CIAT

COALITION TO INSURE AGAINST TERRORISM

www.insureagainstterrorism.org

April 15, 2016

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

RE: 2016 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 25, 2016 Federal Register. 81 Fed. Reg. 16281. 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, entertainment, manufacturing, transportation, the major league sports, as well as public sector buyers of insurance. The current list of CIAT members can be found at www.insureagainstterrorism.org/who.html.

CIAT is pleased to have the opportunity to comment in response to FIO's request. While CIAT members, as policyholders rather than insurers, are not in a position to provide comments specifically regarding FIO's data collection activities under Section 111 of the 2015 Reauthorization Act, we nevertheless are eager to emphasize our view of the overall effectiveness of the Terrorism Risk Insurance Program ("TRIP"). CIAT will also be providing comments separately on FIO's recent Notice of Proposed Rulemaking on replacing the TRIP regulations.

CIAT continues to believe that the TRIP program has been, and 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 in the future. As part of its economic national security, America needs a stable, reliable, and competitive terrorism insurance market so employers can invest in assets and create jobs without assuming the risk and liabilities of a terrorist attack. The TRIP program has been the key factor in ensuring that this market continues to exist.

As the principal commercial buyers of terrorism insurance, CIAT members remember all too well the economic environment that led to the enactment of the Terrorism Risk Insurance Act ("TRIA"). 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-

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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.

As we learned during this time, terrorism risk is unlike most insurable risks. It is difficult to measure frequency or severity in order to price the risk. While most insurable risks occur at random times in random locations and are of random magnitudes; terrorism losses are anything but random. Terrorist attacks are intrinsically focused on maximizing financial and psychological impact, so are unlikely to be geographically dispersed, which can cause adverse selection. Against this backdrop, the TRIA program was designed to maximize private sector participation in covering terrorism risk, while providing a federal backstop to ensure that the economy is not paralyzed in the wake of truly catastrophic events.

Due to TRIA, it has been possible for businesses to purchase terrorism risk coverage continuously since its enactment. And the Program is designed very well: rather than simply shift cost onto the federal government, the plan requires insurers and policyholders to bear the first dollar loss of up to a "Program Trigger" level in annual claims resulting from terrorist attacks (currently $120 million). Insurers must then meet a deductible of 20% of their prior year's premiums – a substantial amount for any insurer – before the government shares in the cost of losses above that level. Through the plan's recoupment provision, the government is required to recoup from policyholders much, if not all, of what was paid out. CIAT believes the TRIA program as currently designed continues to work well while protecting taxpayers and limiting government exposure to only the most extreme events.

While TRIA was originally intended to be a temporary measure – a bridge to a time when the private market could return fully to the marketplace -- there has been no evidence that private markets can develop adequate terrorism risk capacity without some type of federal participation. Without TRIA in place, terrorism risk coverage will evaporate – insurers will simply drop out. 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. While private reinsurance capacity for terrorism risk has grown somewhat, current reinsurance capacity does not even meet the full demands of direct insurers to cover their current retentions under TRIA. What this means is that TRIA has allowed private capacity to develop, but remains the essential piece of the puzzle.

All this is not to say that TRIP is perfect or that it could not be *more* effective. CIAT believes that the Program could provide greater clarity on issues such as the certification process, for example, and a longer-term solution (rather than frequent reauthorizations with the threat of expiration) would help lend greater stability to the market as well. But overall, CIAT believes TRIA is very well-designed and has been quite effective in achieving its purposes.

In conclusion, CIAT continues to believe that 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. Contrasting this to the ad hoc nature of prior federal disaster responses, it is reasonable to conclude that having TRIA in place likely lessens taxpayer exposure to terrorism risk.[1] Therefore, CIAT strongly supports TRIA and believes that TRIP continues to be tremendously effective for the insurance marketplace, the broader economy, and taxpayers.

Sincerely,

The Coalition to Insure Against Terrorism

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[1] See, e.g., Peter Chalk et al., *Trends in Terrorism: Threats to the United States and the Future of the Terrorism Risk Insurance Act*, 58 (2005) ("TRIA's sunset, without additional Congressional action, will both slow recovery after a future attack and magnify the economic consequences of an attack," as it will "raise the risk of widespread uninsured losses.")

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