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TERRORISM RISK INSURANCE PROGRAM

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HISTORY AND REAUTHORIZATIONS

Since its creation in 2002, the federal Terrorism Risk Insurance Program has been reauthorized three times, most recently in 2015. The program is currently authorized until December 31, 2020.

- 2002 - Terrorism Risk Insurance Act (TRIA)
- 2005 - Terrorism Risk Insurance Extension Act (TRIEA)
- 2007 - Terrorism Risk Insurance Program Reauthorization Act (TRIPRA 2007)
- 2015 - Terrorism Risk Insurance Program Reauthorization Act (TRIPRA 2015)

ISSUE

Explain the federal Terrorism Risk Insurance Program (TRIP), as updated by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA 2015, P.L. 114-1, codified at 15 U.S.C. 6701 note). This report updates OLR Report 2004-R-0072.

SUMMARY

TRIP is a public/private risk-sharing program created by the federal Terrorism Risk Insurance Act (TRIA), and updated most recently by TRIPRA 2015.

Under TRIA and its subsequent reauthorizations, the federal government assists private insurers in compensating insureds for losses resulting from acts of terrorism. In order for an insurer to receive this assistance (1) an act of terror must be certified and cause a minimum amount of insured losses and (2) insurers must pay a deductible. The federal government then pays a percentage of insured losses, up to a maximum limit. In 2020, the final year of the program, the federal government will be required to pay 80% of insured losses above an insurer's deductible and below the maximum limit.

Federal law also requires certain insurers to make terrorism coverage available on property and casualty policies on generally the same terms and conditions of other coverage available to insureds under these policies (15 U.S.C. 6701 note § 103(c)).

CERTIFIED ACTS OF TERRORISM AND MINIMUM DAMAGE LEVELS

Federal law requires an act of terrorism to be "certified" before any TRIP funds may be used to reimburse insurers or insureds for covered losses. An act of terrorism is certified as such if the U.S. Treasury Secretary, in consultation with the Secretary of Homeland Security and the U.S. Attorney General, certify the act

1. was an act of terrorism;
2. was violent or dangerous to human life, property, or infrastructure;
3. resulted in damage within the United States (or outside the United States in the case of certain air carriers, vessels, or U.S. missions); and
4. was committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or coerce the conduct of the United States government (15 U.S.C. 6701 note § 102).

With certain exceptions, an event will not be certified as an act of terrorism if

1. it is committed in the course of a war declared by Congress or
2. property and casualty insurance losses resulting from the event do not exceed $5 million in the aggregate (15 U.S.C. 6701 note § 102).

Non-certified losses are acts of terrorism that are not certified under TRIP, such as violent acts not intended to coerce the federal government or the civilian population or that do not cause more than $5 million in aggregate damage. For example, according to the Insurance Journal, the 2013 Boston Marathon bombing did not cause more than $5 million in aggregate damage, and was thus not a certified act of terrorism under TRIP, even though many referred to it as an "act of terrorism."

TRIPRA 2015 LOSS SHARING

Two primary criteria must be met before federal assistance to insurers becomes available: (1) the act must meet a certain threshold of aggregate damage, known as a minimum loss trigger or program trigger, and (2) the insurer must pay a deductible. After these criteria are satisfied, the federal government covers a percentage of insured losses up to $100 billion.

Minimum Loss Trigger

A certified act of terrorism must cause more than $140 million in aggregate damage for insurers to be eligible for federal assistance. Under TRIPRA 2015, this amount increases incrementally each year to $200 million in 2020 (see Table 1).

Table 1: Minimum Loss Trigger, 2015-2020

Year	*Minimum Loss Trigger (millions)*
2015	$100
2016	120
2017	140
2018	160
2019	180
2020	200

Source: 15 U.S.C. 6701 note § 103(e)(1)(B).

Insurer Deductibles

Once a certified act of terrorism meets the minimum loss trigger, an insurer must pay a certain amount of its claims, called a deductible, equal to 20% of its direct earned premiums in the previous calendar year (15 U.S.C. 6701 note § 102(7)).

Federal Assistance

After an insurer pays its deductible, federal assistance becomes available. This assistance is known as the federal loss share, which is the percentage of covered losses above an insurer's deductible that the government pays. For example, the federal government will pay 83% of an insurer's losses above its deductible in 2017, and the insurer pays the remaining 17% (see Table 2). The insurer share is called a copay.

Table 2: Federal Loss Share, 2015-2020

Year	*Federal Loss Share (%)*
2015	85
2016	84
2017	83
2018	82
2019	81
2020	80

Source: 15 U.S.C. 6701 note § 102(e)(1)(a).

Aggregate Retention Amounts and the Federal Liability Maximum

Federal law requires insurers to compensate insureds for certified losses up to an industry total of $33.5 billion in 2017. This amount, known as the aggregate retention amount, includes all deductibles and copays paid by insurers. It increases from $29.5 billion in 2015 to the average of insurers' deductibles over the past 3 years as determined by the Treasury Secretary (estimated by the Congressional Budget Office to be as high as $50 billion)(see Table 3).

Table 3: Aggregate Retention Amount, 2015-2020

Year	*Aggregate Retention Amount (billions)*
2015	$29.5
2016	31.5
2017	33.5
2018	35.5
2019	37.5
2020	Average of insurers' deductibles over the previous 3 years

Source: 15 U.S.C. 6701 note § 103(e)(6).

Aggregate losses above $100 billion are uninsured. Under TRIPRA 2015 (1) the federal government does not pay any portion of losses that exceed that amount and (2) insurers that have met their deductibles are not required to pay for any portion of losses above that amount (15 U.S.C. 6701 note § 103(e)(2)).

Federal Recoupment and Terrorism Loss Risk-Spreading Premiums

TRIPRA 2015 allows, and in certain circumstances requires, the federal government to recoup money it pays out after a certified act of terrorism of sufficient magnitude occurs. The federal government recoups this money by imposing a mandatory Terrorism Loss Risk Spreading premium (i.e., a policy surcharge) on each eligible commercial property and casualty insurance policy.

Recoupment is determined by aggregate retention amounts. If total industry insured losses are less than or equal to the aggregate retention amount, the federal government recoups 140% of the difference between the insurance industry's total insured losses and its total payments, including deductibles and copays (15 U.S.C. 6701 note § 103(e)(7)(A)).

If total insured losses are greater than the aggregate retention amount, the federal government may, at the Treasury Secretary's discretion, recoup money paid above the aggregate retention amount (15 U.S.C. 6701 note § 103(e)(7)(D)).

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