

CIAT

**COALITION TO INSURE
AGAINST TERRORISM**

www.insureagainstterrorism.org

Terrorism Risk Insurance Program
Public Comment Record
Suite 2100
U.S. Department of the Treasury
1425 New York Avenue, NW
Washington, DC 20220

VIA EMAIL: triacomment@do.treas.gov

Re: Comments on “Make Available” Determination

Dear Program Administrator:

The Coalition to Insure Against Terrorism (“CIAT”) urges the Secretary of the Treasury to extend the “make available” requirement of the Terrorism Risk Insurance Act (“TRIA”) through December 31, 2005 - and to do so as soon as possible before the September 1 deadline - for the reasons set forth in this letter.

Introduction

CIAT is a broad coalition of trade associations and other organizations that was formed in the months following 9/11 to ensure that American businesses and non-federal governmental entities could obtain comprehensive and affordable terrorism insurance. Collectively, the business and governmental organizations represented by the CIAT membership are the principal consumers of commercial property and casualty insurance in America, and therefore it is accurate to say that the voice we provide here is the true consumer voice. CIAT is perhaps in a unique position to affirmatively state that an extension of the “make available” provision is warranted.

TRIA in 2002. All of CIAT’s members remain equally determined to see both the extension of “make available” and continuation of the TRIA backstop for the intermediate term because the conditions that made it necessary are still with us. The threat of foreign terrorist acts in the United States has not diminished; if anything, it may have increased since TRIA was enacted. At the same time, the insurance market has not recovered, at least not with respect to this peril. While

American Bankers Association
American Bankers Insurance Association
American Gas Association
American Hotel and Lodging Association
American Public Power Association
American Resort Development Association Resort Owners' Coalition
American Society of Association Executives
America's Community Bankers
Associated Builders and Contractors
Associated General Contractors of America
Association of American Railroads
Association of Art Museum Directors
The Bond Market Association
Building Owners and Managers Association International
Boston Properties
CCIM Institute
Chemical Producers and Distributors Association
Commercial Mortgage Securities Association
Cornerstone Real Estate Advisers, Inc.
David L. Babson & Company, Inc.
Edison Electric Institute
Electric Power Supply Association
The Financial Services Roundtable
The Food Marketing Institute
General Aviation Manufacturers Association
Helicopter Association International
Hilton Hotels Corporation
Host Marriott
Independent Electrical Contractors
Institute of Real Estate Management
International Council of Shopping Centers
The Long Island Import Export Association
Marriott International
Mortgage Bankers Association
National Apartment Association
National Association of Home Builders
National Association of Industrial and Office Properties
National Association of Manufacturers
National Association of REALTORS®
National Association of Real Estate Investment Trusts
National Association of Waterfront Employers
National Association of Wholesaler-Distributors
National Basketball Association
National Collegiate Athletic Association
National Council of Chain Restaurants
National Football League
National Hockey League
National Multi Housing Council
National Petrochemical & Refiners Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Rural Electric Cooperative Association
The New England Council
New York City Partnership
Office of the Commissioner of Baseball
Public Utilities Risk Management Association
The Real Estate Board of New York
The Real Estate Roundtable
Six Continents Hotels
Society of American Florists
Starwood Hotels and Resorts
Taxicab, Limousine & Paratransit Association
Travel Business Round Table
UJA-Federation of New York
Union Pacific Corporation
U.S. Chamber of Commerce
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some limited reinsurance capacity has returned, nothing near what is needed to sustain the economy is foreseeable under current conditions. TRIA is an important component of this national effort, because TRIA both helps the economy move forward in the face of terrorism and helps us prepare economically should there be another catastrophic event. Without TRIA the wheels of commerce, including the active development of new businesses and the jobs they bring with them, will be slowed, jeopardizing our nation's economic security.

Despite the successes of TRIA, the members of CIAT are increasingly anxious about the looming prospect that our ability to obtain comprehensive and cost-effective terrorism coverage will be diminished substantially in 2005 unless the Secretary moves affirmatively extend the "make available" provision in TRIA. This provision makes the current TRIA program more effective and makes it more likely that American businesses will be covered by terrorism risk insurance in the future.

Specific Responses to Treasury's Questions

Effectiveness of the Make Available Requirement in the Context of the Overall Program

1.1 Has the make available requirements contributed to the overall effectiveness of the Program over the first two years of the Program? In particular, has the make available requirement been effective in making terrorism insurance coverage available and more affordable to the insurance marketplace in general, to large corporate policyholders, and to small business policyholders? (We specifically seek information on terrorism coverage for railroads, trucking and public transit in response to this question).

Prior to 9/11, coverage for acts of terrorism was routinely included in all property and liability insurance policies. After those horrific attacks, terrorism risk was generally excluded from the renewal offers on all of these policies, and the only coverage that could be found was either "stand-alone" policies or "buy-back" endorsements. Even taking up coverage on those terms left us and others with substantially less protection of our assets and operations than had been the case before 9/11. When coverage was available, it was not as broad or secure as before and the costs were dramatically higher. Moreover, there was no consistency or apparent rationality to the prices on various layers and programs of coverage.

The consequence of this was not just decreased coverage protection and increased cost for commercial buyers. In many cases it also meant that we in the business community could not, for example, provide lenders and other business partners with evidence of insurance consistent with loan documentation requirements. This led to a slow-down of development activities, job losses and other consequences throughout the post 9/11 economy. As noted in the letter this week from a large bi-partisan group of Representatives to Secretary Snow, the availability of terrorism risk insurance is crucial to our economic security. "The lack of

terrorism insurance terminated or delayed billions of dollars in commercial property financing, threatening business operations and development, job creation and our overall economy.”¹

After TRIA was enacted the market very quickly normalized, for the most part. The combination of the Federal reinsurance backstop and the law’s requirement that all participating property and casualty insurers “make available” terrorism insurance in every commercial policy led to restoration of full per-occurrence coverage in most cases. Equally important, it also meant a return, in the eighteen months since TRIA came into effect, to something like a rational or consistent pricing of this coverage. To be sure, the process has been gradual as insurers, brokers and buyers have adjusted to the Act’s requirements and considered the evolving prices and other terms. The most recent information from Marsh, Inc., the world’s largest insurance brokerage firm, show that the take-up rate for terrorism coverage continues to rise as this adjustment process continues. For example, a recent Marsh study of 2,400 U.S. businesses found that, from the second quarter to the fourth quarter of 2003, the percentage of businesses purchasing terrorism coverage rose 5.4%, from 27.3% to 32.7%. At major businesses or at publicly traded companies with boards and managements subject to Sarbanes-Oxley responsibilities, purchase rates are even higher. This participation rate compares well with both the National Flood Insurance Program and the California Earthquake Authority program.

The “make available” provision has improved the overall effectiveness of the TRIA program because it has made terrorism risk insurance more available and more affordable for American businesses.

1.2 How would the effectiveness of the Program be affected during Program Year 3 (where the federal backstop for terrorism insurance is still maintained under the Act) if the make available requirement is not extended? Would policyholders still be able to obtain terrorism risk insurance (under what terms and conditions) and would the affordability be impacted if the requirement is not extended? Compare your response to the preceding questions to what you believe would be the effectiveness of the Program if the make available requirement is extended into 2005.

If the “make available” provision is allowed to expire this year, American businesses face the alarming prospect that terrorism insurance policies again will become scarce, if not unavailable altogether, a full year earlier than TRIA’s termination date. Further, it is likely that financial markets would react negatively in the final quarter of 2004 to the prospect that insurance may not be available.

Absent an extension, primary insurers would no longer be mandated to make terrorism insurance available on the same terms and conditions as other insurance. Although we hoped, like all who were involved in the passage of TRIA, that a significant private market for terrorism reinsurance would emerge in a post-9/11 TRIA environment, this has not yet happened.

¹ Letter of Representatives Kelly/Baker/Kanjorski/Gutierrez *et al.*, to John Snow (May 11, 2004) [hereinafter “Kelly/Baker Letter”].

Consequently, we are seriously concerned that in the absence of a mandate under TRIA, primary insurers will not offer, or “make available,” significant, comprehensive terrorism insurance for the 2005 marketplace. Already, several insurers are reacting to the prospect that the “make available” provision will not be extended and are only renewing policies that expire in June 2004 for six months, in lieu of the traditional one year period.² The Insurance Services Office (ISO), a leader in the drafting of policy forms for the insurance industry, is currently preparing endorsements that will automatically allow insurers to end terrorism coverage in their policies effective with the expiration of the current make-available provision. In fact, we know from the example of the continuing exclusion of biological chemical, radiological and nuclear risks how markets will react if there is not a mandate (and continuation of a backstop).

As noted by Representative Eric Cantor (R-VA),

TRIA has brought greatly needed stability to the insurance market. However, this year’s expiration of the “make available” provision may likely cause the disappearance of a viable market for terrorism insurance. An inadequate supply of terrorism insurance could trigger bond downgrades, destabilize the capital markets, and sharply reduce the availability of loan capital for commercial real estate. Under this scenario, the cost of borrowing would increase, thus undermining economic and employment growth in the vital construction and real estate sectors.³

Without the “make available” provision, our businesses might not have any opportunity for coverage of terrorism-related risks. The National Association of Insurance Commissioners (“NAIC”) has stated that it believes “that extending the present ‘make available’ requirement in TRIA through 2005 will help ensure marketplace establish by continuing the availability of terrorism insurance in all parts of the United States. If insurers are not required to offer coverage, areas that face low risk of losses from acts of terrorism would probably experience little disruption. However, those areas of our nation and prominent cities with attractive targets for terrorist activity might face availability and affordability problems. This would have a negative impact on their local and regional economies, particularly real estate development.”⁴

But terrorism insurance is not only relevant to major urban areas. The CIAT coalition has a national membership active in all fifty states, including rural organizations such as the rural electric cooperatives, that are vitally concerned with the availability of this insurance coverage.

² Statement of the Mortgage Bankers Association to the U.S. House of Representatives Committee on Financial Services, Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises and Subcommittee on Oversight and Investigations Hearing on “A Review of TRIA and its Effect on the Economy: Helping America Move Forward,” at 4 (Apr. 28, 2004).

³ Letter of Representative Eric Cantor (R-VA) to John Snow (Mar. 30, 2004).

⁴ Testimony of Donna Lee Williams, Commission of Insurance for Delaware, on behalf of the National Association of Insurance Commissioners before the Committee on Banking, Housing and Urban Affairs United States Senate regarding Federal Assistance in Assuring that insurance for Terrorist Acts Remains Available to American Consumers, at 3-4 (May 18, 2004) [hereinafter “Testimony of NAIC”].

What we need, and need urgently, is the assurance provided by the “make available” provision, to help us be prepared for whatever might come.

It is highly uncertain, at this stage of the development of the market for terrorism risk insurance, whether our businesses will be able to obtain insurance coverage absent the “make available” provision.

1.3 Has Treasury’s implementation of the make available requirement contributed to the effectiveness of the Program? In particular, has the make available requirement resulted in businesses being provided with useful information and the enhanced ability to compare prices for terrorism risk insurance across a number of providers? Given the experience with the make available requirement since enactment and policyholders’ decisions on whether to purchase coverage provided by the Act, are there other approaches to implementing the make available requirements that are worth considering?

Treasury’s implementation of the “make available” requirement has contributed to the effectiveness of the overall TRIA program in at least three ways.

First, as stated above, the “make available” provision has ensured the availability of terrorism risk insurance for American businesses. The NAIC has stated that, based on its experience:

Insurers and the marketplace at large are finding it very difficult to accurately price coverage for acts of terrorism. Unknown frequency, coupled with the potential for severe losses, makes coverage for acts of terrorism one that insurers might choose to avoid if given the opportunity. Until insurers and their reinsurers become more comfortable that government efforts are adequate to protect citizens from terrorist acts, or at least become more predictable than they are today, they will be reluctant to accept complete risk transfers from American businesses. In particular, those businesses viewed by insurers as having a greater risk of terrorism losses will have trouble finding insurance.⁵

Second, the “make available” provision has increased the choices available to American businesses. The Treasury Department’s implementation of the “make available” provision has made the TRIA Program more effective by creating the opportunity for choice in the marketplace. As noted by the NAIC, “American businesses — both large and small — have been offered choices they might not otherwise have had. Through the ‘make available’ provision, TRIA has given them the opportunity to make an informed choice regarding the purchase of coverage for acts of terrorism.”⁶ This has allowed businesses to have more information and enhanced our ability to compare prices in the marketplace.

⁵ Testimony of NAIC, at 5.

⁶ Testimony of NAIC, at 4.

One CIAT member's experience illustrates the benefits that have been realized. Host Marriott, which owns or has interests in over 230 hotels in 34 States and the District of Columbia, is a publicly traded real estate investment trust. As the Host Marriott's CEO testified recently before the Senate Banking Committee, their property insurance costs for their Marriott-managed hotels nearly tripled in the policy year following September 11th, even though on a property portfolio insured for \$8.6 billion for other (non-terrorism) perils, they had stand-alone terrorism insurance for only about 3 1/2 percent of that portfolio value, and that now excluded biological, chemical and radiological risks which were previously covered. These costs subsequently moderated after TRIA's implementation. However, TRIA's impact was first felt by Host Marriott in the first renewal of property insurance for its non-Marriott hotels in April of 2003. In that renewal, the substitution of TRIA coverage in place of the previous stand-alone terrorism product helped achieve a cost reduction of 58% for that property portfolio.

Third, the TRIA program generally, and the "make available" provision specifically, have provided protection for American business by ensuring coverage while providing time for the private sector to develop alternatives.

The private sector has not been idle in the past two years. Serious work has been done exploring alternatives to TRIA, such as the possibility of a privately funded terrorism reinsurance pool for the workers compensation insurance market. This is a line of coverage crucial to every employer. The preliminary conclusions, however, suggest that even this may be beyond the capability of the private economy without some government assistance. In any event, no such alternatives have yet been formed. At a minimum, more time is needed to develop solutions, and the extension of the "make available" provision will help provide that time. "An extension will ensure that terrorism coverage is widely available while Treasury continues its good work and while private market solutions are still being developed."⁷

The "make available" provision creates the opportunity for American businesses to get insurance that the current market may not provide. The combination of the federal backstop in conjunction with the "make available" requirement has granted American businesses the peace of mind that insurance coverage will be available.

1.4 How would a decision on extending or not extending the make available requirement affect policyholders' understanding of their options regarding the availability of terrorism risk insurance coverage in Program Year 3 (e.g., that the federal backstop for terrorism risk insurance is still in force)? Would one course of action be better understood by policyholders than other options?

Extending the "make available" requirement would help policyholders' understanding of terrorism insurance coverage for Program Year 3. The existence of the mandatory offer necessarily ensures that customers are better advised on both the existence of the TRIA program and the availability within the commercial policies being negotiated during the year.

⁷ Letter of Representatives Michael G. Oxley, Sue W. Kelly, *et al.*, to John Snow (Apr. 22, 2004).

“[T]he underlying insurance policies that rely on TRIA are written every day of the year, generally for a 12-month term (although some commercial property policies covered by TRIA are multi-year.”⁸ However, the disconnect between those dates, the potential termination of the “make available” provision and the current termination date of the overall TRIA Program has caused a great deal of confusion of policyholders.

The potential sunset of the “make available” provision before the federal backstop has also created uncertainty within the insurance industry as well. “As many insurance policies are a year in duration, many insurer and insureds are already facing uncertainty whether new and renewed policies that begin after 1/1/2005 but are being negotiated now will be subject to the ‘make available’ provision.”⁹ The extension of the “make available” provision would simplify the law for both insurers and policyholders.

For this reason, that CIAT urges the Treasury Department to make the decision to extend the “make available” provision of TRIA as soon as possible. There is a concern among both insurers and policyholders “about the potential mismatch between policies sold during 2005 and the hard sunset date.”¹⁰ Some, but to be sure not all, of this concern could be alleviated by extension before the September 1 deadline.

As stated by the Independent Insurance Agents and Brokers of America (“IIABA”), “[t]he sooner that insurers, commercial policyholders, and their agents have certainty on this matter, the better it is for everyone. There would be no unfairness to insurers from a one-year extension because they will have the Federal backstop at least through 2005.”¹¹

Treasury will be aware already of the bipartisan effort already underway in Congress calling for an extension of the “make available” provision. Like, CIAT, these members have urged that action be taken as soon as possible, rather than leave it for the September 1 deadline. This will ensure that the insurance industry will be prepared in 2005 to provide American businesses with one of the crucial tools necessary to help protect the American economy and American jobs from the ugly and harmful specter of terrorism.¹²

⁸ Statement submitted on behalf of the American Insurance Association, Council of Insurance Agents & Brokers, *et al.*, to the U.S. House of Representatives Committee on Financial Services, Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises and Subcommittee on Oversight and Investigations Hearing on “A Review of TRIA and its Effect on the Economy: Helping America Move Forward,” at 4 (Apr. 28, 2004) [hereinafter “Statement of AIA, *et al.*”].

⁹ Letter of Representatives Barney Frank, Paul Kanjorski, *et al.*, to John W. Snow (Apr. 22, 2004).

¹⁰ Statement of AIA, *et al.*, at 5.

¹¹ Comments of the Independent Insurance Agents and Brokers of America regarding Treasury “Make Available” Determination [hereinafter “Comments of IIABA”].

¹² See Kelly/Baker Letter to Snow.

As it stands, the current mismatch between the date of the “make available” provision and the expiration of TRIA has created a great deal of confusion for policyholders. By extending the sunset provision for the “make available” provision to match that of the overall TRIA Program, policyholders would have clearer understanding as to their coverage and their options for coverage going forward.

2. The Relationship Between the Make Available Requirement and the Likely Capacity of Property and Casualty Insurers to Offer Coverage for Terrorism Risk After Termination of the Program

2.1 What is the relationship between the make available requirement and an insurer’s capacity to offer terrorism risk insurance coverage? How has the make available requirement affected or interacted with the available capacity of property and casualty insurer to provide terrorism risk insurance coverage during the course of the Program to date? Has the make available requirement led to any build-up in capacity?

Insurers have effectively announced that they will not routinely offer terrorism cover during 2005 unless the “make available” requirement is extended. For example in their April 28, 2004 joint statement to the House Financial Services Subcommittees on Capital Markets, Insurance, and Government Sponsored Enterprises and on Oversight and Investigations, the major property and casualty trade associations expressed concern about the potential mismatch between policies sold during 2005 and the “hard” sunset date on TRIA at 12/31/2005. (Despite somewhat differing perspectives on the “make available” requirement, it is instructive that insurers did not in that letter oppose the “make available” extension but rather used their effort to urge Congress to renew TRIA itself this year to avoid the mismatch.)

We believe that TRIA’s “make available” requirement does help develop private market capacity by allowing demand for the product to be more effectively seen by the insurance industry and their reinsurers. Over time this translates into more private reinsurance capacity-building. It seems to work this way: An insurer’s capacity to offer terrorism risk insurance is, for now, primarily a function of the federal backstop, not the result of the “make available” requirement itself. However, even with the backstop, the unknown severity and frequency associated with terrorist risks undoubtedly would have, during the past two years, deterred many insurers from offering terrorism coverage, simply passing up on the opportunity to make use of the backstop, had it not been for TRIA’s “make available” provision. The “make available” requirement undoubtedly has increased the likelihood that insurers will offer to cover these risks despite insurer concerns with deductible levels, retention percentages and the probable delayed reimbursement by the government. Thus, in itself, the “make available” requirement did not directly build up capacity. However, it encouraged insurers to utilize both their own capacity and the Federal backstop to meet customer needs.

Equally or more important, because the Federal backstop is subject to both a per-insurer (or control group) deductible and a co-insurance retention, the mandatory offer feature undoubtedly increased the effective demand from direct insurers for private reinsurance to cover the “wrap” (*i.e.*, deductible plus coinsurance). The “make available” provision therefore has contributed to the emergence of what limited amounts of private reinsurance capacity that has developed since TRIA enactment. Not extending the “make available” requirement risks having the industry take a backward step (or two) in this capacity-building trend. The direct insurance industry seems in agreement with us on this point.

With respect to Program Year 3, however, the question is not whether the insurance industry has the capacity to provide meaningful terrorism risk insurance coverage on its own — it almost certainly does not without the federal backstop — rather, for Program Year 3, the issue is whether property and casualty insurers, in conjunction with the Federal backstop and limited private reinsurance, have the capacity to “make available” terrorism risk coverage to all commercial customers when required to do so by the government. The answer to this is an equally clear “yes.”

In their measure of insurance capacity, the NAIC has found that:

2003 was a profitable year for property and casualty insurers, with aggregated policyholder surplus increasing approximately 26% to \$375 billion. It should be noted however, that policyholder surplus declined each year from 1999 to 2002, and the \$375 billion figure is only 4.3% higher than the \$360 billion in policyholder surplus held in 1999. Furthermore, less than half of those funds are used to support commercial lines writings. As part of considering whether the insurance industry has sufficient capacity to underwrite the risk of terrorism losses, the Treasury Department must consider whether the industry is willing to put its capital at risk. We believe the answer is no.¹³

The immediate reason for the NAIC offering this historical note on the industry’s relative surplus was in explaining why TRIA itself should be extended beyond 2005, not whether the “make available” provision should be extended. However, the gradual recovery which NAIC notes of the property and casualty insurers’ aggregate capital and surplus following 9/11 suggests two things: (1) extension of the “make available” requirement for Program Year 3 is within the property and casualty insurers’ capability, but (2) the commercial P&C industry does not yet have the capacity to deal with this peril without the federal backstop.

¹³ Testimony of NAIC, at 4-5.

2.2 How would a Treasury decision to extend or not to extend the make available requirement affect or interact with the capacity of property and casualty insurers (including the availability of reinsurance) in terms of offering terrorism risk insurance coverage in Program Year 3? In addition, would there be any effect on insurers' decision to offer terrorism risk insurance coverage beyond 2005 that could be associated with a decision to extend or not to extend the make available requirement during Program Year 3?

First, see the portion of previous answer regarding increased effective demand for private reinsurance and capacity building.

Second, so long as the federal backstop remains in place, there is every indication that the overall capacity of property and casualty insurers will continue to recover and increase. How much of this capacity (and to what extent the federal backstop) will be utilized is, in important measure, a function of the continuation of the "make available" mandate. Insurers have already engineered their systems to routinely make offers for terrorism coverage to commercial policyholders as a result of the "make available" requirement in Program Years 1 and 2. Keeping these mechanisms in place for Program Year 3 does not impose significant new administrative burdens on insurers. However, removing the "make available" requirement for Program Year 3 not only diminishes the availability of coverage for that year but would necessarily reduce the likelihood that insurers would voluntarily offer terrorism risk insurance beyond 2005. Put another way, reviving the "make available" mandate later (with or without the same federal backstop) would necessarily represent additional (and unnecessary) administrative "re-engineering" costs on that industry.

3. Operational Issues

3.1 What would be the regulatory impact at the state level (e.g. on filings with the state regulator of policy forms or exclusions) if the make available requirement were extended through Program Year 3 (2005)? Similarly, what would be the regulatory impact at the state level if the make available requirement were not extended through Program Year 3?

CIAT is concerned that without an extension of the "make available" provision, and an extension sooner rather than later, problems will arise as to the implementation of insurance coverage for 2005 and beyond. Our hope is to avoid the market disruption that appeared in 2002 before the adoption of TRIA.

As previously noted, based on the expiration of the broader TRIA program at the end of 2005, the insurance industry has already proposed to State regulators, through the Insurance Services Office ("ISO"), to begin using policy forms beginning January 1, 2005 that would exclude or cut off terrorism coverage on January 1, 2006 policies that run past that date. (While the calendar year is common in insurance programs, the majority of commercial policies have

renewal dates other than January 1st.) Worse, our fear is that in many cases insurers may withdraw from particular lines or particular customers rather than bother with negotiating over these “sleeping” exclusions that have been proposed to regulators. Thus, commercial insurance buyers face potentially severe dislocations and availability problems not in 2006 but as soon as negotiations for 2005 insurance programs commence; that is to say, later this year, if the overall TRIA program is not renewed before then. These concerns are heightened by the possibility that the “make available” requirement would not be extended through 2005.

Given the time requirement for insurers to comply with state regulatory requirements, the “make available” provision should be extended as soon as possible. The sooner the “make available” requirement is expanded through 2005, the sooner our business will know that we have coverage available for the upcoming year.

As the IIABA has noted, its “agents and brokers are concerned ... that their customers may be without coverage for acts of terrorism next year unless ‘make available’ is extended. The General Accounting Office and others have confirmed that insurers have not yet made progress toward developing reliable pricing methods for terrorism insurance. Moreover, earlier this month, state insurance regulators began receiving requests for approval of new policy endorsements that would exclude coverage for ‘acts of terrorism’ when TRIA expires on December 31, 2005. This is a clear sign that insurers are not yet ready to respond if federal law no longer requires that coverage be made available.”¹⁴

Thus, we believe the Treasury Department should enact that extension as soon as possible to ensure that everyone who needs coverage will be able to buy it. Only this will avoid gaps in availability during the 2004-2005 insurance renewal season. Any uncertainty during the coming year could impair economic activity — especially new commercial construction — and job growth, as clearly occurred between 9/11 and November 2002 when TRIA was enacted.

3.2 Are there other operational issues that Treasury should consider as part of determining whether or not to extend the make available requirement through Program Year 3?

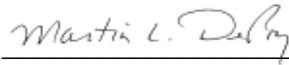
Many commercial policyholders, particularly those with complex portfolios, have not even completed placement of their 2004 property (and liability) insurance programs. Anecdotally, many are assuming (or at least hoping!) that “make-available” will have been extended by the time they go to the insurance market for 2005. If this does not happen, however, buyers certainly will feel the need to begin exploring other options for terror coverage in the third or fourth quarters this year, and will need to drastically increase their budget guidance on stand-alone insurance costs.

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¹⁴Comments of IIABA.

We hope these comments will be helpful to the Treasury Department as the Secretary makes the decision on extending the “make available” provisions of TRIA. We would be pleased to respond to any questions or requests for further information the Treasury Department may have.

Respectfully submitted,



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