MEMORANDUM

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Date: September 16, 2013

Subject: September 19, 2013, Full Committee Hearing on "The Terrorism Risk Insurance Act of 2002"

The Committee will hold a hearing on "The Terrorism Risk Insurance Act of 2002" at 10:00 a.m., on Thursday, September 19, 2013, in Room 2128 of the Rayburn House Office Building. This hearing will examine the Terrorism Risk Insurance Act of 2002, as amended (TRIA), and, consequently, the Terrorism Risk Insurance Program established under TRIA as a temporary loss sharing program between the federal government and the insurance industry. TRIA sunsets on December 31, 2014. This hearing will examine TRIA, the Terrorism Risk Insurance Program, and what role, if any, the Federal government should play regarding insurance claims related to acts of terrorism.

This will be a two-panel hearing with the following witnesses:

Panel I

- The Honorable Michael G. Grimm
- The Honorable Michael E. Capuano
- The Honorable Peter T. King
- The Honorable Carolyn B. Maloney

Panel II

- Mr. Peter Beshar, Executive Vice President and General Counsel, Marsh & McLennan Companies
- Mr. Eric Smith, Chief Executive Officer, Swiss Re America Holding Corporation
- Ms. Janice M. Abraham, President and Chief Executive Officer, United Educators
- Dr. Gordon Woo, Catastrophist, Risk Management Solutions
- Mr. Steve Ellis, Vice President, Taxpayers for Common Sense

Background

Before the terrorist attacks of September 11, 2001, insurers generally covered losses resulting from terrorist acts as part of commercial property and casualty insurance policies. As a result of the 9-11 attacks, insurance companies paid $31.6 billion (around $40 billion in current dollars, adjusted for inflation) in terrorism-related claims. The September 11 attacks led reinsurance and insurance companies to recognize potential terrorism losses as a new and significant kind of risk that they could not sufficiently model at that time, making such insurance either unavailable or unaffordable. Reinsurance and insurance companies thus began excluding terrorism coverage from their insurance policies.

According to some industry observers, these exclusions created a void in the insurance market, making terrorism coverage unavailable for businesses and employers, some of whom were contractually obliged to obtain terrorism coverage as a condition for financing. This inability to obtain terrorism coverage thus jeopardized economic development, particularly in large urban areas. To fill this void, some industry participants and analysts called for the creation of a temporary federal government backstop—a form of federal reinsurance—that would allow insurers to offer policyholders coverage for terrorism-related losses. Proponents argued that a temporary government backstop would give the insurance industry the time and opportunity to develop methods of calculating risk, assess capacity, and build accurate models so that appropriately priced, privately-backed coverage could again be made available. Opponents argued that a temporary government backstop would inhibit the development of a functioning reinsurance marketplace by crowding out private insurers.

In response to these calls for a temporary government backstop, the Committee on Financial Services drafted legislation that became TRIA (P.L. 107-297). TRIA established a Terrorism Risk Insurance Program for three years, to be administered by the Treasury Department, the purpose of which was to make terrorism insurance coverage more widely available. Under the program, the federal government shared the risk of loss from future terrorist attacks with the insurance industry for a three-year period. TRIA mandated that insurers participate in the program and required that insurers make terrorism coverage available in all commercial property and casualty insurance policies. TRIA did not, however, require that businesses purchase terrorism coverage.

Congress designed TRIA as a temporary, three-year federal backstop, with the expectation that the industry would eventually model and price for terrorism risk. While the initial TRIA may have helped address an economic need, the private market did not recover as quickly as many had hoped. As a result, in late 2005, Congress passed the Terrorism Risk Insurance Extension Act (P.L. 109-144) (TRIEA). TRIEA extended TRIA for two more years, until December 31, 2007. The extension left much of the original TRIA program intact, but raised industry retention levels and pared back the insurance lines covered. TRIA now requires $100 million in aggregate industry losses and an individual insurer deductible of 20 percent of premiums before the federal government shares 85 percent of the insured losses.

Despite this extension—or as some critics have argued, because of it—a private market for terrorism insurance has failed to develop. In 2007, with TRIA scheduled to expire for a second time, the 110th Congress again considered legislation to extend TRIA. The House and the Senate initially passed competing bills to significantly expand and extend TRIA: the House bill would have extended TRIA for 15 years, and the Senate bill for 7 years. Ultimately, Congress enacted H.R. 2761, the Terrorism Risk Insurance Program Reauthorization Act of 2007 (P.L. 110-160). The bill extended the TRIA program for seven years (through December 31, 2014), added domestic terrorism coverage to TRIA, modified TRIA's annual liability cap so that insurers are not responsible for losses exceeding $100 billion, and made other changes to insurers' mandatory surcharge and recoupment amounts.

Although the backstop has never been used because there have been no terrorist attacks that met TRIA's loss-sharing criteria, some private-sector critics and Members of Congress oppose TRIA because they view it as an unnecessary program. Some critics have pointed out that the TRIA extensions dramatically expanded a federal program that was supposed to be temporary. Critics of the program also claim that the existence of government-provided terrorism reinsurance under TRIA has inhibited the return of private-sector terrorism insurance. And although the program has never been used, critics are nonetheless concerned about TRIA's potential cost to taxpayers, which could total tens of billions of dollars or more, because there is no way to predict the target, frequency, or scale of damage from a covered terrorism event.

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) established a Federal Insurance Office at the Treasury Department, headed by a Director. Among other things, the Director of the Federal Insurance Office is charged with assisting the Treasury Secretary in administering TRIA.

Legislative Proposals for the 113th Congress

Three bills have been introduced in this Congress to extend or modify TRIA:

- Rep. Michael Grimm has introduced H.R. 508, the Terrorism Risk Insurance Act of 2002 Reauthorization Act of 2013, which would extend TRIA through December 31, 2019, and require the Treasury Secretary to collect all mandatory premiums for any act of terrorism that occurs on or after January 1, 2012, by September 30, 2024.

- Rep. Michael Capuano has introduced H.R. 2146, the Terrorism Risk Insurance Program Reauthorization Act of 2013, which extends TRIA through December 31, 2024, and requires the Treasury Secretary to collect all mandatory premiums for any act of terrorism occurring on or after January 1, 2012, by September 30, 2027. H.R. 2146 would also require the President's Working Group on Financial Markets to report in 2017, 2020, and 2023 on its findings regarding the long-term availability and affordability of terrorism risk insurance.

- Rep. Bennie Thompson has introduced H.R. 1945, the Fostering Resilience to Terrorism Act of 2013, which extends TRIA through December 31, 2024, and revises the definition of an "act of terrorism" to mean any act certified by the Secretary of Homeland Security in concurrence with the Secretary of the Treasury as meeting the criteria for such an act, among other changes to TRIA.