

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

Six years ago, when the Congress considered the bill creating the terrorism insurance program, I urged my colleagues to reject it. One of the reasons I opposed the bill was my concern that, contrary to the claims of the bill's supporters, terrorism insurance would not be allowed to sunset. As I said then:

The drafters of H.R. 3210 claim that this creates a `temporary' government program. However, Mr. Speaker, what happens in three years if industry lobbyists come to Capitol Hill to explain that there is still a need for this program because of the continuing threat of terrorist attacks. Does anyone seriously believe that Congress will refuse to reauthorize this `temporary' insurance program or provide some other form of taxpayer help to the insurance industry? I would like to remind my colleagues that the federal budget is full of expenditures for long-lasting programs that were originally intended to be `temporary.'

I am disappointed to be proven correct. I am also skeptical that, having renewed the program twice, this time for fifteen years, Congress will ever allow it to expire.

As Congress considers extending this program, I renew my opposition to it for substantially the same reasons I stated six years ago. However, I do have a suggestion on how to improve the program. Since one claimed problem with allowing the private market to provide terrorism insurance is the difficulty of quantifying the risk of an attack, the taxpayers' liability under the terrorism reinsurance program should be reduced for an attack occurring when the country is under orange or red alert. After all, because the point of the alert system is to let Americans know when there is an increased likelihood of an attack it is reasonable to expect insurance companies to demand that their clients take extra precautionary measures during periods of high alert. Reducing taxpayer subsidies will provide an incentive to ensure private parties take every possible precaution to minimize the potential damage from possible terrorists attack.

Since my fundamental objections to the program remain the same as six years ago, I am attaching my statement regarding H.R. 3210, which created the terrorist insurance program in the 107th Congress:

Mr. Speaker, no one doubts that the government has a role to play in compensating American citizens who are victimized by terrorist attacks. However, Congress should not lose sight of fundamental economic and constitutional principles when considering how best to provide the victims of terrorist attacks just compensation. I am afraid that H.R. 3210, the Terrorism Risk Protection Act, violates several of those principles and therefore passage of this bill is not in the best interests of the American people.

Under H.R. 3210, taxpayers are responsible for paying 90% of the costs of a terrorist incident when the total cost of that incident exceeds a certain threshold. While insurance companies technically are responsible under the bill for paying back monies received from the Treasury, the administrator of this program may defer repayment of the majority of the subsidy in order to `avoid the likely insolvency of the commercial insurer,' or avoid `unreasonable economic disruption and market instability.' This language may cause administrators to defer indefinitely the repayment of the loans, thus causing taxpayers to permanently bear the loss. This scenario is especially likely when one considers that `avoid . . . likely insolvency, unreasonable economic disruption, and market instability' are highly subjective standards, and that any

administrator who attempts to enforce a strict repayment schedule likely will come under heavy political pressure to be more `flexible' in collecting debts owed to the taxpayers.

The drafters of H.R. 3210 claim that this creates a `temporary' government program. However, Mr. Speaker, what happens in three years if industry lobbyists come to Capitol Hill to explain that there is still a need for this program because of the continuing threat of terrorist attacks. Does anyone seriously believe that Congress will refuse to reauthorize this `temporary' insurance program or provide some other form of taxpayer help to the insurance industry? I would like to remind my colleagues that the federal budget is full of expenditures for long-lasting programs that were originally intended to be `temporary.'

H.R. 3210 compounds the danger to taxpayers because of what economists call the `moral hazard' problem. A moral hazard is created when individuals have the costs incurred from a risky action subsidized by a third party. In such a case individuals may engage in unnecessary risks or fail to take steps to minimize their risks. After all, if a third party will bear the costs of negative consequences of risky behavior, why should individuals invest their resources in avoiding or minimizing risk?

While no one can plan for terrorist attacks, individuals and businesses can take steps to enhance security. For example, I think we would all agree that industrial plants in the United States enjoy reasonably good security. They are protected not by the local police, but by owners putting up barbed wire fences, hiring guards with guns, and requiring identification cards to enter. One reason private firms put these security measures in place is because insurance companies provide them with incentives, in the form of lower premiums, to adopt security measures. H.R. 3210 contains no incentives for this private activity. The bill does not even recognize the important role insurance plays in providing incentives to minimize risks. By removing an incentive for private parties to avoid or at least mitigate the damage from a future terrorist attack, the government inadvertently increases the damage that will be inflicted by future attacks!

Instead of forcing taxpayers to subsidize the costs of terrorism insurance, Congress should consider creating a tax credit or deduction for premiums paid for terrorism insurance, as well as a deduction for claims and other costs borne by the insurance industry connected with offering terrorism insurance. A tax credit approach reduces government's control over the insurance market. Furthermore, since a tax credit approach encourages people to devote more of their own resources to terrorism insurance, the moral hazard problems associated with federally funded insurance is avoided.

The version of H.R. 3210 passed by the Financial Services committee took a good first step in this direction by repealing the tax penalty which prevents insurance companies from properly reserving funds for human-created catastrophes. I am disappointed that this sensible provision was removed from the final bill. Instead, H.R. 3210 instructs the Treasury Department to study the benefits of allowing insurers to establish tax-free reserves to cover losses from terrorist events. The perceived need to study the wisdom of cutting taxes while expanding the federal government without hesitation demonstrates much that is wrong with Washington.

In conclusion, Mr. Speaker, H.R. 3210 may reduce the risk to insurance companies from future losses, but it increases the costs incurred by an American taxpayer. More significantly, by ignoring the moral hazard problem this bill may have the unintended consequence of increasing the losses suffered in any future terrorist attacks. Therefore, passage of this bill is not in the long-term interests of the American people.

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