

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](http://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.

1875 I Street, NW, Suite 600, Washington, D.C. 20006-5413  
Phone 202-739-9400 Fax 202-739-9401  
[www.insureagainstterrorism.org](http://www.insureagainstterrorism.org)

***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