

Office of Financial Institutions Policy, **Attention:**  
President's Working Group on Financial Markets  
Public Comment Record, Room 3160 Annex  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W. Washington, DC 20220  
(Submitted via electronic mail to: **PWGComments@do.treas.gov**)

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF FINANCIAL INSTITUTIONS POLICY**

President's Working Group on Financial Markets:  
Terrorism Risk Insurance Analysis

**Comments of the Coalition to Insure Against Terrorism**

**Introduction**

When President Bush signed the Terrorism Risk Insurance Act of 2002 (TRIA), he hailed the legislation as creating a system to “address financial losses and get our economy back on its feet as quickly as possible.”<sup>1</sup> The Coalition to Insure Against Terrorism (CIAT) welcomes the opportunity to respond to the President’s Working Group on Financial Markets’ (PWG) Request for Comments<sup>2</sup> concerning long-term availability and affordability of insurance for terrorism risk. As an initial matter, however, we are concerned, as discussed in more detail below, that none of the thirty-seven (37) questions posed in the Request for Comments focuses on what the President recognized in the signing statement as the two key purposes of the legislation.

While welcoming the PWG’s outreach to the public at large with the publication of the Request for Comments, CIAT also submits that this public comment docket should not be considered to discharge the mandate from Congress that the PWG perform the required analysis “in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policyholders”.<sup>3</sup> We urge the PWG to follow up this mass solicitation with an iterative and specific consultative process with each of the four groups identified by Congress, including of course the consumers who purchase terrorism risk insurance policies.

In this regard, CIAT is a broad coalition of 79 major trade and professional associations and businesses, representing the nation’s major consumers of commercial insurance lines. A list

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<sup>1</sup> Press Release, White House Office of the Press Secretary, *President Signs Terrorism Insurance Act* (Nov. 26, 2002), available at <http://www.whitehouse.gov/news/releases/2002/11/20021126-1.html>.

<sup>2</sup> 71 Fed. Reg. 11460 (March 7, 2006).

<sup>3</sup> TRIA, Pub. L. No. 107-297, § 108(e)(1), 116 Stat. 2322, as amended by Terrorism Risk Insurance Extension Act of 2005 (TRIEA), Pub. L. 109-144, § 8, \_\_ Stat. \_\_ (emphasis added).

of the 79 CIAT member organizations – such as the United States Chamber of Commerce, The Real Estate Roundtable, the International Council of Shopping Centers, the National Association of Real Estate Investment Trusts, the Mortgage Bankers Association, the National Rural Electric Cooperative Association, Major League Baseball, the American Resort Development Association and related industries within the travel, tourism, and hospitality sector, to name a few – accompanies this statement. CIAT was formed in the months following 9/11 to ensure that American businesses and non-federal governmental entities could obtain comprehensive and affordable terrorism risk insurance. This coverage which had been a routine part of most commercial lines prior to that date very quickly thereafter began to be excluded by the insurance industry. Collectively, the business and governmental organizations represented by the CIAT membership are the principal consumers of commercial property and casualty insurance in America, and therefore it is accurate to say that the voice we provide here is the true consumer voice.

### **Post- 9/11 Economic Uncertainty for Consumers**

When the President signed TRIA, he described the legislation as being a vehicle to move construction projects forward, secure billions of dollars in investments, put citizens back to work, and give investors in markets “greater confidence that our economy is strong enough to withstand a future attack.”<sup>4</sup> Following 9/11, commercial policyholders witnessed a withdrawal of terrorism coverage and skyrocketing premiums for the little terrorism coverage that remained available. After the enactment of TRIA, policyholder take-up rates for terrorism coverage increased.<sup>5</sup> However, the insurance industry’s continuing lack of capacity to cover losses from a future act of terrorism became obvious as the possible expiration of TRIA approached. In the months before TRIA’s original termination date of December 31, 2005, policyholders witnessed a variety of “pop-up exclusions” and “sunset clauses” as insurers anticipated the possible disappearance of the TRIA backstop. The private insurance market showed no signs of being able to cover a future loss without the backstop. Although TRIA has been extended, consumers and investors still lack confidence that terrorism coverage will be available following the program’s termination.

The same challenges which raised concerns about finding affordable terrorism coverage in the months after 9/11 and the months before the original expiration of TRIA exist today. Specifically, terrorism continues to be an unpredictable, man-made threat as opposed to a conventional property and casualty risk. This threat will continue to evolve as the war on terrorism continues and the enemy in that war continues to adapt.

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<sup>4</sup> White House Office of the Press Secretary, *supra*, note 1.

<sup>5</sup> See Peter Chalk et al., *Trends on Terrorism: Threats to the United States and the Future of the Terrorism Risk Act* 8 (RAND Center for Terrorism Risk Management Policy 2005). Results from a survey by one of CIAT’s active members, the Mortgage Bankers Association (MBA), also point to the positive impact of TRIA on the availability and affordability of terrorism risk insurance coverage. As of Spring 2004, 94 percent of loan administrators who serviced more than \$656 billion of outstanding commercial real estate debt required terrorism insurance and 84 percent had terrorism insurance coverage in place. See Survey: Lack of Terror Coverage Would Hurt Commercial Mortgage Market, *Insurance Journal*, June 8, 2004.

Meanwhile, there is no evidence that insurers' confidence in modeling and underwriting terrorism risks has improved significantly since the enactment of TRIA. Continued warnings from the insurance industry concerning lack of private reinsurance capacity for terrorism losses and the general hardening of the insurance market following the 2005 hurricane season have left consumers skeptical about the economy's ability to recover if a terrorist attack occurs in a post-TRIA environment.

Overcoming these challenges is necessary to ensuring that terrorism risk insurance remains available and affordable for policyholders on a long-term basis. Therefore, we urge the PWG to not only solicit information about the current terrorism risk insurance market and the key factors that will affect long-term availability and affordability, but to also analyze, in consultation with the four interested groups, long-term solutions for making such coverage available and affordable following the termination of the TRIA backstop. Until a long-term solution emerges for increasing the insurance industry's capacity and willingness to insure terrorism losses, consumers will remain skeptical about the nation's ability to address financial losses in the wake of a future act of terrorism. Moreover, confidence in the stability of the U.S. economy will remain vulnerable to the actions of terrorists.

## **Responses to Selected Questions**

In an effort to begin a dialogue with the PWG which will lead to a meaningful evaluation of potential long-term solutions, CIAT submits the policyholders' perspectives on selected questions concerning current and long-term availability and affordability of terrorism risk insurance and CNBR coverage.

### **1.1 In the long-term, what are the key factors that will determine the availability and affordability of terrorism risk insurance coverage?**

The development of private reinsurance capacity is perhaps the most important factor in determining the long-term availability and affordability of terrorism risk insurance coverage. The ability of insurers to spread catastrophic risk through a reinsurance mechanism is key to adequately insuring against terrorism risks. Although the Department of Treasury (Treasury) has acknowledged that reinsurance plays a role in an insurer's capacity to absorb terrorism losses, it has not yet explored the issue of developing private reinsurance capacity.<sup>6</sup> The PWG should make evaluating long-term solutions for increasing private reinsurance capacity a top priority.

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<sup>6</sup> See U.S. Dep't. of Treasury Office of Economic Policy, *Report to Congress: Assessment: The Terrorism Risk Insurance Act of 2002* 5 (June 30, 2005).

## 1.6 What is the current availability of reinsurance to cover terrorism risk? How will this evolve in the long-term?

In its June 2005 study, Treasury reported a general trend among insurers with less than \$10 billion in assets toward increased reinsurance for terrorism risk insurance coverage in commercial property lines following the enactment of TRIA.<sup>7</sup> The study did not, however, address whether the private reinsurance market had developed adequate capacity to insure against terrorism on a scale that would facilitate rapid economic recovery in the wake of a future terrorist act. Despite warnings from groups such as CIAT and even former Federal Reserve Chairman Alan Greenspan,<sup>8</sup> there appears to be a false assumption among some, including Treasury, that the private terrorism insurance market will grow in the absence of a federal backstop. In reality, insurance industry experts believe that the federal backstop provided under TRIA is responsible for maintaining the small amount of capacity that currently exists.<sup>9</sup> We encourage the PWG to avoid adopting Treasury's assumption and to consider long-term solutions which will facilitate the growth of private reinsurance capacity.

Policyholders do not have the same options with respect to terrorism risk insurance as they do for other types of catastrophic risk coverage. The insurance industry does not underwrite and price terrorism risk in the same manner as other catastrophic risks such as wind, flood and earthquake risks. Insurers have little confidence in modeling for terrorism risk because it is difficult, if not impossible, to accurately predict the frequency and magnitude of losses from an act of terrorism.<sup>10</sup> Fortunately, insurers do not have the same loss experience for terrorism as for other types of catastrophic risk. The federal backstop has helped contain the volatility that accompanies terrorism risk and encourage insurers to provide options to policyholders.

Despite the increase in take-up rates for terrorism risk insurance coverage since enactment of TRIA, policyholders remain concerned that the private insurance and reinsurance market shows no signs of developing capacity to cover terrorism losses following the expiration of TRIA. In particular, policyholders are troubled by the lack of product innovation with respect

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<sup>7</sup> *Id.* at 114-20.

<sup>8</sup> Press Release, Coalition to Insure Against Terrorism, *Policyholders Reject Treasury Study as Flawed* (June 30, 2005), available at <http://www.insureagainstterrorism.org/63005release.pdf>.

<sup>9</sup> The survey conducted by the MBA as well as reports by the RAND Center for Terrorism Risk Management and Marsh also suggest that take-up rates for the purchase of terrorism coverage increased materially following the enactment of TRIA. See Survey: Lack of Terror Coverage Would Hurt Commercial Mortgage Market, *supra* note 5; Peter Chalk et al., *Trends on Terrorism: Threats to the United States and the Future of the Terrorism Risk Act* 8 (RAND Center for Terrorism Risk Management Policy 2005), available at [http://www.rand.org/pubs/monographs/2005/RAND\\_MG393.pdf](http://www.rand.org/pubs/monographs/2005/RAND_MG393.pdf); Marsh, *Marketwatch: Terrorism Insurance 2005* 6-14 (2005), available at [http://www.marsh.dk/files/Marketwatch\\_Terrorism\\_Insurance\\_2005.pdf](http://www.marsh.dk/files/Marketwatch_Terrorism_Insurance_2005.pdf).

<sup>10</sup> See Letter from Dennis Fasking, Chairman, Extreme Events Committee, American Academy of Actuaries, to Rep. Richard Baker, Chairman, Subcommittee on Capital Markets, U.S. House of Representatives (August 2, 2005), available at [http://www.actuary.org/pdf/casualty/tria\\_080205.pdf](http://www.actuary.org/pdf/casualty/tria_080205.pdf). Insurers recently echoed their lack of confidence in modeling for terrorism at the March 29, 2006 public hearing held by the National Association of Insurance Commissioners (NAIC) Terrorism Insurance Implementation Working Group.

to terrorism coverage. In addition, the stand-alone terrorism insurance industry has remained static with few new players entering the market since 9/11.

Meanwhile, underwriters are increasingly focused on aggregation of risk. Given the severity of the recent hurricane season, the cost of coverage and the strain on capacity for catastrophic losses in general is increasing. Rating agencies have placed significant pressure on insurers to limit their exposures. In order to satisfy the rating agencies, companies are reconsidering their exposure and many have found their stomachs full when it comes to terrorism coverage. As these pressures continue, more insurance company mergers and acquisitions could emerge, thereby intensifying the aggregation focus. Without the backstop, many companies – particularly small, regional carriers and mono-line carriers that lack sufficient capacity without TRIA – will likely exit the terrorism insurance business. Policyholders fear that these trends will translate into more constraints on capacity for catastrophic losses in general and diminished availability and affordability of terrorism risk insurance in particular.

We are not aware of any evidence that private reinsurance capacity will increase once the federal backstop expires. Rather, it appears that net reinsurance capacity available for the terrorism peril will decrease after the backstop expires. The terrorism insurance options which emerged for policyholders as a result of the federal backstop will likely disappear unless concrete methods of increasing private market participation in risk bearing for terrorism are developed before the expiration of TRIA.

**1.8 In the long-term, what are the key factors that will determine the amount of private-market insurer and reinsurer capacity available for terrorism risk insurance coverage? How will this evolve in the long-term? Please comment on potential entry of new capital into insurance markets.**

The amount of private-market insurer and reinsurer capacity will be determined by the ability to draw stable, private capital from sources outside of the traditional insurance industry as well as the extent of the federal government's participation in a long-term solution. Although potential terrorism losses could top \$100 billion, current global reinsurance capacity for the United States is only estimated at \$6 to 8 billion.<sup>11</sup> Even with participation from capital markets, it could take decades before the insurance industry is able to build the necessary capacity to facilitate economic recovery following substantial terrorism losses.<sup>12</sup> We believe that any long-term solution to the capacity problem should feature continued federal support while the private market builds capital.

Federal involvement in a long-term solution is appropriate from the policyholders' perspective because terrorism is a national security issue. The federal government naturally possesses substantially more expertise concerning terrorism risks than the insurance industry.

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<sup>11</sup> See Franklin W. Nutter, President, Reinsurance Association of America, Testimony at the Public Hearing of the Terrorism Insurance Implementation Working Group of the National Association of Insurance Commissioners 5-6 (Mar. 29, 2006), available at [http://www.naic.org/documents/topics\\_tria\\_testimony0603\\_RAA.pdf](http://www.naic.org/documents/topics_tria_testimony0603_RAA.pdf).

<sup>12</sup> See Marsh, *supra* note 9 at 33.

Indeed, countries which have a longer history of terrorist activity (e.g., the United Kingdom, Spain and France) have consistently made insuring against terrorism risk a government issue.<sup>13</sup>

Private market insurer and reinsurer capacity is unlikely to grow unless a new financing vehicle is developed to expand private sector risk capacity for large industry-wide losses in addition to maintaining federal support such as a backstop for extremely large loss events (e.g., \$100 billion). Accordingly, the PWG should analyze how a combination of private insurance industry capacity, private sector financing and federal participation can be used to facilitate a speedy economic recovery in the wake of terrorism losses. Specifically, the PWG should examine long-term solutions whereby private insurance industry capacity and private sector financing increase over time while the federal backstop decreases.

Treasury's June 2005 report did not include feedback from capital markets and new sources of private capital were not incorporated into the terrorism risk insurance program when TRIA was extended. In order to ensure the maximum response from capital markets, the PWG must establish a dialogue with Wall Street. Their input is crucial to finding ways to improve capital from private sources as well as determining the extent of the federal government's role in a long-term terrorism risk insurance solution.

In addition to considering the role of capital markets in a long-term solution, the PWG should analyze the use of residual market mechanisms to supplement federal participation. The PWG should also examine the use of possible sources of capital for a new private sector financing vehicle such as pre-event risk premiums, private market reinsurance, pre-event debt financing, mandatory or voluntary capital contributions, or post-event policyholder assessments. In addition, the PWG should analyze the use of tax policy-based incentives to enhance the ability of insurers to accumulate capital.

### **3.1 What is the current availability and affordability of coverage for CNBR events, and for what perils is coverage available, subject to what limits, and under what policy terms and conditions? Is there a difference in the availability and affordability of coverage for CNBR events caused by acts of terrorism?**

Currently, there is little coverage available for CNBR events other than that included in statutorily mandated products such as workers compensation insurance. Most of the existing terrorism insurance coverage excludes CNBR events, except where such coverage is expressly required under state law (e.g., with respect to workers' compensation coverage). As noted at the NAIC Working Group's recent public hearing, insurance industry representatives believe that CNBR events are at once inevitable, not conducive to modeling, and likely to trigger substantially greater losses than conventional terrorist acts. As a result, policyholders are often unable to obtain affordable coverage for CNBR events, and sometimes not at any price.

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<sup>13</sup> Aggregate insurance industry exposure in those nations may be less strained than in the U.S. insurance industry given the prominent roles that their governments play in covering health care costs for injuries which arise both inside and outside of the workplace. In the U.S., however, the same P&C insurance industry which writes commercial property coverage also bears, through the worker compensation mechanism, most of the risk of loss from workplace injuries resulting from terrorism. All states prohibit insurers from excluding coverage for acts of terrorism from worker's compensation policies.

### **3.7 In the long-term, what are the key factors that will determine the availability and affordability of terrorism risk insurance coverage for CNBR events?**

Little affordable CNBR coverage is currently available (other than in worker comp policies) and we have not encountered any meaningful evidence that CNBR coverage will be available beyond the expiration of TRIA. Warnings of the inevitability of a CNBR attack have come from many parts of our government as well as outside experts and from the insurance industry. A meaningful solution for making affordable CNBR available to policyholders has yet to emerge even with the TRIA backstop in place.

It is difficult for policyholders to take effective mitigation measures against CNBR attacks. Moreover, the costs of mitigating against terrorism risk (e.g., security measures) usually outweigh any incentives offered by insurers. At the same time, it is difficult for insurers to diversify risk because terrorism risk is highest in areas with the most insured value.<sup>14</sup>

Given the difficulty of effectively mitigating against CNBR attacks and the private insurance market's apparent discomfort in underwriting CNBR, substantial economic losses followed by tenuous economic recovery and political embarrassment are inevitable in the aftermath of a CNBR event. We believe that any long-term solution to the CNBR coverage problem must address federal participation. Absent federal involvement, we anticipate that insurance regulators will face increasing pressure to approve CNBR exclusions outside of state-mandated lines such as workers' compensation.

Specifically, we urge the PWG to consider whether a separate federal reinsurance program should be established for non-life insurance CNBR losses or whether coverage for CNBR peril should be included in a multi-tiered financing structure involving private insurance industry, private sector and federal participation. Given concerns that CNBR events may result in greater economic losses than conventional terrorist acts, the PWG should also consider whether lower program triggers for federal reinsurance are appropriate in the CNBR context.

Respectfully Submitted,

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<sup>14</sup> Risk Management Solutions, Inc., *A Risk-Based Rationale for Extending the Terrorism Risk Insurance Act 18* (Sept. 2005), available at <http://www.rms.com>.

# COALITION TO INSURE AGAINST TERRORISM

## Who We Are

The Coalition to Insure Against Terrorism (CIAT) represents a wide range of businesses and organizations throughout the transportation, real estate, manufacturing, construction, entertainment and retail sectors. These groups banded together to speak for business insurance policyholders to win passage of a terrorism insurance plan on Capitol Hill.

### CIAT Members:

American Bankers Association  
American Bankers Insurance Association  
American Council of Engineering Companies  
American Gas 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  
America's Community Bankers  
Associated Builders and Contractors  
Associated General Contractors of America  
Association of American Railroads  
Association of Art Museum Directors  
The Bond Market Association  
Babson Capital Management  
Building Owners and Managers Association  
Boston Properties  
Campbell Soup Company  
CCIM Institute  
Century 21 Department Stores  
Chemical Producers and Distributors Association  
Citigroup Inc.  
Commercial Mortgage Securities Association  
Cornerstone Real Estate Advisers, Inc.  
CSX Corporation  
Edison Electric Institute  
Electric Power Supply Association  
The Financial Services Roundtable  
The Food Marketing Institute  
General Aviation Manufacturers Association  
Helicopter Association International  
Hilton Hotels Corporation  
Host Marriott  
Independent Electrical Contractors  
Institute of Real Estate Management  
Intercontinental Hotels

International Council of Shopping Centers  
International Franchise Association  
International Safety Equipment Association  
The Long Island Import Export Association  
Marriott International  
Mortgage Bankers Association of America  
National Apartment Association  
National Association of Home Builders  
National Association of Industrial and Office Properties  
National Association of Manufacturers  
National Association of REALTORS®  
National Association of Real Estate Investment Trusts  
National Association of Waterfront Employers  
National Association of Wholesaler-Distributors  
National Basketball Association  
National Collegiate Athletic Association  
National Council of Chain Restaurants  
National Football League  
National Hockey League  
National Multi Housing Council  
National Petrochemical & Refiners Association  
National Restaurant Association  
National Retail Federation  
National Roofing Contractors Association  
National Rural Electric Cooperative Association  
The New England Council  
Office of the Commissioner of Baseball  
Public Utilities Risk Management Association  
Partnership for New York City  
The Real Estate Board of New York  
The Real Estate Roundtable  
Society of American Florists  
Starwood Hotels and Resorts  
Taxicab, Limousine & Paratransit Association  
Trizec Properties, Inc.  
Travel Business Roundtable  
UJA-Federation of New York  
Union Pacific Corporation  
U.S. Chamber of Commerce  
Westfield Group

(as of 9/15/05)