TERRORISM RISK AND THE TERRORISM RISK INSURANCE ACT

After the September 11, 2001 terrorist attacks, Congress enacted the Terrorism Risk Insurance Act of 2002 (TRIA) to create a temporary program, or “backstop”, in the Treasury Department, in which the U.S. government would share future insured terrorism losses with the property/casualty insurance industry and policyholders. TRIA, which was set to expire after three years, was intended to give the insurance industry time to develop the capacity to insure terrorism risks. At the time, many believed the three-year time frame for the program was too short because it was not possible for insurers and reinsurers to successfully model and underwrite for the frequency, severity or correlation of terrorism risk.

In 2005, TRIA was extended for two additional years by the Terrorism Risk Insurance Extension Act of 2005 (TRIEA). In December 2007, Congress enacted the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA), which extended the program for another seven years through December 31, 2014.

Summary of TRIPRA Provisions:

**Act of Terrorism:** TRIPRA applies only to an event that is certified by the Treasury Secretary as an “act of terrorism”. TRIPRA defines an “act of terrorism” as a violent act that is dangerous to human life, property or infrastructure, causing damage within the U.S. or to a U.S. flag vessel, carrier, or mission premises, committed by individual(s) as part of an effort to coerce the civilian population of the U.S. or to influence the policy or affect the conduct of the U.S. Government by coercion. TRIPRA expanded the definition of “act of terrorism” to include domestic acts of terrorism. Previously under TRIA and TRIEA, the act had to be committed “on behalf of any foreign person or foreign interest.”

**Covered Lines:** TRIPRA includes most commercial property and casualty lines, including workers compensation, but excludes reinsurance, crop, financial guarantee, private mortgage, title, medical malpractice, flood provided under the NFIP, commercial auto, professional liability (other than D&O), surety, burglary and theft, and farm-owners multi-peril. Life and group life as well as health insurance are not included.

Although there was insurance industry support for including nuclear, biological, chemical and radiological (NBCR) terrorism, NBCR terrorism is not included. However, TRIPRA mandates the Government Accountability Office to study NBCR terrorism insurance.

**Make Available Requirement:** Licensed insurers must “make available” coverage in all of the covered lines for a certified act of terrorism that “does not differ materially” from terms, amounts
and other limitations (other than prices) that apply to other perils in the policy with respect to initial offers or offers of renewals “made on or after” December 26, 2007.

**Program Trigger:** In order to trigger payment under the program, a certified act of terrorism must result in industry aggregate insured losses of at least $100 million.

**Insurer Deductable:** Each insurer is required to retain and pay insured losses from a certified act (or acts) of terrorism during a program year in an amount equal to 20% of its prior year’s direct earned premiums for covered property/casualty lines.

**Co-Share and Program Cap:** The Federal share of insured losses exceeding the insurer’s deductible is 85% and the insurer’s share is 15% of its insured losses up to the annual program cap of $100 billion. TRIPRA clarified that insurers will not be obligated to pay their share of losses above the program cap. Insurers are required to provide “clear and conspicuous disclosure” to policyholders of the program cap at the time of offer, purchase and renewal.

Treasury must notify Congress within 15 days of the act of terrorism if the losses are likely to exceed the $100 billion program cap.

**Federal Recoupment of Federal Share via Policyholder Surcharges:** TRIPRA requires a mandatory post-event recoupment of the federal share via policyholder surcharges of the difference between $27.5 billion and the aggregate insurer retention (deductable and co-share) for federal payments of property/casualty insured losses. The surcharge is limited to 3% of premium in covered lines per year. Recoupment of the balance of federal payments above the mandatory recoupment amount remains discretionary.

TRIPRA requires that 133% of the amount of such Federal outlays be recovered through policyholder surcharges

**Mid-Term Policies:** There is an exception for meeting the TRIPRA provisions for mid-term policies if the TRIEA provisions are met, except where the policy continues into 2008 but the terrorism coverage does not extend beyond December 31, 2007, and where an insurer makes a new mid-term offer after December 26, 2007.

**Mandatory Studies on Long-Term Availability and Affordability of Terrorism Insurance:**

*The President’s Working Group on Financial Markets (PWG):* Section 108 of TRIPRA requires an on-going analysis by the PWG regarding the long-term availability and affordability of insurance for terrorism risk generally. Reports are due to Congress in 2010 and 2013. The PWG must conduct its analysis in consultation with the National
Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policyholders.

In mid-June 2010, the U.S. Department of the Treasury filed a request for public comment with respect to the required PWG study. Treasury’s request included 32 questions that could be used as guidance for comments. Questions included key factors in determining private market capacity and availability and affordability of terrorism coverage; impact of the economy on coverage availability; changes in underwriting, coverage and demand since 2006; and the availability and cost of reinsurance. Questions 3 and 19-23 specifically addressed reinsurance.

The RAA filed the attached comment letter on June 29, 2010, in response to Treasury’s request. The RAA’s comments were submitted and can be accessed via www.regulations.gov, ID# – TREAS-DO-2010-0004. The RAA’s comments briefly describe the business of reinsurance, the challenges in underwriting terrorism risk, reinsurers’ role with respect to TRIPRA, and specifically respond to relevant questions presented in the request for comments. The submission was prepared by compiling information accumulated from individual RAA member companies and brokers.


The United States Government Accountability Office (GAO): The Comptroller General, head of the GAO, must (within 190 days of enactment of TRIPRA) report on the availability and affordability of terrorism insurance in specific markets.

The report, entitled “Initial Results on Availability of Terrorism Insurance in Specific Geographic Markets”, was released in December 2008 and can be accessed at the following link: http://www.gao.gov/new.items/d0939.pdf.

**Nuclear, Biological, Chemical and Radiological Terrorism:** TRIPRA covers attacks involving conventional weapons, but does not require insurers to make NBCR coverage available.

TRIPRA mandated the GAO to report on (1) the extent to which insurers offer NBCR coverage, (2) factors that contribute to the willingness of insurers to provide NBCR coverage, and (3) policy options for expanding coverage for NBCR risks. In December 2008 the GAO issued a report entitled, “Terrorism Insurance: Status of Coverage Availability for Attacks Involving Nuclear, Biological, Chemical, or Radiological Weapons” (GAO-09-39). The report and a
summary of the report can be accessed at:  http://www.gao.gov/products/GAO-09-39.  In preparing this report, GAO reviewed studies and reports and interviewed more than 100 industry participants about the availability of NBCR coverage in the market.

The report concluded that commercial property/casualty insurers generally were excluding NBCR coverage because of uncertainties about the risk and the potential for catastrophic losses. The report found that insurers rely on longstanding, standard exclusions for nuclear and pollution risks, although such exclusions may be subject to challenges in court because they were not specifically drafted to address terrorist attacks. The report also explained that workers’ compensation, group life, and health insurers that generally are not permitted to exclude NBCR coverage from their policies also face challenges in managing NBCR risks. The report discussed advantages and disadvantages of proposals to increase coverage for NBCR attacks in the property/casualty market. It also addressed comments the GAO received on a draft of the report from Treasury and the NAIC.

**RAA Congressional Testimony**

On February 28, 2007, Jamie Veghte, Executive Vice President and Chief Executive Officer of Reinsurance General Operations and Chief Executive Officer of XL Reinsurance America, testified on behalf of the RAA in support of extending the TRIEA program before the Senate Banking, Housing and Urban Affairs Committee at a hearing examining the terrorism risk insurance program. [Mr. Veghte’s testimony is attached (or give a link to our website?).](#)

On June 21, 2007, Franklin Nutter, President of the RAA, also testified in support of the program before the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises. [Mr. Nutter’s testimony is attached (or give a link to our website?).](#)

The testimony provided that the RAA believes the program has principally fulfilled its purpose of allowing primary insurers to provide terrorism insurance coverage to commercial policyholders in both urban and rural areas. By limiting insurers’ exposure to catastrophic terrorism losses, the program has improved the market for such coverage and has had a stabilizing influence on the economy.

**Obama Administration Budget**

The Obama Administration’s 2010 and 2011 Budgets proposed to decrease Federal participation in TRIPRA, but Congress did not act on those proposals. There were no cuts proposed in the 2012 Budget proposal.