that could be revised, therefore, to encourage take-up of cyber-terrorism insurance would be to bring greater clarity to the certification process.

CIAT would like to see Treasury’s certification regulations include process for policyholders and insurers to petition Treasury to commence a certification review of an event. It is also possible that some of the timelines in the current regulations could be shortened, as delay or ambiguity could leave insurers and policyholders in limbo since coverage for terrorism often hinges upon a certification decision by virtue of policy language.

Additionally, it would be helpful for Treasury to inform the public when an event is under review, and if applicable, when an event has been determined to not meet the definition of “act of terrorism” under TRIA.

¹ Specifically, the Conference Report on the original TRIA in 2002 notes that “the Conferees intend the legislation to apply only to primary and excess commercial property and casualty insurance (including cyberterrorism and business interruption coverage).” H.R. Rep. No. 107-779, at 24 (2002) (Conf. Rep.).

Nothing at all was communicated after the Boston Marathon, for example, and policyholders and insurers remained in limbo due to this uncertainty.

Conclusion

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 has achieved three important benefits: (1) policyholders have the security of knowing their risk is properly insured rather than dependent upon after-the-fact disaster assistance; (2) the insurance industry's risk management and claims adjustment expertise is available for terrorism risk; and (3) a more significant portion of the costs of recovery from any act of terrorism will be borne by the private insurance industry's capital base than would be the case without TRIA ensuring their participation. 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 decreases taxpayer exposure, improves policyholder risk management, and ensures a functioning terrorism insurance marketplace.

Sincerely,

The Coalition to Insure Against Terrorism