

# Senators make opening bid, introduce TRIA bill

April 10, 2014

With the Terrorism Risk Insurance Act (TRIA - P.L. 107-297) set to expire at the end of 2014 unless extended, today, Senator Charles Schumer (D-NY), with the support of cosponsoring Senators Mark Kirk (R-IL), Jack Reed (D-RI), Dean Heller (R-NV), Christopher Murphy (D-CT), Mike Johanns (R-NE), Mark Warner (D-VA), Roy Blunt (R-MO), and Robert Menendez (D-NJ), introduced a bill to extend TRIA.

The senators' TRIA bill joins three separate bills already introduced in the House of Representatives in the current Congress to extend the TRIA program (H.R. 508, H.R. 1945 and H.R. 2146) for varying durations on modestly different terms. The senators' bill and all three House bills are essentially bills to extend the TRIA program and extend the deadline for the mandatory recoupment required under TRIA. The bills leave most of the current terms of TRIA as last amended in 2007 (P.L. 110-160) intact.

It is our understanding that the text of the senators' TRIA bill as introduced today is the same as the **text of the attached document**.

## TRIA legislation in this Congress

The TRIA program was amended and extended for two years in 2005 (P.L. 109-144) and then again amended and extended in 2007 (P.L. 110-160) Unless further extended, TRIA will expire at the end of 2014. Set forth below are brief summaries of the senators' TRIA extension bill and the three House bills:

### The senators' TRIA extension bill

- Reauthorizes the TRIA program for seven years until the end of the year 2021;
- Extends the deadline for mandatory recoupment by 7 years until September 30, 2024;
- Phases in two significant reforms to the current TRIA program over a five year period;
- Increases insurers' co-share of insured terrorism losses from an 85 percent-15 percent level to an 80 percent-20 percent split with the federal government
- Increases to \$37.5 billion from the current level of \$27.5 billion the amount of losses that the insurance industry as a whole incurs for which a mandatory recoupment of the federal share of the loss will be imposed.

### The three House bills

H.R. 508, The Terrorism Risk Insurance Reauthorization Act of 2002 Reauthorization

## Act of 2013

- Introduced by Congressman Michael Grimm (R-NY) on February 5, 2013
- 87 cosponsors
- Referred to the Financial Services Committee
- Would reauthorize the existing TRIA program for five years until the end of 2019 and would extend the statutory deadline for mandatory recoupment until September 30, 2024, seven years beyond the current deadline for recoupment

## H.R. 1945, The Fostering Resilience to Terrorism Act of 2013

- Introduced by Homeland Security Committee Ranking Member Congressman Bennie Thompson (D-MS) on May 9, 2013
- 7 cosponsors
- Referred to both the Financial Services Committee and the Homeland Security Committee
- H.R. 1945 would extend the current TRIA program for ten years until the end of 2024 and would extend the statutory deadline for mandatory recoupment until September 30, 2024, seven years beyond the current deadline
- Under current law, whether an incident is considered an "act of terror" depends on a certification by the Treasury Secretary in conjunction with the Attorney General and the Secretary of State
- This bill would add the Secretary of Homeland Security as the lead authority for certifying that an event was an "act of terror" and require the Homeland Security Secretary to provide information and reports on terrorism risks and best practices to foster resilience in the face of terrorism
- The Treasury Secretary would remain part of the certification process as a concurring party, not the lead authority

## H.R. 2146, Terrorism Risk Insurance Program Reauthorization Act

- Introduced by Financial Services Committee Housing and Insurance Subcommittee Ranking Member Michael Capuano (D-MA) on May 23, 2013
- 48 cosponsors
- Referred to the Financial Services Committee
- Would reauthorize the existing TRIA program for ten years until the end of 2024 and extend the mandatory recoupment deadline for ten years from the current deadline to September 30, 2027
- Would also require the President's Working Group on Financial Markets to file reports on market conditions in 2017, 2020 and 2023

## History behind original TRIA legislation

Faced with enormous losses resulting from the September 11, 2001 terrorist attacks on the United States and because they felt unable to adequately price terrorist risk, most reinsurers withdrew from or severely limited the market for terrorism insurance.

As a result, terrorism risk insurance became unavailable or extremely expensive and many businesses could no longer find or afford such coverage. The lack of such coverage had an immediate and tremendously adverse effect on many sectors of the economy, particularly those that require substantial, long-term investments such as the real estate, construction, utilities, energy and transportation sectors. Businesses were reluctant to undertake long-term, sizable investments without the assurance that they could protect themselves through insurance against the risk of terrorism.

## Arguments for and against TRIA's reauthorization

TRIA was first enacted by the Congress in November 2002 (P.L.107-297) as a three-year program to provide a government reinsurance backstop in the event of a terrorist attack given the inability or unwillingness of private reinsurers to do so. When TRIA was first enacted, it was characterized as a "temporary" intervention by the Federal government to provide reinsurance while private reinsurers restored their capacity and their willingness to provide such reinsurance coverage.

Many Republicans take the position that private reinsurers have restored much of their willingness and capacity to offer terrorism reinsurance and that the continued existence of the TRIA program itself stands in the way of the ability of the private reinsurance market to flourish. They argue that, while many Democrats said that TRIA should be a "temporary" program, Democrats by and large are viewing TRIA as if it should be permanent.

In contrast, most Democrats and some Republicans say that while reinsurers and insurers have improved their ability to estimate the potential range of damages from a terrorist attack, they have no real ability to assess or determine the likelihood of such an attack. TRIA's supporters argue that, while the private reinsurance market is improving slowly, terrorism risk still cannot adequately be priced by the private sector, and private reinsurers continue to lack the capacity to provide enough coverage to ensure that terrorism risk insurance is available on reasonably affordable terms to all businesses that seek it. Thus, they argue that, while the private reinsurance market continues to improve, another "temporary" reauthorization of TRIA is essential to maintaining business confidence and avoiding a severe downturn in the economy.

## The current congressional landscape re: TRIA reauthorization

### Skepticism by House Republicans

There have been several Congressional hearings in the past year on TRIA reauthorization including Senate Banking Committee hearings on February 25, 2014 and September 25, 2013, a full Financial Services Committee hearing on September 19, 2013 and a Financial Services Committee Housing and Insurance Subcommittee hearing on November 13, 2013.

Financial Services Committee Chairman Jeb Hensarling (R-TX) has expressed great skepticism about the wisdom of extending the TRIA program and some Congressional Republicans appear to oppose any extension of the TRIA program. In his opening statement at the September 19, 2013 hearing, Hensarling stated: "Although I was not personally here in 2002, I know that the original purpose of the TRIA bill when it came out of committee was to 'create a temporary industry risk spreading program for foreign acts of terrorism' and 'facilitate a transition to a viable market for private terrorism risk insurance.'

"At the time it was a thought that originally the TRIA act would give the insurance industry time to re-capitalize and

develop new models that they could price for terrorism risks and increase industry capacity. Three years later in 2005 Congress decided to make TRIA a little less temporary and extended it for two years. In 2007, Congress was back again to stretch the boundaries of modern linguistics by extending TRIA temporarily for seven additional years and expanding it to cover any acts of terrorism, foreign or domestic. So we all must recognize that in just five years TRIA has leapt in scope and quadrupled in length, neither of which I think could be mistaken for facilitating a transition to a viable market for private terrorism risk insurance.

"I think this begs a number of questions that I hope will be addressed ... What does constitute a temporary program? And I'm not sure how many of us actually have faith in an ex-ante recovery scheme of funds, so it begs the question -- if premiums are not gathered, is this truly an insurance program? Is it temporary?"

## Request for GAO report

Similarly, in a March 13, 2014 letter to the Government Accountability Office, Housing Subcommittee Ranking Member Randy Neugebauer (R-TX) and Congressman Ed Royce (R-CA) asked the GAO for an oral status report by April 15 and a completed written report by May 15 on the costs and benefits of the TRIA and the potential impact of not reauthorizing the law. Noting that the price of terrorism insurance had declined 70 percent since the September 11th attacks and that the availability of terrorism insurance has increased, Neugebauer and Royce argue that "As availability of terrorism insurance coverage has improved, so too has reinsurance capacity and the ability of insurers to price the risks." Neugebauer-Royce Letter

Thus, given the skepticism of many Congressional Republicans about, and in some cases their hostility to, an extension of the TRIA program, it seems clear that the primary impetus for any TRIA reauthorization is likely to come from the Senate where Senate Democrats on the Banking Committee by and large are very supportive of the TRIA program and where some Senate Republicans, such as Senator Mark Kirk of Illinois and Dean Heller of Nevada are also supportive. December 16, 2013 Kirk-Heller letter supporting a TRIA reauthorization. Accordingly, today's introduction of the senators' TRIA extension bill is an important development.

When the senators introduced their bill, they noted their interest in proceeding promptly with a reauthorization of the TRIA program. There are some indications that they may be seeking a Banking Committee markup of their TRIA bill shortly after the Committee's scheduled April 29th markup of the Johnson/Crapo GSE reform bill concludes. We will continue to provide TRIA reauthorization updates as developments warrant.

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