MARSH

INSIGHTS | JANUARY 2020

# TRIPRA's Early Renewal Keeps Terrorism Insurance Market Stable

Last month, President Trump signed into law a $1.4 trillion spending package that included the reauthorization of the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) through December 31, 2027. The federal terrorism backstop — originally put in place following the September 11, 2001, attacks — was previously set to expire at the end of this year.

Marsh leaders have strongly advocated for the reauthorization of the program, testifying at both Senate and House hearings on the importance of maintaining the federal backstop and ensuring the viability of the terrorism insurance market. The government's recent reauthorization of TRIPRA reduces uncertainty for terrorism insurance buyers, allowing them to make long-term decisions on insurance coverage.

## No Market Disruption

The reauthorization of TRIPRA, more than a year before its expiration, ensures there is no lapse in the federal backstop. Although short-lived, the expiration of the federal backstop at the end of 2014 — and the uncertainty prior to its lapse — led to significant pricing increases for terrorism insurance buyers, as well as workers' compensation capacity concerns for organizations located in major metropolitan areas or with large concentrations of employees.

Despite TRIPRA being reauthorized well ahead of its expiration, organizations should still make sure they start the renewal process early – 120 days (or more) prior to the effective date – and provide underwriters with accurate and detailed information regarding exposures and operations, including loss trends, safety programs, and risk management practices, as well as granular employee concentration information, to ensure their risk profiles are accurately reflected in the underwriting process.


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### WHAT'S IN THE REAUTHORIZATION BILL?

The Terrorism Risk Insurance Act (TRIA) was originally passed in 2002 to create a federal reinsurance backstop for terrorism losses and maintain stability in the insurance market. It remains critical for businesses, especially as terrorism threats have continued to evolve since TRIA was first passed. The Terrorism Risk Insurance Program Reauthorization Act of 2019 is the fourth reauthorization of the law, which was previously reauthorized in 2005, 2007, and 2015.

Among its provisions, the new law:

- Reauthorizes the terrorism insurance backstop for a term of seven years, through December 31, 2027.
- Preserves the current industry aggregate loss trigger of $200 million for the seven-year term.
- Amends the Treasury Department's recoupment timeline while maintaining the recoupment rate of 140%.
- Maintains the current insurance market aggregate retention to an amount equal to the annual average of the sum of deductibles for all insurers participating in the program for the prior three calendar years.
- Requires studies on:
  - The availability and affordability of terrorism risk insurance, including a specific analysis of places of worship.
  - Cyber terrorism, including analysis on whether state-defined cyber liability under property and casualty policies offers adequate coverage for cyber terrorism; whether these risks can be adequately priced by the private market; and whether the current risk-sharing system is appropriate for a cyberterrorism event.
- Directs the Treasury Department to continue to collect terrorism insurance data from insurers.

## Next Steps

Extending the terrorism backstop through 2027 is critical to the viability of the terrorism insurance marketplace and the broader economy. However, organizations should continue to manage terrorism risk and relevant insurance programs, including property and workers' compensation.

The latest reauthorization bill is similar to the law it replaces (see chart), but it adds a new requirement that the Treasury Department evaluates the availability of insurance for places of worship and directs the Government Accountability Office (GAO) to report to Congress on the potential costs of cyber terrorism.

Organizations should now:

- Thoroughly review all policies and terrorism endorsements to understand how coverage applies and consider requesting endorsements to reflect any relevant changes in the law. Any sunset clauses that were previously added to insurance policies renewing in 2021 should now become null and void.
- Review the structure of captive insurers that seek to purchase reinsurance for their terrorism obligations. Captive managers should review the capitalization of each vehicle to determine if it adequately supports its terrorism coverage obligations. Owners of captives that provide TRIPRA-subject lines of insurance should confirm that any existing policies extending into 2021 reflect the reauthorization. This may require endorsing existing policies and updating policy renewal templates for areas such as definition of loss, references to the law, and cancellation provisions. Captive owners should also update procedures and documents related to TRIPRA disclosure requirements.
- Consider potential options beyond terrorism-embedded coverage. Standalone terrorism insurance coverage, for example, could replace or supplement embedded coverage and may offer more attractive pricing and terms and conditions. Additionally, because TRIPRA covers US-based assets, it is important for businesses to carefully evaluate coverage for locations outside the US.
- Implement key risk management best practices. Modeling and business continuity planning can play a pivotal role in improving resiliency, evaluating alternative insurance options, and securing more favorable pricing and terms and conditions at renewal.

**Key Provisions in New Reauthorization Act**

| | Terrorism Risk Insurance Program Reauthorization Act of 2015 | Terrorism Risk Insurance Program Reauthorization Act of 2019 |
|---|---|---|
| **Termination** | December 31, 2020. | December 31, 2027. |
| **Make-Available Provision** | Must make coverage available for certified acts of terrorism on same terms and conditions as for other covered risks. | No change. |
| **Covered Acts** | Foreign and domestic terrorism in the US and on US interests abroad. Includes an act of war for workers' compensation policies only. | No change. |
| **Certification** | $5 million. The treasury secretary must consult with the secretary of homeland security and attorney general. | No change. |
| **Program Trigger** | Increasing in $20 million annual increments, from $100 million in 2015 to $200 million in 2020. | $200 million. |
| **Covered Lines** | Commercial property/casualty insurance (including excess casualty, workers' compensation, and directors and officers liability.) | No change. |
| **Insurer Deductible (Percentage of Direct Earned Premium)** | 20% | No change. |
| **Federal Reinsurance Quota Share** | Decreasing in 1% increments, from 85% in 2015 to 80% in 2020. | 80% |
| **Insurance Industry Retention for Mandatory Federal Recoupment** | Increase in $2 billion increments, from $29.5 billion in 2015 to $37.5 billion in 2019. In 2020, the retention amount rises to average of insurers' deductibles over the previous three years. | The amount is equal to the annual average of the sum of the insurer deductibles for all insurers participating in the program for the prior three calendar years. |
| **Recoupment Amount** | 140% of any mandatory recoupment amount. | No change. |
| **Recoupment Timing** | For a terrorist attack before December 31, 2017, all required recoupment amounts must be collected by September 30, 2019.<br><br>For a terrorist attack in 2018, 35% of required recoupment amounts must be collected by September 30, 2019, and the balance must be collected by September 30, 2024.<br><br>For a terrorist attack after January 1, 2019, all required recoupment amounts must be collected by September 30, 2024. | For a terrorist attack before December 31, 2022, all required recoupment amounts must be collected by September 30, 2024.<br><br>For a terrorist attack in 2023, 35% of required recoupment amounts must be collected by September 30, 2024, and the balance must be collected by September 30, 2029.<br><br>For a terrorist attack after January 1, 2024, all required recoupment amounts must be collected by September 30, 2029. |
| **Cap on Liability** | $100 billion. | No change. |
| **Nuclear, Biological, Chemical, and Radiological (NBCR) Terrorism** | No separate treatment of NBCR terrorism. | No change. |
| **Data Collection** | Requires Treasury Department to collect data from insurers on terrorism insurance, including premiums and take-up rates. | No change. |
| **Discretionary Recoupment** | Surcharges to not exceed 3%. | No change. |

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