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April 15, 2016

Richard A. Ifft
Federal Insurance Office
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

RE: FR Docket No: 2016-06795
2016 Report on the Terrorism Risk Insurance Program

Dear Mr. Ifft:

The National Association of Mutual Insurance Companies (NAMIC) is pleased to respond to the Federal Insurance Office's (FIO) request for public comment on the statutory factors that the Terrorism Risk Insurance Program (TRIP) Office is required to analyze and other related matters. NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 40 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies serve more than 170 million policyholders and write nearly $225 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 32 percent of the business insurance markets.

Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

**Background**

Section 111 of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (Reauthorization Act) requires the Secretary to submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on, among other things, the impact and effectiveness of TRIP. The report must also include an evaluation of information that is being separately collected by Treasury, including certain data appropriate for analyzing the effectiveness of TRIP.

On March 25, 2016, the FIO issued a Notice requesting comments regarding all Section 111 elements that must be covered in the report, including: (1) lines of insurance with exposure to terrorism losses; (2) premiums earned on terrorism coverage; (3) geographical location of exposures; (4) pricing of such coverage; (5) the take-up rate for such coverage; and (6) the amount of private reinsurance for acts of terrorism purchased. In addition, the Notice requests comments on: (1) the overall effectiveness of the TRIP; (2) observed changes or trends relating to the above Section 111 matters; (3) whether any aspects of TRIP have the effect of discouraging or impeding insurers from providing commercial property casualty insurance coverage or coverage for acts of terrorism; (4) the impact of TRIP on workers' compensation insurers; (5) the availability and affordability of terrorism risk insurance coverage, both nationally and in particular geographic areas; and (6) other issues relating to TRIP or terrorism insurance or reinsurance more broadly that may be relevant to Treasury's assessment of the effectiveness of TRIP.

**Section 111 Elements**

NAMIC is currently preparing comments in response to the FIO's March 10 Notice requesting comments on the Section 111 data collection process (FR Docket No: 2016-05364). Because specific comments on the Section 111 data elements will likely be most useful in the context of that discussion, we will hold off on adding them here. In general however, we feel it is important at the outset to remember that the purpose of the statutorily mandated report to Congress is to analyze the "impact and effectiveness" of TRIP. The statutorily specified data elements to be collected by the TRIP Office may indeed shed light on certain facts about the marketplace for terrorism risk insurance coverage. However, it is not necessarily obvious that knowledge about any particular data element demonstrates the effectiveness of having the TRIP program at all. For example, the geographic locations of exposures might tell us something about the perceived risk profiles of certain areas of the country, but it is not at all clear that it tells us anything about the availability or affordability of terrorism risk insurance in those areas in the absence of a government risk-sharing mechanism.

NAMIC commends the TRIP Office and FIO for their decision to seek out supplemental information on the program through this request for comments. We believe that in order for the statutorily required report to appropriately analyze the effectiveness of TRIP, it is essential to offer context to the existing marketplace for terrorism risk insurance by considering issues outside of the Section 111 data elements. A big-picture analysis is needed to help policymakers understand that it is only with a risk-sharing mechanism in place that the private sector is able and willing to participate in the terrorism risk insurance market at current levels.

Below we provide some more general thoughts about the TRIP program and respectfully urge the TRIP Office to address them in the final report.

**The Effectiveness of TRIP**

Soon after the events of 9/11, reinsurers and then insurers moved to exclude terrorism coverage from their new and renewing policies as it defies normal underwriting practices. Terrorism involves strategic human behavior and represents a dynamic threat that is intentional, responsive to countermeasures, and purposefully unpredictable. Subsequently, the ability of commercial policyholders to purchase adequate coverage at affordable prices was severely constrained. As a result, many were forced to go without coverage or only partly insure their assets. In states that prohibited carriers from excluding coverage for terrorism and with reinsurance companies universally excluding terrorist acts in property/casualty treaties, most carriers' only alternative was to offer less coverage or not write the business at all.

The lack of adequate insurance capacity and significant increases in pricing of commercial multi-peril business resulted in the postponement of many construction projects. It was estimated at the time to have delayed or cancelled $15.5 billion in real estate transactions[1] and cost 300,000 construction workers their jobs[2]. Given the economic uncertainty that was created and the insurance industry's serious concern about properly managing this risk, Congress passed and President George W. Bush signed into law the Terrorism Risk Insurance Act of 2002.

Since the passage of TRIA and its three reauthorizations in 2005, 2007, and 2015, a robust market for terrorism coverage has developed with relatively stable take-up rates and declining costs. Market surveys conducted by large brokerage firms indicate that take-up rates for terrorism coverage have been stable for the last half-decade and in 2015 they found that large companies were more likely to purchase property terrorism insurance, and to see the lowest cost as a percentage of overall property premiums.[3]

Additionally, most insurers would likely not offer terrorism coverage in the absence of a federal risk-sharing mechanism like TRIA. Research by Aon shows that more than 85 percent of insurers would no longer insure terror risk if the federal program went away.[4] Further, state insurance regulators indicate that they have not seen evidence suggesting that the insurance

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[1] Real Estate Roundtable, "Survey Confirms Economic Toll of Terrorism Insurance Gap: Over $10 Billion of Real Estate Projects Affected Across U.S.," September 4, 2002.
[2] President George W. Bush, "President Reiterates Need for Terrorism Insurance Agreement," October 3, 2002.
[3] "2015 Terrorism Risk Insurance Report", Marsh, June 2015, page 1. https://www.marsh.com/content/dam/marsh/Documents/PDF/US-en/2015%20Terrorism%20Risk%20Insurance%20Report-06-2015.pdf
[4] "Response to U.S. Treasury and President's Working Group: Terrorism (Re)Insurance," AON, September 2013, page 9. <http://www.aon.com/attachments/risk-services/2013-Aon-Response-to-Presidents-Working-Group.pdf>
[4] "2015 Terrorism Risk Insurance Report", Marsh, June 2015, page 1.

marketplace is capable of voluntarily taking on a substantial portion of the risk of providing coverage for acts of terrorism in the absence of the program.

The TRIP allows for robust private sector participation in this market by placing a ceiling on individual insurance company terrorism losses, permitted them to quantify their terrorism exposure and make the coverage available. The current program requires all insurers selling covered lines to offer terrorism coverage, compelling many insurers that had previously exited that market to return and dramatically reducing the amount of potentially uninsured losses in the event of an attack. In return, the federal mechanism for risk-sharing provides more definitive loss parameters for each company; specifically, the individual company retention (20 percent of the prior year's direct earned premium for covered commercial lines) and the co-pay (now going to 20 percent of all losses above the individual company retention).

It is this structure of the current TRIA program that has created space for a private market to operate under the umbrella of federal participation. It is our firm belief that in the absence of a risk-sharing mechanism between the private and public sectors, no self-sustaining private market for terrorism risk coverage is likely to develop. It is also important to remember that the response of the federal government to a large-scale terrorist attack – particularly in the absence of the risk-sharing mechanism – will not be inaction. With TRIP in place, all but the largest terrorist attacks will be completely borne by the private sector. Without the program there will be more – not less – exposure to the taxpayers as the government will be under extreme pressure to pay for all or most of the losses. And TRIP does all this at no cost in the absence of an attack (except for annual administrative costs) and with a built-in mechanism to recover every single penny the government pays out if there is a terrorist attack.

**The Crowding Out of the Private Sector**

Some have characterized the program as another example of corporate welfare or of somehow crowding out portions of the private sector that would otherwise deploy capital in this space. A close examination of the facts reveals this characterization is not only false, but misconstrues the very nature of the program. As noted above, TRIP allows a viable private insurance market to function, thereby obviating the demand for government assistance to commercial property owners that would surely arise in the aftermath of a major attack if a private market for terrorism insurance did not exist.

A more pedestrian point involves the fact that private insurance companies, including mutual companies, are return-seeking operations. Therefore, if they believe there is an opportunity to earn an economic return and it is possible to do so in accordance with an overall successful business model, they will aggressively pursue that opportunity. In other words, if there was money to be made in insuring against terrorism risk, coverage would be offered without

government intervention. Insurers would be arguing for less—not more—government intervention to increase that earning potential. The fact that they are uniformly not doing so and in fact suggesting that without the TRIA program private coverage would not expand and instead retract, is telling.

In seeking to accomplish the goal of increasing private sector participation in the terrorism insurance market, it is important to recognize that the entire marketplace as it stands today has grown up in the presence of the TRIA program. Insurance industry capital remains insufficient to absorb the cost of a large-scale terrorist attack on its own. Simply put, the insurance industry's capacity is dwarfed for most modeled long-tail, high severity, catastrophic terrorism events. That capacity cannot be exposed beyond a reasonable level without failing in its primary purpose, which is to support the economy by protecting against a wide variety of non-terrorism related losses, including major losses caused by large-scale natural disasters. In the event of a major attack, substantially depleted reserves and insolvencies could mean that policyholders of non-TRIA covered lines could go unprotected. A company that engages in business that endangers the ability to pay on existing or future policies is violating its duties to existing policyholders.

Moreover, even if the overall industry capacity was significantly greater, serious concern about terrorism risk would remain for individual insurance companies. For a catastrophic event, the losses are not likely to be spread evenly among a large number of insurers. Thus terrorism risk is a situation in which no firm will be the "average" company. Insurance companies may either suffer no losses or else they could suffer losses sufficient to threaten their very existence. This dynamic lends itself to very strict underwriting and would severely constrain the private market in the absence of TRIA.

Finally, and perhaps most importantly, while some reinsurers have claimed they could provide additional terrorism coverage where and when primary insurers needed it, reinsurance capacity has historically become severely constrained following a large-scale natural catastrophe, such as a major hurricane striking the Gulf or Atlantic coasts. If the U.S. were to rely solely on the reinsurance market's capacity for terrorism coverage, a major terrorism event would in all likelihood lead us right back to where we were following 9/11: limited availability and no guarantee that the capacity and willingness to take on terrorism exposure would return.

**Workers Compensation**

If TRIA is allowed to expire, it would create a particularly severe disruption of the worker's compensation system, which operates very differently from other property/casualty insurance lines and so should be given special attention. Workers compensation writers are not permitted to exclude any peril from their coverages and are particularly susceptible to having highly

concentrated losses in the event of a major terrorist attack. Without a federal backstop, workers' compensation insurers will bear the entire financial burden of losses due to a terrorist attack because reinsurers have shown an unwillingness to accept this potentially devastating risk or to offer affordable limits to protect the solvency of these companies.

In the absence of a private/public, risk-sharing mechanism, workers' compensation carriers will inexorably retreat from highly concentrated exposure areas. Without TRIP, there would almost certainly be a simultaneous and significant increase in the cost of these policies and decrease in their availability for employers based in the major metropolitan areas and industries involved with, or adjacent to, symbols of America which are currently covered by private carriers. The only way a workers compensation writer could eliminate its terrorism exposure in high-risk markets would be to completely withdraw from those markets. Therefore, a migration of business currently being offered by private workers' compensation carriers to public state funds and residual markets for large segments of metropolitan areas would be expected. These public options for workers' compensation are not designed to handle a catastrophic terrorist event and a failure of a state-backed, insurer of last resort would cause ripple effects throughout the economy.

**Conclusion**

Again, NAMIC appreciates the opportunity to provide the TRIP Office and FIO with additional information, apart from our comments on the Section 111 data elements, to help analyze the effectiveness of TRIP. We believe that in order to encourage private sector involvement in the terrorism insurance marketplace – and thereby protect and promote our nation's financial stability, domestic security, and economic strength – we should maintain a long-term, well-functioning terrorism loss management plan. Fortunately, TRIP has proven to be just such a plan.

We hope you will find these comments useful in helping provide what we believe is the appropriate context for the existing marketplace for terrorism risk insurance and look forward to continuing to be a resource to the Federal Insurance Office in the future.

Respectfully submitted,

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Vice President, Public Policy