OECD INTERNATIONAL PLATFORM ON
TERRORISM RISK INSURANCE

# UNITED STATES — TERRORISM RISK INSURANCE PROGRAM

**Name of programme**

Terrorism Risk Insurance Program (TRIP)

**Date of establishment**

November 26, 2002

**Basic structure**

Coverage features of TRIP include:

- The Secretary of the Treasury (Secretary), in consultation with the Attorney General of the United States and Secretary of Homeland Security, may certify an event as an act of terrorism.
- No event may be certified as an act of terrorism unless commercial property and casualty insurance losses resulting from the act of terrorism exceed $5 million.
- No payments shall be made under TRIP unless the aggregate insured losses from one or more certified acts of terrorism exceed a minimum threshold, commonly referred to as the "Program Trigger." The Program Trigger is $100 million for losses occurring in 2015, and it increases by $20 million for each of the next five calendar years until it reaches $200 million in 2020 and thereafter.
- To be eligible to receive reimbursement payments, an insurer must absorb a deductible equal to 20% of its direct earned premiums on TRIP-eligible lines of business for the prior calendar year.
- If aggregate insured losses resulting from one or more Acts exceed the Program Trigger, in 2015 the U.S. Treasury will reimburse 85% of the insured loss in excess of each insurer's deductible, except that the U.S. Treasury may not make any payment for any portion of aggregate insured losses that exceeds $100 billion during a calendar year. Beginning in 2016, the 85% government share decreases by one percentage point per year until it reaches 80% for 2020 and thereafter.

In some instances, the Terrorism Risk Insurance Act of 2002 (TRIA, P.L. 107-297, 116 Stat. 2322), as amended, which establishes TRIP, requires the Secretary to recoup some or all of the government share of losses paid under the program. The Secretary also has discretion in some instances to require recoupment. All commercial insurers are required to contribute to recoupment through terrorism loss risk-spreading premiums funded by surcharges on TRIP-eligible business.

## Terrorism Risk Insurance Program

### History and Purpose

Prior to September 11, 2001, insurance for losses resulting from acts of terrorism was generally included in policies without a specific cost to policyholders. Following September 11, 2001, insurers and reinsurers largely refused to offer coverage for terrorism risk or significantly escalated premiums associated with such coverage. TRIA was enacted with the recognition that the widespread unavailability of terrorism insurance could hamper construction projects, increase rents, and otherwise suppress economic activity.

TRIA was enacted on November 26, 2002 in order to:

- Protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and
- Allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving state insurance regulation and consumer protections.

TRIA requires a participating insurer to make insurance available for losses resulting from acts of terrorism, and provides a federal government backstop for the insurer's resulting financial exposures. The Secretary of the Department of the Treasury, with the assistance of the Federal Insurance Office, administers TRIP. Only the Secretary (in consultation with two other cabinet-level officials) may certify an act as an act of terrorism. In such instances, the Secretary shall reimburse insurers for a federal share of compensation for insured losses from certified acts of terrorism. TRIA requires insurers of certain commercial lines to participate in TRIP.

Although TRIP was originally set to expire on December 31, 2005, it has been extended in 2005, 2007, and most recently in 2015. Through the legislative extensions, the federal share of compensation has been reduced while the definition of an act of terrorism has been expanded to provide compensation for domestic acts of terrorism, among other amendments. TRIP is currently set to expire on December 31, 2020.

### Insured Losses by Acts of Terrorism (period 1971-2016)

Estimates of insured losses from the attacks on September 11, 2001 are around $40 billion in current dollars, the largest losses from a non-natural disaster on record. These insured losses were concentrated in business interruption insurance (33% of the losses), property insurance (30%), and liability insurance (23%).

No event has been certified as an "act of terrorism" under TRIA.

### Definitions of Certain Terms

<u>Act of Terrorism</u> – For an event to be covered under TRIA, it must be certified by the Secretary of the Treasury, in consultation with the Attorney General of the United States and the Secretary of Homeland Security –

- To be an act of terrorism;
- To be a violent act that is dangerous to human life, property, or infrastructure;
- To have resulted in damage within the United States;
- To have been committed by an individual or individuals as part of an effort to coerce the U.S. civilian population or influence U.S. government policy or conduct through coercion.

Any certification of an act of terrorism is final and not subject to judicial review. The Secretary may not delegate to any other person the determination of whether an act of terrorism has occurred.

Certification Limitations – No act shall be certified as an act of terrorism if – (a) the act is committed as part of the course of a war declared by the Congress, except with respect to any coverage for workers' compensation; or (b) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5 million.

Insurer Deductible – The value of an insurer's direct earned premiums for the TRIP- eligible lines of insurance during the immediately preceding calendar year, multiplied by 20%.

Covered Lines of Insurance – TRIP-eligible lines of insurance consist of certain commercial lines of property and casualty insurance. Under the implementing regulation, such commercial lines of insurance include excess insurance, workers' compensation, directors and officers liability insurance, and commercial insurance within the following lines:

- Fire and allied lines,
- Commercial multiple peril (liability and non-liability portions),
- Ocean marine,
- Inland marine,
- Other liability,
- Products liability,
- Aircraft (all perils), and
- Boiler and machinery.

**Operation of TRIP**

The coverage features of TRIP include:

- Certification: The Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the Attorney General, is charged with determining whether an event may be certified as an act of terrorism. No event may be certified as an act of terrorism unless property and casualty insurance losses resulting from the act of terrorism exceed $5 million.
- Program Trigger: No payments shall be made under TRIP unless the aggregate insured losses from one or more acts of terrorism exceed the Program Trigger. The Program Trigger is $100 million for insured losses occurring in 2015, and it increases by $20 million for each of the next five calendar years until it reaches $200 million in 2020.
- Insurer Deductible: Prior to receiving payments, an insurer must pay a deductible with respect to insured losses during a calendar year that equals 20% of its direct earned premiums on TRIP-eligible lines of business for the prior calendar year.
- Federal Share: If aggregate insured losses resulting from one or more acts of terrorism exceed the Program Trigger, the U.S. Treasury will reimburse 85% of the insured loss in excess of an insurer's deductible. The federal share will decrease by 1% each calendar year beginning on January 1, 2016 until the federal share reaches 20% in 2020 and thereafter.
- Cap on Annual Liability: If during a calendar year aggregate insured losses exceed $100 billion, neither the Treasury nor an insurer that has met its deductible shall be liable for any amount of losses that exceeds $100 billion.
- Recoupment: In general, the Secretary's recoupment of some or all government payments for losses following an act of terrorism is mandatory or discretionary depending on the extent of insurers' losses.

## Exclusions

The TRIP regulation lists the following lines of business as not falling within the scope of TRIP-eligible lines.

- Federal crop insurance issued or reinsured under the Federal Crop Insurance Act, or any other type of crop or livestock insurance that is privately issued or reinsured;
- Private mortgage insurance or title insurance;
- Financial guaranty insurance issued by monoline financial guaranty insurance corporations;
- Insurance for medical malpractice;
- Health or life insurance, including group life insurance;
- Flood insurance provided under the National Flood Insurance Act of 1968 or earthquake insurance;
- Reinsurance or retrocessional reinsurance;
- Commercial automobile insurance;
- Burglary and theft insurance;
- Surety insurance;
- Professional liability insurance; and
- Farmowners multiple peril insurance.

TRIA does not address NBCR or cyber events. Coverage under TRIA is based on the insurance line of business rather than the peril.

## Extent of Compulsion & Choice

TRIA requires an insurer offering certain lines of commercial property and casualty insurance to make insurance for terrorism risk available and to participate in TRIP. Under TRIA, each entity that meets the definition of an insurer must make available coverage for insured losses resulting from certified acts of terrorism that does not differ materially from the terms and amounts applicable to losses arising from other events.

In 2016, the Department of the Treasury found that insurance for terrorism risk currently is available and affordable. Take-up rates (i.e. the percentage of policyholders that purchase coverage for terrorism risk) have improved since the enactment of TRIA and are roughly stable at 60 percent in the aggregate. When measured by premiums, take-up rates may be closer to approximately 70 percent. The Department of the Treasury's report on the effectiveness of TRIP, based upon 2015 data collected by Treasury, is found at https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/2016_TRIP_Effectiveness_%20Report_FINAL.pdf.

## Period of Operation

TRIA was enacted, and TRIP created thereunder, in November 2002, originally for a period of three years. TRIP was amended and extended in 2005, 2007, and again in 2015. Following the 2015 reauthorization, TRIP is set to expire on December 31, 2020.

## Main features

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| **Layers of coverage** | TRIP consists of a single layer of coverage that attaches above the Program Trigger after an insurer's deductible has been satisfied, up to $100 billion aggregate loss (combined government and private shares). |

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| **Limitation of exposure of private sector** | If during a calendar year aggregate insured losses exceed $100 billion, neither Treasury nor an insurer that has met its deductible shall be liable for any amount of losses that exceeds $100 billion. In general, recoupment of federal outlays under TRIP is discretionary or mandatory depending on the amount of insured losses. |
| **Temporary /permanent government participation** | TRIP was amended and extended in 2005, 2007, and 2015. Following the 2015 authorization, TRIP is set to expire at the end of 2020. |
| **Extent of government coverage** | The federal share of compensation is 85% of the insured loss in excess of an insurer's deductible up to $100 billion. The federal share will decrease by 1% each calendar year beginning on January 1, 2016 until the federal share reaches 20% in 2020. |
| **Voluntary / mandatory** | Every insurer that writes TRIP-eligible lines of business must make available terrorism risk insurance under terms and conditions that do not differ materially from those applicable to losses arising from events other than acts of terrorism. |
| **Minimum sum insured** | No payment shall be made by Treasury unless aggregate insured losses from certified acts of terrorism in a calendar year exceed the Program Trigger. The Program Trigger is $100 million for losses occurring in 2015, and it will increase by $20 million each of the next five years until the amount reaches $200 million. |
| **Coverage of NBCR terrorist attacks** | TRIA, as amended, does not specifically address losses resulting from NBCR acts of terrorism (or from any other peril). TRIP covers insured losses from an "act of terrorism" due to a NBCR event to the same extent TRIP would cover losses from acts of terrorism by conventional means. Most TRIP-eligible insurance policies exclude losses resulting from NBCR events, regardless of whether the loss may be due to terrorism. If these exclusions are invoked, they would limit insurance coverage of such losses and thus also limit reimbursement payments by Treasury under TRIP. Many insurance policies with NBCR exclusions, however, do not exclude coverage for fire following, and workers' compensation insurance policies do not exclude NBCR losses. |
| **Lines covered** | TRIP-eligible lines of insurance consist of certain commercial lines of property and casualty insurance. Under the implementing regulation, such commercial lines of insurance include excess insurance, workers' compensation, directors and officers liability insurance, and commercial insurance within the following lines:<br>• Fire and allied lines,<br>• Commercial multiple peril (liability and non-liability portions),<br>• Ocean marine,<br>• Inland marine,<br>• Other liability,<br>• Products liability,<br>• Aircraft (all perils), and<br>• Boiler and machinery. |
| **Pricing mechanism** | TRIP is not pre-funded by premiums, but instead provides Treasury, in some instances, the authority to recoup some or all of the government's share of losses paid under TRIP. The Secretary also has discretion in some instances to require recoupment. All commercial insurers are required to contribute to recoupment through terrorism loss risk-spreading premiums funded by surcharges on TRIP-eligible business. |

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| **Other public sector victims compensation schemes** | The closest previous analogy to the situation with terrorism risk may be the federal riot reinsurance program created in the late 1960s. Following riots in American cities in the late 1960s, insurers generally pulled back from insuring in those markets, either adding policy exclusions to limit exposure to damage from riots or ceasing to offer property damage insurance altogether. In response, Congress created a riot reinsurance program as part of the Housing and Urban Development Act of 1968. The federal riot reinsurance program offered reinsurance contracts similar to commercial excess reinsurance. The government agreed to reimburse a percentage of an insurance company's covered losses above a certain deductible in exchange for a premium paid by that insurance company. Private reinsurers eventually returned to the market and the federal riot reinsurance program was terminated in 1985. |

## News releases

U.S. Department of the Treasury – Terrorism Risk Insurance Program, http://www.treasury.gov/about/organizational-structure/offices/Pages/Terrorism-Risk-Insurance-Program.aspx