RSC
Republican Study Committee
Rep. Mike Pence (R-IN), Chairman
Sheila Cole, Executive Director
426 Cannon House Office Building
Washington, DC 20515
http://johnshadegg.house.gov/rsc/
ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin……………………………….………December 7, 2005

FINAL UPDATE

Contents:

S. 467/ H.R. 4314—Terrorism Risk Insurance Extension Act—*as reported from committee* (*Sen. Dodd, D-CT*/ Baker, R-LA)

NOTE: According to the House Budget Committee, this bill is expected to exceed the FY2006 budget resolution by about $1 billion.

Order of Business: S. 467, as amended with the text of H.R. 4314, is scheduled to be considered on Wednesday, December 7th, under a motion to suspend the rules and pass the bill.

NOTE: The Senate-passed text of S. 467 will be removed and replaced with the text of H.R. 4314, essentially as it was reported from the House Financial Services Committee. Therefore, this Legislative Bulletin focuses on H.R. 4314.

Background: On November 26, 2002, President Bush signed into law H.R. 3210 (Public Law 107-297), which implemented the new federal back-stop for terrorism risk insurance (commonly known as "TRIA") in the wake of the September 11th attacks. The program was implemented to ensure that the private insurers would continue to offer terrorism insurance by protecting the insurance industry from financial collapse should a massive terrorist attack (or series of attacks) occur. At the time, it was widely agreed that this federal reinsurance for terrorism would be temporary; thus the law includes an explicit statement of program termination (on December 31, 2005). If Congress and the President do not act before the end of this month, the program will terminate.

To see the RSC Legislative Bulletins on H.R. 3210 from the 107th Congress, visit these two webpages:
http://johnshadegg.house.gov/rsc/Lb111402.pdf
http://johnshadegg.house.gov/rsc/LB112901.PDF

On November 18, 2005, the Senate passed by unanimous consent S. 467, a bill that would extend TRIA for <u>two</u> years yet otherwise <u>shrink</u> the program. For example, it would remove certain lines of coverage from TRIA (e.g. burglary and theft, and professional liability) and would raise the threshold of insured loss that triggers federal assistance. H.R. 4314 would extend and <u>grow</u> the program overall (details below).

<u>Summary</u>: H.R. 4314 would extend TRIA for three years, through December 31, 2008. Highlights of the changes to the current TRIA would be as follows:

- Adds group life insurance to TRIA and allows it to apply to group life during congressionally-declared wars (TRIA would not apply to most lines of coverage during such wars).
- Removes the requirement that TRIA apply only to terrorist acts on behalf of a foreign person or interest (i.e. TRIA could apply to domestic-based terrorism).
- Eliminates the requirement that a final, non-reviewable decision as to whether something is a terrorist act be made jointly by the Treasury Secretary, the Secretary of State, and the Attorney General of the United States.
- Removes the $5 million minimum aggregate loss for an act to be declared terrorism for the purposes of TRIA.
- Excludes commercial auto insurance from TRIA.
- Continues to increase the deductibles for participating insurers (casualty insurance deductibles would increase more sharply than other lines of coverage, with workers' compensation insurance increasing the least).
- Provides for 0.1% reductions in deductibles for each $1 billion in aggregate industry losses that exceed $1 billion in a calendar year.
- Creates a sub-deductible system for nuclear, biological, chemical, and radiological (NBCR) terrorism coverage.
- Allows insurers to provide NBCR coverage that is materially different from non-NBCR coverage.
- Changes the federal share of compensation under TRIA from **90%** of all aggregate losses annually above $5 million to:
  --80% of aggregate losses up to $10 billion;
  --85% of aggregate losses from $10 billion to $20 billion;
  --90% of aggregate losses from $20 billion to $40 billion; and
  --**95%** of aggregate losses above $40 billion.

- Increases the program trigger (the loss-point at which TRIA kicks in) from $5 million to:
  - --$50 million in 2006;
  - --$100 million in 2007; and
  - --An additional cumulative $50 million for each subsequent year.

- Reduces the program trigger by $10 million for each $1 billion in aggregate losses occurring in any preceding year (trigger could still not be less than $50 million).

- Allows each participating insurer to establish a TRIA Capital Reserve Fund (CRF), in which it could hold funds in a fiduciary capacity (i.e. invest premiums that would otherwise be paid to the Treasury) on behalf of the Treasury Secretary. When TRIA terminates, the insurer could keep 90% of the balance in a CRF.

- Creates a nine-member, Treasury-directed advisory committee to encourage the growth of private-market reinsurance.

- Removes the current-law provisions about the insurance industry's aggregate retention of funds to pay back the Treasury and retains the requirement that the Treasury Secretary collect "terrorism loss risk-spreading premiums" in an amount equal to the total amount paid by the Secretary under TRIA for terrorism losses. The bill would also remove any language regarding a waiving of the payback provisions.

- Directs the Comptroller General to study:
  - --the exposure of personal lines of insurance (including homeowners insurance) to terrorism risk, the coverage currently available, and potential policy responses;
  - --the risks of potential NBCR attacks; and
  - --the need for a federal program that provides for a system of shared public and private compensation for insured losses resulting from natural disaster.

- Establishes the eleven-member Commission on Terrorism Risk Insurance to analyze and encourage the private-sector provision of terrorism insurance and reinsurance and to reduce the federal role in this market. The Commission would also make a recommendation by the end of 2006 as to whether TRIA should continue to exist.

- Terminates TRIA one year earlier (i.e. on December 31, 2007), if the Commission fails to make the above recommendation on time.

- Exempts certain policies and policyholders from state preemption language in current law and in this legislation (including lawsuit forums, thereby allowing forum-shopping for TRIA-related actions).

- Expresses Congress' intent that, by the end of 2007, all states implement and fully utilize the System for Electronic Rate and Form Filing (SERFF) to provide a single point for electronic filing of property insurance and casualty insurance forms for federal review.

- Requires that insurers make available, in any life insurance policy, coverage that does not preclude future foreign travel by the person insured. Premiums for such coverage could not be "excessive" and would have to be based on "a good faith actuarial analysis."

- Removes the prohibition on using taxpayer funds to pay punitive damages in TRIA-related lawsuits.

Committee Action: On November 14, 2005, H.R. 4314 was referred to the Financial Services Committee, which marked up, amended, and ordered the bill reported to the full House by voice vote.

Possible Conservative Concerns: Some conservatives have expressed concerns with the fact that H.R. 4314, relative to the Senate bill, would expand TRIA, which was intended to be a temporary band-aid solution to market uncertainties in the immediate aftermath of the September 11th attacks. Specifically, some conservatives have expressed concerns over the following provisions:

- H.R. 4314 would extend TRIA for at least three years (Senate bill: two years).
- H.R. 4314 would extend TRIA coverage to group life insurance and to terrorist attacks originating from a domestic source and for domestic political reasons.
- H.R. 4314 would increase the federal share from 90% to 95% for aggregate losses between $40 billion and $100 billion.
- H.R. 4314 would essentially impose a new tax on all commercial insurance policyholders, regardless of whether each policyholder is affected directly by terrorism (the mandatory repayment of TRIA payouts)
- H.R. 4314 would create a new government advisory committee and a new government commission to encourage the private-market provision of terrorism insurance and reinsurance.

Additionally, the House Budget Committee reports that H.R. 4314 is expected to violate the budget resolution by about $1 billion in FY2006.

Administration Position: A Statement of Administration Policy (SAP) for the House amendment to S. 467 says that the Administration "strongly opposes" this bill.

Cost to Taxpayers: CBO informally told RSC staff that a cost estimate for H.R. 4314 is not likely to be available before next week, however they expect the increase in mandatory spending to be between $1 billion and $2 billion over five years. The mandatory recoup from policyholders (regardless of whether they were each affected by terrorism) of TRIA payments would score as revenues (**as a tax**) and thus NOT score as offsetting any pay-outs made under TRIA. The House Budget Committee informally told RSC staff that this bill would violate the FY2006 budget resolution by about $1 billion.

Does the Bill Expand the Size and Scope of the Federal Government?: H.R. 4314 would increase the taxpayer's exposure through an overall-expanded reinsurance program.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: A complete analysis of the mandates in this bill is not yet available.

Constitutional Authority: A committee report citing constitutional authority remains unavailable.

Outside Organizations: The Club for Growth is opposing any extension of TRIA. The National Taxpayers Union has publicly urged all Members to oppose H.R. 4314, citing the bill's increased financial exposure for taxpayers.

Many insurance industry organizations have either expressed support for H.R. 4314 or have remained neutral in choosing between the House and Senate versions of the bill.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718