

# FIO FOCUS

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*Devoted to exploring the progress of the modernization of the insurance industry, FIO Focus provides information and insights about the organizations and issues that are driving change and influencing the future of the industry.*

## **Senate Hearing on the Terrorism Risk Insurance Act (TRIA)**

On February 25, 2014, the Senate Committee on Banking, Housing and Urban Affairs held a hearing on “Reauthorizing TRIA: The State of the Terrorism Risk Insurance Market, Part II.” Part I of the hearing was held on September 25, 2013. FIO Focus [Issue 6](#) provides an overview of the Terrorism Risk Insurance Program (Program).

Testimony was provided by a panel consisting of:

- W. Edward Walter, President and CEO, Host Hotels & Resorts, on behalf of the Coalition to Insure Against Terrorism
- Carolyn Snow, President, Risk and Insurance Managements Society
- Bill Henry, CEO, McQuerry, Henry Bowles and Troy, on behalf of the Council of Insurance Agents & Brokers
- Vincent T. Donnelly, President and CEO, PMA Insurance Group, on behalf of the Property Casualty Insurers Association of America
- Warren W. Heck, CEO and Chairman of the Board, Greater New York Insurance Companies, on behalf of the National Association of Mutual Insurance Companies
- Douglas G. Elliot, President of Commercial Markets, The Hartford, on behalf of the American Insurance Association

## **Highlights from the Hearing**

Senator Tim Johnson (D-SD) asked the panel if the Terrorism Risk Insurance Act (TRIA) should be extended for “a long period” of time. Members of the panel suggested that TRIA should be extended for at least 7 or 10 years. There was also strong support for making TRIA permanent. It was suggested that the long-term extension of TRIA would encourage real estate investment by ensuring that terrorism coverage would be available throughout the period of financing and/or ownership of a property.

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Senator Tom Coburn (R-OK), quoting the original TRIA legislation which stated that the Program was temporary to stabilize the insurance market following the September 11th attacks, asked whether the private market would ever be able to insure terrorism risk. The panel responded that terrorism is not insurable because losses caused by terrorism are not predictable and there is not sufficient empirical data to appropriately price terrorism risk. A panel member also noted that even with TRIA, insurers have a lot of capital at risk currently covering terrorism risk.

Senator Dean Heller (R-NV) asked about adding language into TRIA to specify that losses caused by a cyber attack would be covered. A member of the panel explained that, to the extent a policy covers cyber liability, cyber terrorism is covered by TRIA. Another panelist said that TRIA should not be amended to mandate coverage for losses caused by cyber terrorism; cyber protection should remain a voluntary coverage.

Senator Elizabeth Warren (D-MA) asked why the government should not charge a “modest fee” (a premium) for back-up coverage provided by the Program. The panel explained that a fee for participating in TRIA would increase the cost of coverage and potentially lower policyholder participation. Senator Warren expressed concern that insurers are not pricing for risks retained by the government. Members of the panel said that it would be difficult – if not impossible – to properly price the tail-end risk associated with terrorism coverage covered by TRIA. Instead, they said, taxpayers are fully protected by the Treasury’s authority to recoup up to 133% of the payouts under TRIA after any covered event.

## **Potential TRIA Reforms**

Potential reforms to the Program were discussed, including:

- The inclusion of specific language to ensure coverage in the case of a terrorist attack involving nuclear, biological, chemical or radiological weapons;
- Streamlining the process for certifying an act of terrorism under TRIA, including consolidating the certification process into one office or department and/or creating a timeline or deadline for a certification decision;
- Removing the Treasury Secretary’s discretion regarding whether to recoup government losses that exceed \$27.5 billion;
- Increasing the insurers’ deductible or copay; or
- Raising TRIA’s trigger beyond \$100 million.

The general consensus among panel members was that any increase in the deductible or copay, and any increase in the trigger, would result in higher premium costs to insureds with little or no additional protection for taxpayers.

## **Additional Comments and Discussions**

There was agreement among the panel members that was shared generally by senators on the committee, that TRIA has been an unqualified success, making private terrorism risk insurance widely available and reasonably priced, while limiting the government’s financial exposure to terrorism risk. After the September 11 attacks, the government paid more than \$20 billion dollars to cover uninsured terrorism losses.

If TRIA is not renewed, the construction will slow down as lenders decline to finance projects for which terrorism coverage is unavailable. There may also be an increase in lender instigated defaults as companies breach lending agreements that require them to maintain terrorism coverage.

Increasing TRIA's triggers, deductibles or copay may lead smaller insurers to withdraw from the property insurance market. The result may be a decrease in the overall capacity available for terrorism coverage, as an estimated half of all terrorism risk coverage is written by small and medium-sized insurers.

Failure of Congress to move quickly to reauthorize TRIA will depress the construction and mortgage finance industries, a process that has already begun because insurance contracts are being negotiated and/or written now for 2015, without the benefit of TRIA.

Senator Johnson stated that the committee is going to be moving "forward with a bill to extend TRIA in short order." Senator Bob Corker (R-TN) explained that Congress should "get on with it." Senator Mark Warner (D-VA) argued that Congress should first address the Government Sponsored-Enterprises (GSE) of Fannie Mae and Freddie Mac prior to addressing TRIA. FIO Focus [Issue 34](#) addresses TRIA renewal legislation introduced in the U.S. House of Representatives.

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## FIO Resource Team

**Michael R. Nelson**  
212-233-6251  
[mnelson@nldhlaw.com](mailto:mnelson@nldhlaw.com)

**Matthew S. Vuolo**  
646-291-8040  
[mvuolo@nldhlaw.com](mailto:mvuolo@nldhlaw.com)

**Benjamin C. Chynsky**  
212-233-2974  
[bchynsky@nldhlaw.com](mailto:bchynsky@nldhlaw.com)

**Maureen E. Adolf**  
(Non-lawyer consultant)  
646-405-7596  
[madolf@nldhlaw.com](mailto:madolf@nldhlaw.com)

**Susan T. Stead**  
614-456-1628  
[sstead@nldhlaw.com](mailto:sstead@nldhlaw.com)

**Molly E. Lang**  
614-456-1634  
[mlang@nldhlaw.com](mailto:mlang@nldhlaw.com)

**Jason M. Kurtz**  
212-233-2633  
[jkurtz@nldhlaw.com](mailto:jkurtz@nldhlaw.com)

**Lawrence H. Mirel**  
202-621-1842  
[lmirel@nldhlaw.com](mailto:lmirel@nldhlaw.com)

**Thomas W. Dietrich**  
614-456-1626  
[tdietrich@nldhlaw.com](mailto:tdietrich@nldhlaw.com)

**Scott G. Paris**  
212-233-2716  
[sparis@nldhlaw.com](mailto:sparis@nldhlaw.com)

