

DEPARTMENT OF THE TREASURY

Analysis by the President's Working Group on Financial Markets on the long-term availability and affordability of insurance for terrorism risk.

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice; request for comments.

SUMMARY: The Terrorism Risk Insurance Extension Act of 2005 requires the President's Working Group on Financial Markets to perform an analysis regarding the long-term availability and affordability of insurance for terrorism risk, including group life coverage and coverage for chemical, nuclear, biological, and radiological events.

As chair of the President's Working Group, Treasury is issuing this notice seeking public comment to assist the President's Working Group in its analysis.

DATES: Comments must be in writing and received by [INSERT DATE THAT IS 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please submit comments (if hard copy, preferably an original and two copies) to Treasury's Office of Financial Institutions Policy, Attention: President's Working Group on Financial Markets Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Because postal mail may be subject to processing delay, we recommend that comments

be submitted by electronic mail to: PWGComments@do.treas.gov. All comments should be captioned with "President's Working Group on Financial Markets: Terrorism Risk Insurance Analysis." Please include your name, affiliation, address, e-mail address and telephone number(s) in your comment. Where appropriate, comments should include a short Executive Summary (no more than five single-spaced pages). All comments received will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, please call one of the numbers below.

FOR FURTHER INFORMATION CONTACT: C. Christopher Ledoux, Senior Policy Analyst, Office of Financial Institutions Policy, 202-622-6813; or Mario Ugoletti, Director, Office of Financial Institutions Policy, 202-622- 2730 (not toll free numbers).

SUPPLEMENTARY INFORMATION: On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297, 116 Stat. 2322) (hereinafter referenced as "TRIA"). TRIA's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving state insurance regulation and consumer protections. Title I of TRIA established a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, as defined in the Act. TRIA authorized Treasury to administer and implement the Terrorism Risk Insurance Program (Program),

including the issuance of regulations and procedures. As originally enacted, the Program was to end on December 31, 2005.

Congress subsequently approved and on December 22, 2005, the President signed into law the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109-144, 119 Stat. 2660) (the Extension Act). The Extension Act continued the Program for two years until December 31, 2007, revised several structural aspects of the Program, and required an analysis of the availability and affordability of terrorism risk insurance. Specifically, the Extension Act amended Section 108 of TRIA to require the President's Working Group on Financial Markets,¹ in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders, to perform an analysis regarding the long-term availability and affordability of insurance for terrorism risk, including group life coverage and coverage for chemical, nuclear, biological, and radiological events. This Notice seeks comment from these and any other interested parties as a means of satisfying the consultation requirement in the most open and efficient manner. TRIA, as amended by the Extension Act, requires the President's Working Group on Financial Markets to submit a report to Congress on its findings no later than September 30, 2006.

Treasury, on behalf of the President's Working Group, is soliciting comments, including empirical data and other information in support of such comments, where appropriate and available, regarding the long-term availability and affordability of

¹ The President's Working Group on Financial Markets (established by Executive Order 12631) is comprised of the Secretary of the Treasury (who serves as its Chairman), the Chairman of the Federal Reserve Board, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission.

insurance for terrorism risk, including terrorism risk insurance coverage for group life and for chemical, nuclear, biological, and radiological events. We request that submitters distinguish between risk from foreign and domestic terrorism in their comments. In addition, we seek and solicit comment in response to the following specific questions:

I. Long-term Availability and Affordability of Terrorism Risk Insurance

1.1 In the long-term, what are the key factors that will determine the availability and affordability of terrorism risk insurance coverage? How can these factors be measured and projected?

1.2 What improvements have taken place in the ability of insurers to measure and manage their accumulation of terrorism risk exposures? How will this evolve in the long-term?

1.3 What improvements have taken place in the ability of insurers to price terrorism risk insurance, including in the development and use of modeling? How will this evolve in the long-term?

1.4 How, if at all, were primary insurers' pricing decisions affected by the anticipated expiration of TRIA at the end of 2005, particularly for insurance policies extending into 2006 that cover terrorism risk? What role did the pricing and availability of reinsurance play in those decisions?

1.5 What role do mitigation efforts related to terrorism risk play in an insurer's underwriting and pricing decisions? How will this evolve in the long-term?

1.6 What is the current availability of reinsurance to cover terrorism risk? Please distinguish by line or type of insurance being reinsured and on what basis (treaty or facultative). How will this evolve in the long-term?

1.7 At what policyholder retention levels are insurance programs being structured to cover terrorism risk; and, with regard to insurers, how are reinsurance programs likewise being structured? Please comment on the availability and affordability at each level.

1.8 In the long-term, what are the key factors that will determine the amount of private-market insurer and reinsurer capacity available for terrorism risk insurance coverage? How will this evolve in the long-term? Please comment on potential entry of new capital into insurance markets.

1.9 To what extent have alternate risk transfer methods (*e.g.*, catastrophe bonds or other capital market instruments) been used for terrorism risk insurance, and what is the potential for the long-term development of these products?

1.10 To what extent have captive insurance companies been used for terrorism risk insurance, and what is the potential for the use of captive insurers to insure against such risk long-term?

1.11 Have state approaches made coverage more or less available and affordable, such as through permitted exclusions and rate regulation? To what extent will the long-term availability and affordability of terrorism risk insurance be influenced by state insurance regulation? Please comment on state approaches to ensure the continued availability and

affordability of terrorism risk insurance in the absence of the TRIA Program being in place (include state approaches after September 11, 2001 and before TRIA became law on November 24, 2002, as well as state approaches in preparation for the expiration of the TRIA Program).

1.12 What are the differences in availability and affordability of terrorism risk insurance between the licensed/admitted market and the non-admitted/surplus lines market, and, if so, to what degree are those changes attributable to the degree and manner in which each market is regulated?

1.13 What are the differences in availability and affordability of terrorism risk insurance coverage for losses at US locations as compared to such coverage for losses at non-US locations?

II. Long-term Availability and Affordability of Group Life Insurance Coverage

2.1 What impact, if any, does terrorism risk have on the availability and affordability of group life insurance coverage to the policy holder (*e.g.*, employer) and certificate holders (*e.g.*, employees)? How will this evolve in the long-term?

2.2 To what extent is an insurer's decision to issue group life coverage influenced by aggregation or accumulation risk in certain locations? What steps have group life insurance providers taken or do they plan to take to offset any aggregation or accumulation risk?

2.3 Has terrorism risk made group life coverage less affordable to the policy or certificate holder? Have group life insurance rates increased or decreased as compared to rates before and since September 11, 2001?

2.4 Please explain how group life insurance coverage may be bundled with other coverages and benefits provided through an employee-benefits program, and how group life coverage is priced, either separately or collectively, through such programs. Please describe any effects competition has on such pricing.

2.5 Are group life providers voluntarily providing coverage for loss of life arising out of or resulting from acts of terrorism, or is coverage mandated by any state or federal laws? Are group life providers prohibited by law from excluding terrorism risk from group life insurance policies?

2.6 Has terrorism risk affected segments of the group life market differently, such as in the case of small/medium sized employers, and if so, why?

2.7 In the long-term, what are the key factors that will determine the availability and affordability of terrorism risk insurance coverage for group life insurance?

III. Long-Term Availability and Affordability of Insurance Coverage for Chemical, Nuclear, Biological, and Radiological (CNBR)² Events caused by Terrorism

3.1 What is the current availability and affordability of coverage for CNBR events, and for what perils is coverage available, subject to what limits, and under what policy

² Though CNBR is commonly used to refer collectively to chemical, nuclear, biological, and radiological losses, comments can be narrow in addressing any of the coverages. If the comment makes such a distinction, please make clear which coverage is being addressed.

terms and conditions? Is there a difference in the availability and affordability of coverage for CNBR events caused by acts of terrorism?

3.2 What was the general availability of coverage for CNBR events prior to the terrorist attack of September 11, 2001? To what extent, subject to what limits, and for what perils was coverage available? Did it cover acts of terrorism?

3.3 If coverage for CNBR events caused by acts of terrorism is available, please describe generally to what extent (*i.e.*, limits, locations, exclusions, *etc.*) for what kinds of insurance and from what types of insurers (*i.e.*, large/ small, admitted/surplus lines, *etc.*). How will this evolve in the long-term?

3.4 To what extent is terrorism risk coverage available and affordable for nuclear facilities and for chemical plants, manufacturers, and industrial chemical users?

3.5 To what extent, both prior to and since September 11, 2001, have various states allowed insurers to exclude coverage for CNBR events? Please comment on requirements for workers' compensation and fire-following coverage.

3.6 It appears that some insurers are unwilling to provide coverage for CNBR events caused by acts of terrorism even with the federal loss sharing provided by the TRIA Program. Why would this be the case given that TRIA limits an insurer's maximum loss exposure?

3.7 In the long-term, what are the key factors that will determine the availability and affordability of terrorism risk insurance coverage for CNBR events?

Dated:

Emil W. Henry, Jr.
Assistant Secretary of the Treasury