Additional Views on H.R. 2761, "Terrorism Risk Insurance Revision and Extension Act of 2007"

Enacted after the September 11, 2001 terrorist attacks, the Terrorism Risk Insurance Act (TRIA) was intended to be `a temporary Federal program . . . to allow for a transitional period for the private market to stabilize, resume pricing of [terrorism] insurance, and build capacity.' Subsequently, Congress recognized the need for a short-term extension of this new program to curb uncertainty and maintain market stability. To ensure that the taxpayers' liability under TRIA would not become permanent, several mechanisms were included to phase out the Federal subsidy over time, including: increasing the insurer deductibles from 7 to 20 percent, increasing the program trigger from $5 million to $100 million, increasing the insurer co-share from 10 to 15 percent, increasing industry retention from $10 billion to $27.5 billion, and narrowing lines of coverage.

TRIA has successfully fulfilled its mandate. According to a report by the President's Working Group on Financial Markets, as the Federal subsidies for terrorism insurance have been slowly phased out, take-up rates have risen, prices have declined, reinsurance has expanded, and the private marketplace has been successfully diversifying and absorbing additional risk exposure. Unfortunately, H.R. 2761 radically revises TRIA, changing it from a temporary hand-up into a permanent hand-out. Instead of continuing to expand the private sector role in the marketplace, H.R. 2761 turns the program on its head, shifting the responsibility from a majority-private sector program to a more government-run program with taxpayers on the hook for massive increased potential liabilities.

While Republicans authored the original TRIA proposals and continue to strongly support extending it for a reasonable period of time, H.R. 2761 goes in the wrong direction with respect to the proper balance between private and public sector participation. The 15 year program extension is too long for such an enormous taxpayer liability--particularly with the terrorist threat continuing to rapidly evolve. The phase-out of the Federal role and narrowing of scope under current law would be largely reversed, the program trigger halved, and required deductibles and co-shares would be dramatically reduced for insurance companies. While deductibles would continue to slightly increase annually, they are reset below Year 1 levels, with the rate of increase not bringing the deductibles even close to current levels until long after the 15 year extension.

Despite H.R. 2761's vast expansion of TRIA's federal subsidies, Committee Republicans and Democrats worked together in a number of critical areas to provide more protection from terrorist threats in the marketplace. For example, many of the provisions of H.R. 2761 protecting policyholders from domestic threats and nuclear, biological, chemical, and radiological (NBCR) risks were initially developed in TRIA extension legislation that passed the House last Congress. Republicans were also successful in getting several important amendments adopted to add more market reforms to TRIA, encourage the long-term build-up of dedicated terrorism surplus, protect taxpayers, increase private sector responsibility, and better implement the NBCR mandates.

For example, the manager's amendment to H.R. 2761 offered by Chairman Frank at the Committee markup contained several key Republican provisions to create a transition period for implementation of the new NBCR requirements, better balance the application of insurance company deductibles, and allow insurers to accumulate and pool dedicated long-term terrorism reserves for their deductibles and co-shares. State forms requirements for NBCR terrorism coverage not previously required will be exempt from state review for the first two years as the NBCR marketplace adjusts and evolves. State price controls will be partly preempted for three years to allow insurers to charge appropriate rates for NBCR coverage as they adjust their risk portfolios during this transition period, although states will still be permitted to invalidate a rate as inadequate or unfairly discriminatory. Insurers are allowed to voluntarily participate in a terrorism buy-down fund, to lower their liability for deductibles and co-shares after an event by contributing premiums to a fund that would accumulate interest over time. The funds can be pooled to help create additional capacity over time, particularly to help insurers absorb the increasing deductibles or increases in the Program trigger. These reforms are based on amendments offered by Rep. Richard Baker at the Capital Markets, Insurance, and Government Sponsored Enterprises Subcommittee markup of H.R. 2761, and will especially benefit smaller insurers, who may find it difficult to initially price and set aside reserves for NBCR coverage.

In addition to the Manager's Amendment, the Committee approved two Republican amendments that improve the ability of insurers to comply with the NBCR make-available mandate. Rep. Kenny Marchant offered a measure clarifying that an insurer may partner with another insurer with a comparable credit rating to provide NBCR coverage. This will allow insurers that may find it more difficult to offer NBCR coverage without risking insolvency or a ratings downgrade to continue offering commercial property and casualty insurance in high-risk areas. Rep. Donald Manzullo had an amendment accepted to allow exemptions to the NBCR make-available mandate for small insurers that demonstrate a likelihood of insolvency in the case of nuclear, biological, chemical, or radiological terrorism. This amendment allows small insurers to continue offering their underlying coverage to policyholders even though the NBCR mandate would otherwise magnify their risk exposure and force a significant coverage contraction. These reforms will ease the implementation of the NBCR mandates for covered lines under the TRIA program. It should be noted that TRIA does not provide a backstop for homeowners' insurance or other personal lines, and NBCR risks are expected to continue to be excluded from most homeowners' policies. Past Committee reports have suggested that NBCR is a relatively uninsurable risk absent some form of government backstop.

Republican amendments were also accepted to better protect taxpayers from bearing the brunt of an expanded TRIA program. Rep. Michele Bachmann offered an amendment directing Treasury to either require full taxpayer recoupment of any Federal payouts to cover terrorism losses, or to report to Congress on why full recoupment is not appropriate, based on such factors as cost to taxpayers, the economic environment, and insurance affordability for small- and mediumsized companies. Full recoupment is a vital component of any TRIA extension. While mandatory 100% payback of the taxpayers has been included in every previous Committee-passed TRIA bill, requiring Treasury to either recoup such amounts or report to Congress why and to what extent such full recoupment cannot be made is an improvement over the introduced language of H.R. 2761. The Committee also adopted an amendment offered by Rep. Scott Garrett increasing the TRIA deductible each year for events over $1 billion by one-half a percentage point each year (50 basis points), with a reset mechanism to bring the deductibles back down if another major terrorist event occurred. Deductibles have increased by at least 2.5% each year since the creation of TRIA. Though the new increase is much more modest, adding at least some increase to H.R. 2761 ensures that private sector responsibility will continue to grow and the Federal subsidy decline over time. Rep. Ginny Brown-Waite also offered a fiscal responsibility amendment designed to reduce taxpayer exposure to terrorism losses. Under this amendment, Treasury is directed to index the TRIA program--including the trigger and cap--to adjust each year for inflation. This will ensure that the dollar amounts do not decline in actual value each year, protecting the government and taxpayers from having to intervene in relatively small events that do not threaten the functioning or solvency of the marketplace.

The vast majority of Republicans remain strongly committed to TRIA and its extension for a reasonable length of time. H.R. 2761 includes a number of important reforms that have been developed as the result of bipartisan efforts over several years. It is my hope that H.R. 2761 can be rebalanced, either on the House Floor or in conference with the Senate, to better reflect its intended temporary and private sector focused nature. TRIA is working extremely well today. Its Federal subsidies should not be increased, but rather slowly decreased to encourage private sector solutions and innovation. If this goal can be achieved, final passage of TRIA will have overwhelming bipartisan support.

SPENCER BACHUS, RANKING MEMBER.