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Terrorism Risk Insurance Legislation: Issue Summary and Side-by-Side Analysis

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Summary

Prior to the September 11, 2001, terrorist attacks, insurance covering terrorism losses was normally included in general insurance policies without additional cost to the policyholders. Following the attacks, this ceased to be the case as insurers and reinsurers pulled back from offering terrorism coverage. It was feared that a lack of insurance against terrorism loss would have a wider economic impact, particularly because insurance coverage can be a significant factor in lending decisions.

Congress responded to the disruption in the insurance market by passing the Terrorism Risk Insurance Act of 2002 (TRIA; P.L. 107-297). TRIA created a temporary program, expiring at the end of 2005, to calm the insurance markets through a government backstop sharing in terrorism losses with the intent that this would give the industry time to gather the data and create the structures and capacity necessary for private insurance to cover terrorism risk. TRIA did not require premiums to be paid for the government coverage. Instead, TRIA required private insurers to offer coverage for terrorism risk and would recoup some or all federal payments under the act in the years following government coverage of insurer losses.

Under TRIA, terrorism insurance became widely available and largely affordable, and the insurance industry greatly expanded its financial capacity. There has been, however, little apparent success on developing a longer-term private solution, and fears have persisted about wider economic consequences if insurance were not available. Congress passed two extensions to the program, in 2005 (P.L. 109-144) and 2007 (P.L. 110-160). The 2005 extension was primarily focused on reducing the government's upfront financial exposure under the act, whereas the 2007 extension left most of the upfront aspect of the TRIA program unchanged, while accelerating the post-event recoupment provisions. The 2007 legislation also included the only expansion of the TRIA program since initial enactment, as it extended the program to cover any acts of terrorism, as opposed to only foreign acts of terrorism.

The current TRIA program expires at the end of 2014. Although insurance industry capacity has increased since 2002, terrorism is still seen by many as essentially uninsurable. Without TRIA, the insurance industry has indicated that terrorism insurance will again become unavailable or unaffordable and fears are again being expressed that lack of terrorism insurance may slow down other sectors of the economy. Several bills (H.R. 508, H.R. 1945, H.R. 2146, S. 2244, and H.R. 4871) have been introduced to extend TRIA and change different aspects of the program.

This reports briefly outlines the issues involved with terrorism insurance, summarizes the extension legislation, and includes a side-by-side of the current TRIA law and the bills that have been passed by the Senate (S. 2244) and reported by the House Committee on Financial Services (H.R. 4871). For more a more in-depth treatment of the issues surrounding TRIA, please see CRS Report R42716, *Terrorism Risk Insurance: Issue Analysis and Overview of Current Program*, by Baird Webel.

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Background

Prior to the September 11, 2001, terrorist attacks, insurance covering terrorism losses was normally included in general insurance policies without additional cost to the policyholders. Following the attacks, both primary insurers and reinsurers pulled back from offering terrorism coverage. Because insurance is required for a variety of economic transactions, particularly borrowing for commercial development, it was feared that a lack of insurance against terrorism loss would have a wider economic impact.

Congress responded to the disruption in the insurance market by passing the Terrorism Risk Insurance Act of 2002 (TRIA).¹ TRIA created a temporary three-year Terrorism Insurance Program to calm the insurance markets through a government reinsurance backstop sharing in terrorism losses. The idea was to give the private industry time to gather the data and create the structures and capacity necessary for private insurance to cover terrorism risk. TRIA requires insurers to offer terrorism coverage, but does not require commercial policyholders to purchase the coverage. This program was extended in 2005² and 2007.³ In 2005, the extension legislation focused on reducing the government's exposure from TRIA by increasing the minimum covered event size, increasing the insurer deductible, reducing the government share of losses, and increasing the post-event mandatory recoupment. In 2007, the primary change was to accelerate the after-the-fact recoupment. While the prospective government share of losses has been reduced over time, the 2007 reauthorization also expanded the program to cover losses from acts of domestic terrorism. The TRIA program is currently set to expire at the end of 2014, as provided for in the 2007 extension.

The initial thresholds of the current program are as follows:

1. A terrorist act must cause \$5 million in insured losses to be certified for TRIA coverage.
2. The aggregate insured losses from a certified act of terrorism must be \$100 million in a year for the government coverage to begin.
3. An individual insurer must meet a deductible of 20% of its annual premiums for the government coverage to begin.

Once these thresholds are passed, the government covers 85% of insured losses due to terrorism with the private insurers retaining 15% of the losses. No premiums are charged by the government for this coverage. Instead, if the insured losses are under \$27.5 billion, the Secretary of the Treasury is required to recoup 133% of government outlays through a surcharge on commercial property/casualty insurance policies. As insured losses rise above \$27.5 billion, the Secretary is required to recoup a reduced amount of the outlays. At some high insured loss level, which will depend on the exact distribution of losses, the Secretary would no longer be required to recoup outlays, but would retain the discretionary authority to do so. Under current law, all mandatory recoupment must be completed by the end of FY2017.

¹ P.L. 107-297, codified at 15 U.S.C. §6701 note.

² P.L. 109-144.

³ P.L. 110-160.

Since TRIA's passage, private industry's willingness and ability to cover terrorism risk have increased. According to industry surveys, prices for terrorism coverage have generally trended downward, and approximately 60% of commercial policyholders have purchased coverage over the past few years.⁴ This relative market calm has been under the umbrella of TRIA coverage, and it is unclear how the insurance market would react to the expiration of the federal program.

Legislation in the 113th Congress

The Terrorism Risk Insurance Act of 2002 Reauthorization Act of 2013 (H.R. 508)

Representative Michael Grimm along with nine cosponsors introduced H.R. 508 on February 5, 2013. The bill is a reauthorization of the existing TRIA program that would extend the program five years, until the end of 2019. It would also extend the deadline for mandatory recoupment seven years, until September 30, 2024. The bill has been referred to the House Committee on Financial Services.

The Fostering Resilience to Terrorism Act of 2013 (H.R. 1945)

Representative Bennie Thompson along with one cosponsor introduced H.R. 1945 on May 9, 2013. The bill would extend the expiration date of the program 10 years, until the end of 2024, and would extend the deadline for mandatory recoupment seven years, until September 30, 2024. It would also add the Secretary of Homeland Security as the lead authority responsible for certifying an act of terrorism and require the Secretary to provide information and reports on terrorism risks and best practices to foster resilience in the face of terrorism. The Secretary of the Treasury would remain in the certification process but as a concurring party, not the lead authority, and the program in general would remain under the authority of the Treasury. H.R. 1945 has been referred to the House Committee on Financial Services and the House Committee on Homeland Security.

Terrorism Risk Insurance Program Reauthorization Act of 2013 (H.R. 2146)

Representative Michael Capuano along with 20 cosponsors introduced H.R. 2146 on May 23, 2013. The bill is a reauthorization of the existing TRIA program that would extend the program 10 years, until the end of 2024, as well as extend the deadline for mandatory recoupment by 10 years, until September 30, 2027. In addition, the President's Working Group on Financial Markets is to continue filing reports on market conditions for terrorism risk insurance, with reports required in 2017, 2020, and 2023. The bill has been referred to the House Committee on Financial Services.

⁴ See, for example, Marsh, Inc. *2014 Terrorism Risk Insurance Report*, April 2014.

Terrorism Risk Insurance Program Reauthorization Act of 2014 (S. 2244)

Senator Charles Schumer along with eight cosponsors introduced S. 2244 on April 10, 2014. The bill would extend the current TRIA program seven years, until December 31, 2021, while also decreasing the federal loss sharing amount and increasing the amount to be retained by the industry and recouped by the government. Specifically, S. 2244 as introduced would

- decrease the federal loss sharing gradually from 85% to 80%, and
- increase the insurance marketplace aggregate retention amount by \$2 billion per year until it reaches \$37.5 billion from the current \$27.5 billion, and
- extend the various dates for mandatory recoupment by seven years.

Under these extended dates, if an act of terrorism occurs prior to 2018, all mandatory recoupment premiums must be collected by September 30, 2019. If an act occurs in 2018, 35% of the mandatory recoupment premiums would be collected by September 30, 2019, with the rest by September 30, 2024. If the terrorist act occurs after 2018, all of the mandatory recoupment premiums would be collected by September 30, 2024.

Committee Consideration

The Senate Committee on Banking, Housing, and Urban Affairs marked up S. 2244 on June 3, 2014. A number of amendments were adopted en bloc, including

- a change in the mandatory recoupment provisions to require that 135.5% of the federal payments be recouped;
- a requirement for the Treasury to study the certification process and issuer final rules governing the process, including a timeline; and
- a Government Accountability Office (GAO) study of the possible effects of instituting premiums to be paid by the insurer to the government for the coverage provided under TRIA.

One amendment was rejected on a recorded vote in committee. Senator Tom Coburn offered an amendment that would have changed the timing of the mandatory recoupment, giving more time for the recoupment in the case of larger attacks. This amendment failed on a vote of 7-15. The bill as amended was ordered reported favorably on a vote of 22-0. The written report (S.Rept. 113-99) was filed on June 26, 2014.

Senate Floor Consideration

S. 2244 was considered by the full Senate by unanimous consent on July 17, 2014, with three amendments adopted.

- S.Amdt. 3552 was offered by Senator Jon Testor. This amendment added a second title to the bill relating to the licensing of insurance agents and brokers. This Title II is similar to both H.R. 1155 and Title II of S. 1926 as the two bills passed the House and the Senate respectively. S.Amdt. 3552 included a two-year

sunset provision, however, that was not in either of these bills. It was adopted by voice vote.

- S.Amdt. 3551 was offered by Senator Jeff Flake. This amendment added an advisory committee on risk sharing mechanism; similar language is included in H.R. 4871. This amendment was adopted on a vote of 97-0.
- S.Amdt. 3550 was offered by Senator David Vitter. This amendment added a section requiring that one member of the Board of Governors of the Federal Reserve have experience with community banking. It was adopted by voice vote.

Senator Coburn offered S.Amdt. 3549 extending the timing of the recoupment provisions in the case of a large terrorist attack. A point of order on budgetary grounds was raised against this amendment and a motion to waive this point of order was rejected on a vote of 48-49. The amended version of S. 2244 was passed by the full Senate on a vote of 93-4.

Administration Reaction

The Office of Management and Budget (OMB) released a Statement of Administration Policy (SAP) on July 17, 2014. This SAP endorsed extension of the TRIA program along with reforms to “further reduce taxpayer exposure, increase private sector contributions, and better position the Program for future transition to the private sector.” It also specifically supported Senate passage of S. 2244.⁵

TRIA Reform Act of 2014 (H.R. 4871)

H.R. 4871 was introduced by Representative Randy Neugebauer and one cosponsor on June 17, 2014. The bill would extend the TRIA program five years while generally reducing the government’s exposure to future TRIA losses, increasing post-event recoupment, and making several other changes to the program. The provisions include

- gradual reduction of federal share of losses from 85% to 80%;
- gradual increase in program trigger from \$100 million to \$500 million and removal of the \$5 million minimum certification amount;
- separate treatment of Nuclear, Chemical, Biological, and Radiological (NCBR) terrorist attacks with lower trigger (\$100 million) and higher federal loss sharing (85%);
- requirement that certification occur within 90 days of an attack;
- increase in the maximum of the mandatory recoupment amount to the total of insurer deductibles under the program (currently approximately \$36 billion) and removal of a provision that decreases mandatory recoupment in the case of very large attacks;
- increase of the mandatory recoupment from 133% to 150% of the federal share of losses;

⁵ Office of Management and Budget, *Statement of Administration Policy: S. 2244*, July 17, 2014. Available at http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saps2244s_20140717.pdf.

- allow for small insurers to opt out of the TRIA requirement to make terrorism coverage available if it would create financial hardship or be financially infeasible;⁶
- requirement that additional data on the terrorism insurance market be collected by Treasury and included in an annual report by Treasury; and
- requirement for a GAO study on the possible effects of instituting insurer premiums for the TRIA coverage and requiring capital reserve funds for terrorism, Congressional Budget Office (CBO) and OMB studies regarding budgeting and costs of federal insurance programs, and a Treasury study on small insurer market competitiveness.

Committee Consideration

The House Committee on Financial Services marked up H.R. 4871 beginning June 19, 2014, and ordered the bill favorably reported on June 20, 2014, by a vote of 32-27. During the markup, a second title was added containing the text of the National Association of Registered Agents and Brokers Reform Act of 2013 (H.R. 1155), which previously passed both the committee and the full House of Representatives.⁷ The committee rejected a substitute amendment by Representative Maxine Waters, which would have replaced the text with a 10-year reauthorization of the current program, on a vote of 27-31. The bill was reported (H.Rept. 113-523) on July 16, 2014.

Table 1 below presents a side-by-side comparison of the current law and the bills ordered reported by the Senate and House committees.

⁶ Small insurers could request to opt out from their domiciliary state regulator using criteria set by the Secretary of the Treasury.

⁷ For more information, see CRS Report R43095, *Insurance Agent Licensing: Overview and Background on Federal "NARAB" Legislation*, by Baird Webel.

Table I. Terrorism Risk Insurance Side-by Side, Current Law and Committee Legislation

Provision	15 U.S.C. §6701 note (as applicable in 2014)	S. 2244 (as passed by the Senate)	H.R. 4871 (Title I as reported)
Title	Terrorism Insurance Program	Terrorism Risk Insurance Program Reauthorization Act of 2014	TRIA Reform Act of 2014
Termination Date	December 31, 2014 (§108(a))	December 31, 2021 (§2)	December 31, 2019 (§102)
Certification of an Act of Terrorism	Terrorist act is to be certified by the Secretary of the Treasury (hereafter “the Secretary”) in concurrence with the Attorney General and Secretary of State. Terrorist act must cause \$5 million in insured losses to be certified. (§102(1)(A))	Requires the Secretary to study and report on the certification process. After the study is completed, the Secretary is to issue rules governing the process, including a timeline as to whether an act is considered an act of terrorism. (§6)	Beginning in 2015, removes the Secretary of State from certification process. Adds "consultation" with the Secretary of Homeland Security. Removes the \$5 million minimum size for certification. Beginning in 2015, adds a deadline of 15 days for "preliminary certification" and 90 days for "final certification." If no certification is made within 90 days, no certification is possible. (§103) Beginning in 2016, certification is to include whether or not terrorist act is an act of Nuclear, Chemical, Biological, or Radiological (NCBR) terrorism according to the definition added by the legislation. (§104(a))
Insured Loss Shared Compensation	Federal share of losses will be 85% for insured losses that exceed the applicable insurer deductible. (§103(e))	Starting in 2016, the federal share of losses will decrease one percentage point per calendar year until equal to 80%. (§3)	Federal share of losses will be 85% in 2015, 84% in 2016, 83% in 2017, 82% in 2018, and 80% in 2019 except in the case of an NCBR terrorist event. For an NCBR attack, the federal share of losses will remain at 85%. (§104(b))
Program Trigger	No compensation shall be paid unless the aggregate industry insured losses resulting from such certified act of terrorism exceed \$100 million. (§103(e)(1)(B))	No Change	Increases program trigger to \$200 million in 2016, \$300 million in 2017, \$400 million in 2018, and \$500 million in 2019. Applies program trigger to the aggregate losses from multiple acts of terrorism in a calendar year if the insured losses from each act exceed \$50 million. Program trigger for NCBR attacks remains at \$100 million. (§104(c))

Provision	15 U.S.C. §6701 note (as applicable in 2014)	S. 2244 (as passed by the Senate)	H.R. 4871 (Title I as reported)
Treatment of NCBR Terrorism	No Similar Provisions	No Similar Provisions	<p>Beginning in 2016, certification is to include whether or not terrorist act is an act of NCBR terrorism according to the definition added by the legislation. (§104(a))</p> <p>Federal share of losses will be 85% in 2015, 84% in 2016, 83% in 2017, 82% in 2018, and 80% in 2019 except in the case of an NCBR terrorist event. For an NCBR attack, the federal share of losses will remain at 85%. (§104(b))</p> <p>Program trigger for NCBR attacks remains at \$100 million. (§104(c))</p>
Mandatory Availability	Insurers are required to make terrorism coverage available to insureds. (§103(c))	No Change	Small insurers, as defined by the Secretary, may be exempted from mandatory availability upon request. This exemption applies if meeting the make available requirement is determined by the insurer's domiciliary state insurance to cause financial hardship or be financially infeasible. This determination would be based on criteria set by the Secretary. (§105)
Aggregate Retention Amount	The aggregate retention amount is the lesser of (1) the total of all insured losses or (2) \$27.5 billion. (§103(e)(6))	Beginning in the calendar year after enactment, the retention amount would be the lesser of (1) the total of all insured losses or (2) \$29.5 billion with this amount further increased by \$2 billion per year until reaching \$37.5 billion. (§4(1))	Beginning in 2016, the retention amount would be the lesser of (1) the total of all insurer deductibles in the previous year or (2) the total of all insured losses. (§107)

Provision	15 U.S.C. §6701 note (as applicable in 2014)	S. 2244 (as passed by the Senate)	H.R. 4871 (Title I as reported)
Mandatory Recoupment of Federal Share	<p>If aggregate insured losses are under the aggregate retention amount, a mandatory recoupment of 133% of the federal share of the loss will be imposed.</p> <p>If aggregate insured losses are over the aggregate retention amount, but uncompensated insurer losses do not exceed the aggregate retention amount, the mandatory recoupment amount is reduced by this amount.</p> <p>If uncompensated insurer losses are over the aggregate retention amount, there is no mandatory recoupment, but Secretary of the Treasury retains discretionary recoupment authority. (§103(e)(7))</p>	<p>The gradual increase in the aggregate retention amount to \$37.5 billion (§4(1)) effectively increases the level of mandatory recoupment.</p> <p>Increases the mandatory recoupment to 135.5% of the federal share of losses. (§4(2))</p>	<p>Mandatory recoupment increases to 150% of the federal share of losses beginning in 2016 and all years thereafter. (§106)</p> <p>Beginning in 2016, mandatory recoupment amount is equal to the lesser of (1) the aggregate amount of federal compensation received by insurers or (2) the aggregate retention amount. (§107)</p>
Timing of Mandatory Recoupment	<p>Requires expedited collection of recoupment amounts:</p> <p>(1) for a terrorist attack before 2011, all required recoupment amounts must be collected by September 30, 2012;</p> <p>(2) for a terrorist attack in 2011, 35% of required recoupment amounts must be collected by September 30, 2012, and the balance must be collected by September 30, 2017; and</p> <p>(3) for a terrorist attack after 2011, all required recoupment amounts must be collected by September 30, 2017. (§103(e)(7)(E)(i))</p>	<p>Requires expedited collection of recoupment amounts:</p> <p>(1) for a terrorist attack before 2018, all required recoupment amounts must be collected by September 30, 2019;</p> <p>(2) for a terrorist attack in 2018, 35% of required recoupment amounts must be collected by September 30, 2019, and the balance must be collected by September 30, 2024; and</p> <p>(3) for a terrorist attack after 2018, all required recoupment amounts must be collected by September 30, 2024. (§4(2))</p>	<p>Beginning in 2016, requires that recoupment commence within 18 months of an attack. (§108)</p>
Risk Sharing Mechanisms	<p>No Similar Provisions</p>	<p>Establishes an advisory committee to encourage the creation and development of private risk-sharing mechanisms. (§9)</p>	<p>Establishes an advisory committee to encourage the creation and development of private risk-sharing mechanisms. (§109)</p>

Provision	15 U.S.C. §6701 note (as applicable in 2014)	S. 2244 (as passed by the Senate)	H.R. 4871 (Title I as reported)
Reporting of Terrorism Insurance Data	Requires Secretary to annually compile information on terrorism insurance premiums. To the extent that such data are not otherwise available, the Secretary may require insurers to submit the information to the NAIC, which shall make it available to the Secretary. (§108(e))	No Change	Beginning in 2016, requires Secretary to collect data from insurers on terrorism insurance coverage, including: lines of insurance with terrorism exposure, premiums earned from terrorism coverage, location of exposure, pricing of coverage, take-up rates, and amount of private reinsurance purchased. If such data are available from the states or another source, the Secretary shall collect the data from this source. The Secretary shall issue a report to Congress based on these data. (§110)
Definition of Control	An entity is considered to have control over another entity if the entity has the power to vote 25% of the voting securities; controls the election of the majority of the directors; or the Secretary determines that the entity exercises control after notice and hearing. (§102(3))	Adds the proviso that an entity is not considered to have control if, on the date of enactment, the entity is “acting as an attorney-in-fact ... for the other entity and such other entity is a reciprocal insurer.” This, however, does not apply if the entity is defined as having control for reasons other than the attorney-in-fact relationship. (§5(1))	Identical provision to S. 2244 as passed. (§112)

Provision	15 U.S.C. §6701 note (as applicable in 2014)	S. 2244 (as passed by the Senate)	H.R. 4871 (Title I as reported)
Studies and Reports	<p>The Secretary shall conduct an expedited study of the availability and affordability of group life insurance coverage. (§103(h))</p> <p>The Secretary shall conduct study and issue a report on the potential effect of terrorism on life insurance and other personal lines by October 2003. (§103(i))</p> <p>The Secretary shall conduct a study and issue a report no later than June 30, 2005 on the effectiveness of the program and the capacity of private insurers to offer terrorism coverage after the expiration of the program. (§104(d))</p> <p>President’s Working Group on Financial Markets is to report on the market conditions for terrorism risk insurance in 2006, 2010, and 2013. (§104(e))</p> <p>GAO shall conduct a study and issue a report on the availability and affordability of NCBR coverage and the outlook for future coverage by December 2008. (§104(f))</p> <p>GAO shall conduct a study and issue a report on the availability and affordability of terrorism insurance in specific markets by June 2008. (§104(g))</p>	<p>GAO shall conduct a study and issue a report on the viability of the government collecting upfront terrorism insurance premiums on insurers within two years from the date of enactment. (§7)</p>	<p>The Secretary shall issue a report to Congress based on the terrorism insurance data collected under Section 11 to be completed by June 30, 2017 and annually thereafter. (§110)</p> <p>The Secretary shall conduct an annual study of small insurer competitiveness and issue an annual report on this study with the first report not later than June 30, 2016. (§113)</p> <p>CBO and OMB shall each conduct a study and issue a report regarding the application of accrual accounting concepts to TRIA and other federal insurance programs not later than 12 months after the date of enactment. (§114)</p> <p>GAO shall conduct a study and issue a report on the viability of (1) the government collecting upfront terrorism insurance premiums on insurers and (2) the creation of a mandatory capital reserve fund to dedicate capital for terrorism losses before such losses occur within two years from the date of enactment. (§115)</p>

Source: CRS; using material from the U.S. Treasury, Senate Committee on Banking, Housing, and Urban Affairs, and the House Committee on Financial Services.

Notes: Section numbers for the initial TRIA law are as codified in 15 U.S.C. §6701 note. Section numbers for current legislation are from the legislation as introduced or the number of the amendment in committee. S. 2244 as passed also includes technical corrections in Section 5(2) that deletes outdated language from several sections of the TRIA statute, a section relating to the composition of the Federal Reserve Board of Governors, and a second title relating to insurance agent licensing. These sections are not included in the chart.

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