



Legislative Bulletin.....December 10, 2014

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Amendment in the Nature of a Substitute to S.2244 — Terrorism Risk Insurance Program Reauthorization Act of 2014

**Amendment in the Nature of a Substitute to S.2244 – Terrorism Risk Insurance Program Reauthorization Act of 2014, as amended
(Rep. Neugebauer, R-TX)**

Order of Business: The bill is scheduled to be considered on December 10, 2014, as an Amendment in the Nature of a Substitute requiring a simple majority for passage.

Summary: The Amendment in the Nature of a Substitute to S.2244 (“Neugebauer Amendment”) will reauthorize and extend the federal government’s current Terrorism Risk Insurance Program (also known as TRIA), which is set to expire after December 31, 2014.

Title I – Extension of Terrorism Insurance Program

Title I extends TRIA for six years from its current expiration date of December 31, 2014 to December 31, 2020. Under current law, the federal government is responsible for a portion of losses stemming from a terrorist attack above \$100,000,000 (“the trigger level”) in insured losses. Below the trigger level, private insurers are 100% responsible for losses. The Neugebauer Amendment increases the trigger level from its current level of \$100,000,000 by \$20,000,000 per year to \$200,000,000 for “losses occurring in calendar year 2020 and any calendar year thereafter.”

For losses above the trigger level and up to a retention level (“the middle tier”), the federal government is currently responsible for 85% (“government share”) of losses after private insurers have paid out deductibles. According to the Congressional Budget Office ([CBO](#)), the deductibles are calculated as an amount “that equals 20 percent of the premiums . . . [the insurers] collected for certain lines of [terrorism] insurance in the calendar year preceding a certified attack.” For 2012, deductibles were estimated to be about \$36 billion according to the National Association of Insurance Commissioners (NAIC). The Neugebauer Amendment alters the government share of insured losses by one percent per year from the current level of 85% “until equal to 80 percent.”

Above the retention level, the federal government is responsible for 100% of losses from a terrorist attack. Under current law, the retention level is calculated as the lesser of \$27.5 billion and “the aggregate amount, for all insurers, of insured losses during such calendar year.” In the Neugebauer Amendment, the retention level will be increased by \$2,000,000,000 per year from \$27.5 billion “until equal to \$37.5 billion.” The retention amount will remain the lesser of \$37.5 billion and the aggregate insured losses. In the year after the year the retention level reaches \$37.5 billion, the retention amount will be calculated as “the amount equal to the annual average of the sum of the insurer deductibles for all insurers” participating in TRIA.

Certification for an “act of terrorism” will be made by the Secretary of the Treasury, the Attorney General of the United States, and the Secretary of Homeland Security, replacing the Secretary of State. The Neugebauer Amendment seeks to improve the terrorist act certification process by requiring the Secretary of the Treasury to “complete a study on the certification process.” The Government Accountability Office (GAO) will also be required to complete a study evaluating the premiums and reserves of TRIA.

Section 109 contains a provision requiring that one of the members of the Board of Governors of the Federal Reserve System shall have “demonstrated primary experience working in or supervising community banks having less than \$10,000,000,000 in total assets.” Section 110 encourages development of a private reinsurance market for losses stemming from terrorist attacks. The Treasury will also have access to increased data from insurers related to losses stemming from terrorist attacks.

Title II – National Association of Registered Agents and Brokers Reform

Title II reestablishes the National Association of Registered Agents and Brokers (NARAB) to be a non-profit and independent organization from the federal government whose purpose is to “provide a mechanism through which licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multi-state basis without affecting the laws, rules, and regulations, and preserving the rights of a State.”

NARAB would permit insurance producers to sell insurance in multiple jurisdictions provided that the qualifications did not infringe on State laws governing insurance matters, such as insurance licensing, fees, and producer conduct. Producers interested in NARAB membership would be required to join NARAB and be subjected to a criminal background check.

Section 330 will prohibit states from passing state laws that impede NARAB members, discriminate in state fees to between NARAB and non-NARAB members, and impose continuing education requirements on nonresident insurance producers. States other than home states of a particular producer may not pass state laws that address provisions established by NARAB, such as those pertaining to licensure, fees, and background checks. States still retain disciplinary authority against potential insurance producer violations.

Title III – Business Risk Mitigation and Price Stabilization

Title III adds protections from capital and margin requirements established by the Commodity Exchange Act and the Securities Exchange Act for certain swap transactions. The Commodity Exchange Act requires swap dealers and major swap participants that are not subject to an exception to adhere to clearing requirements with a registered derivatives clearing organization. Clearing helps mitigate risk and provide greater liquidity in the commodities markets.

The amendment clarifies existing statute that if a swap party qualifies for the end-user exception it is not subject to the clearing requirement. This provision helps provide a distinction between entities using swaps for financial speculation and underlying commodity market risk. The Securities Exchange Act of 1934 is amended to clarify that counterparties to security based-swaps with an existing exemption under Dodd-Frank are exempt from capital and margin requirements.

The language in this Title is identical to H.R. 634, which passed the House on June 12, 2013, by a vote of 411-112. The RSC Legislative Bulletin for H.R. 634 is available [here](#).

Additional Information: The Terrorism Risk Insurance Program was established after passage of the Terrorism Risk Insurance Act of 2002 in response to catastrophic losses commensurate with the September 11, 2001 terrorist attacks. Insurance losses from 9/11 exceeded \$20 billion in 2001. TRIA was established in the aftermath of the attacks given the uncertainty of imminent and future catastrophic terrorist attacks and major financial demands on existing reinsurance markets.

TRIA was originally established to provide insurance where it was thought no private market was available to address potential losses. Many policies exclude terrorism coverage or would prove insolvent without an umbrella type loss structure such as TRIA.

Committee Action: The underlying legislation, S.2244, the “Terrorism Risk Insurance Program Reauthorization Act of 2014,” was introduced by Senator Charles Schumer (D-NY) on April 10, 2014. S.2244 was reported by Senator Tim Johnson (D-SD) with a report from the Committee on Banking, Housing, and Urban Affairs with a report on June 26, 2014. S.2244 was passed in the Senate by a vote of 93-4. The Neugebauer Amendment in the Nature of a Substitute was submitted to the House Rules Committee on December 9, 2014.

Outside Groups: Reauthorization and extension of TRIA is supported by a host of insurance, business, and other government institutions including:

- [The Coalition to Insure Against Terrorism](#)
- [The National Association of Insurance Commissioners](#)
- [The National League of Cities](#)
- [National Governors Association](#)
- [The Independent Community Bankers of America \(ICBA\)](#)

[-The American Bankers Association](#)

The U.S. Chamber of Commerce circulated a multi-industry support [letter](#) with an extensive list of signatories in support of S.2244.

R Street Institute issued a [release](#) stating that the “House terror insurance bill is short on reform.”

Administration Position: The Obama Administration supports reauthorization and extension of TRIA.

Cost to Taxpayers: The Congressional Budget Office (CBO) [estimates](#) that enacting the Amendment in the Nature of a Substitute will result in a net reduction in the deficit of \$456 million over the 2015-2024 period. CBO estimates that revenues will increase by \$3.987 billion and that expenses will increase by \$3.531 billion over 10 years. Revenues are estimated to increase as the Secretary of the Treasury will have authority to impose surcharges on policy holders to help recoup federal losses.

Does the Bill Expand the Size and Scope of the Federal Government?: In relation to TRIA, the bill extends a program that otherwise would have expired.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. The CBO [estimated](#) in its initial report on S.2244 that “aggregate costs to public entities of complying with those mandates would probably fall below the annual threshold established in Unfunded Mandates Reform Act (UMRA) for intergovernmental mandates.” For private sector policyholders and insurers, CBO estimated that the aggregate cost would be above UMRA.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment?: No. Although some conservatives may be opposed to NARAB, despite retention of state sovereignty in insurance law.

Does the Bill Delegate Any Legislative Authority to the Executive Branch?: No.

Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: n/a

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