

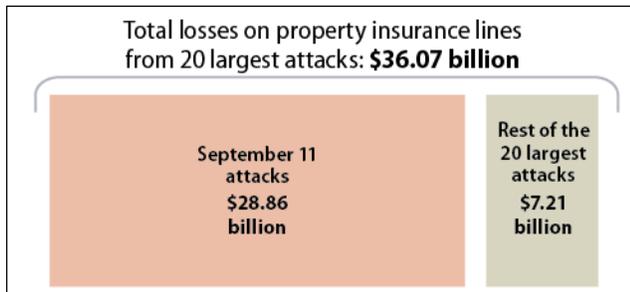


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# The Terrorism Risk Insurance Act (TRIA)

Prior to the September 11, 2001, terrorist attacks, insurance covering terrorism losses was normally included in commercial insurance policies without additional cost to the policyholders. The insured losses on all insurance lines from the 9/11 attacks exceeded \$50 billion in current dollars, an amount well above other insurance industry experiences with terrorism losses. For example, **Figure 1** compares the losses in property insurance lines from the 9/11 attacks to the total of the rest of the 20 largest terrorist attacks worldwide both before and since 2001.

**Figure 1. Insured Property Losses from Terrorism**



**Source:** Insurance Information Institute.

**Note:** Amounts are worldwide and adjusted for inflation to 2020.

Following September 2001, insurers and reinsurers pulled back from offering terrorism coverage. Some observers feared that a lack of insurance against terrorism loss would have a wide 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, initially set to expire at the end of 2005, to calm markets through a government reinsurance program sharing in terrorism losses. This program was intended to give the insurance industry time to gather the data and create the structures and capacity necessary for private insurance to cover terrorism risk.

TRIA did (and does) not cover terrorism losses directly but instead reimburses private insurers for a portion of their losses. The act does not require premiums to be paid by private insurers for the government coverage. However, it does require private insurers to offer commercial insurance for terrorism risk, which private insurers were not willingly offering prior to TRIA's enactment. In addition, TRIA provides that the government recoup some or all federal payments under the act from insurers in the years following government coverage of insurer losses. TRIA is limited to commercial property and casualty insurance. It does not cover losses in health or life insurance, nor does it cover

losses in personal property lines, such as homeowners insurance.

Following TRIA's enactment, terrorism insurance became widely available and largely affordable, and the insurance industry greatly expanded its financial capacity. There has been, however, little apparent success in developing a longer-term private solution, and fears have persisted about the economic consequences if terrorism insurance were not available. Thus, although explicitly designed as a three-year program, TRIA has been extended several times since 2002; it is currently set to expire at the end of 2027.

The precise program details under TRIA have been adjusted by Congress over time, particularly (1) the *program trigger*, an aggregate annual minimum loss threshold below which no government loss-sharing occurs; (2) the *federal share of insured losses*; (3) the *insurer deductible*, an amount based on each insurer's premium volume; and (4) the *insurer aggregate retention amount*, the losses retained by the insurers if post-attack recoupment occurs. In addition to these thresholds, a single attack must cause a minimum of \$5 million in insured damages to be certified under TRIA. No attack has been certified under the act and no federal payments have been made.

## TRIA Extension

Congress has passed four extensions to the TRIA program, in 2005 (P.L. 109-144), 2007 (P.L. 110-160), 2015 (P.L. 114-1), and 2019 (P.L. 116-94). The 2005 extension 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 but accelerated the post-event recoupment provisions. The 2007 legislation also included the only expansion of the TRIA program since initial enactment: it extended the program to cover any acts of terrorism, as opposed to only foreign acts of terrorism.

P.L. 110-160 extended TRIA to the end of 2014, but no extension legislation was enacted in this timeframe. Thus, the program expired for 12 days until P.L. 114-1 was signed by the President in January 2015. This law extended the program nearly six years, until the end of 2020, while reducing the government's share of the losses compared with the program as it was in 2014. Specifically, P.L. 114-1 gradually (1) increased the program trigger from \$100 million to \$200 million, (2) reduced the government share of the losses from 85% to 80%, and (3) increased the insurer aggregate retention amount from \$27.5 billion to \$37.5 billion and indexed it to the sum of insurer deductibles in years thereafter. P.L. 116-94 extended TRIA to the end of 2027, leaving the rest of the law essentially unchanged.

## The Terrorism Insurance Marketplace

Prior to 2015, data regarding the market for terrorism insurance was somewhat inconsistent because state regulators have historically not required granular reporting by insurers on terrorism coverage. Most terrorism insurance statistics were gathered by private surveys. This changed following P.L. 114-1 as Congress required Treasury to collect specific data and the state regulators also strengthened their data reporting requirements.

Analyses by Treasury have seen TRIA as supporting a terrorism insurance market that is generally stable with available and affordable insurance. Estimates for the *take-up rate* for terrorism coverage range from around 60% to nearly 80% depending on what metrics are used. The total premiums for all TRIA-eligible lines of insurance was \$214 billion in 2019, with an estimated 1.7%, or \$3.7 billion, attributable to terrorism risk premiums. (This figure includes affiliated insurers known as captives.) Between 30% and 35% of the terrorism coverage is provided as part of broader insurance without a specific charge. In total, Treasury estimates that insurers have received \$51.9 billion in terrorism insurance premiums from 2003 through 2019.

Although the terrorism insurance marketplace appears relatively robust, this occurs within the context of the federal backstop for terrorism coverage. The large majority of terrorism insurance coverage is written eligible for TRIA, with Treasury finding that, for example, 80% of the standalone terrorism policies in 2019 were TRIA-eligible. Whether private coverage would remain available and affordable without TRIA is uncertain.

## How Would TRIA Work?

In the aftermath of a terrorist attack, the first step would be for private insurers to pay claims under whatever terms are in place in the existing policies. Insurers would then submit for partial reimbursement to the Treasury. For reimbursements under TRIA to occur, the Secretary of the Treasury must certify the attack, including that the single attack caused more than \$5 million in losses. Next, the total aggregate annual terrorism losses must be greater than \$200 million. After these industry-wide thresholds are met, each individual insurer is responsible for a deductible equal to 20% of its premiums on TRIA-eligible lines of insurance. The Treasury would then reimburse the insurers 80% of their losses from the terrorist attack above this deductible.

## What Would Happen Afterwards?

In the years following the attack, TRIA's recoupment provisions would take effect. The Secretary of the Treasury would be required to recoup some or all of the reimbursements to specific insurers by placing a premium surcharge on all the insurers offering commercial property/casualty insurance covered by TRIA. (This surcharge may vary for different lines of insurance and different geographic areas.)

Mandatory recoupment is required to be completed by 2029 and would be equal to 140% of the difference between the aggregate retention amount and the total amount of insured losses that were not reimbursed by the government. The

aggregate retention amount for 2022 is based on aggregate premiums for the previous three years. For 2022, it is the lesser of approximately \$42.7 billion and the total amount of insured losses. The Treasury Secretary has the authority to extend recoupment to include all losses reimbursed by the government, but this discretionary premium surcharge may not exceed 3%.

## Policy Issues in TRIA Reauthorizations

Although the temporary TRIA program has been reauthorized for 22 years past its initial three-year term, various questions about TRIA have been raised over the years. Such questions have included the following:

### Is TRIA still needed? If so, how long should reauthorization last?

Past reauthorizations have ranged from two years to seven years and, in each case, some have argued that it is actually time to allow the program to expire and return terrorism risk solely to the private sector rather than reauthorize for any length of time.

### Should the private-sector contribution to TRIA change?

The amount of risk borne by the private sector has increased since initial TRIA passage, with increased triggers, deductibles, and private share in terrorism losses. The post-event recoupment has increased as well. Continuing this trend, however, could eventually result in TRIA effectively sharing little terrorism risk and blunting the effectiveness of the program in the event of a terrorist attack. Alternatively, upfront premiums could be charged for the government coverage, although this would constitute a more substantial change to TRIA's program design.

### Should TRIA specifically address nuclear, chemical, biological, or radiological (NCBR) terrorist events?

NCBR events are the most likely to inflict large losses due to a terrorist attack. Such attacks, however, may not actually result in full coverage under TRIA because the underlying private policies may effectively exclude NCBR events.

### Should TRIA specifically address cyberterrorism?

The underlying TRIA statute is generally silent on the issue of cyberterrorism. In 2016, the Department of the Treasury issued guidance clarifying that the "cyber-liability" line of insurance, introduced by state regulators in 2016, would be included as property/casualty insurance under TRIA. A cyberterrorist event, however, must meet all other thresholds in TRIA, which might reduce TRIA's applicability to such cyberattacks. P.L. 116-94 required a Government Accountability Office study and report on cyberterrorism insurance.

## CRS Resources

CRS Report R45707, *Terrorism Risk Insurance: Overview and Issue Analysis for the 116th Congress*, by Baird Webel

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