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INSIGHT

Insurance and Unexpected Risks: COVID-19 in 2020 and Terrorism in 2001

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The Coronavirus Disease 2019 (COVID-19) pandemic has disrupted the economy across the United States and the world, due to both the direct effects of the virus and the various public health measures imposed to address the disease. Many affected businesses have looked to their insurance policies to recoup some of their losses. The final extent of insurance coverage is unclear, particularly due to uncertainty around insurance policy language that may exclude virus-related losses. (For more information, see CRS Insights IN11295, IN11382, and IN11383.) Even if such exclusions are upheld, insured losses are estimated to be in the tens of billions of dollars, likely outstripping the insured losses from the September 11, 2001 terrorist attacks.

The unexpected losses from the 2001 attacks caused significant disruptions in terrorism insurance markets, leading Congress to step in with the Terrorism Risk Insurance Act (TRIA; 15 U.S.C. 6701 Note). With COVID-19 also likely causing disruptions in insurance coverage, some in Congress are considering terrorism insurance as a potential model. Representative Carolyn Maloney has introduced the Pandemic Risk Insurance Act of 2020 (PRIA; H.R. 7011), modeled on TRIA. This Insight compares the primary features of TRIA with PRIA.

Comparing Terrorism Risk with Pandemic Risk

As Congress considers responding to the COVID-19 pandemic, similarities in the COVID-19 pandemic and the 2001 attacks may make TRIA a natural model. However, there are differences that may inform legislation, including the following:

- **Size and scope of losses.** Total losses from the 2001 attacks were unexpectedly large, at approximately $47 billion in current dollars, but they were concentrated in a particular area and were generally manageable within the capital structure of the insurance industry. Total policyholder surplus for the U.S. insurance industry at the time was approximately $425 billion in current dollars, and much of the terrorism exposure was spread around the world through foreign reinsurance.
  The financial impact of the COVID-19 pandemic is expected to be larger than that of the 9/11 attacks. Insured loss estimates are still uncertain, but some have been quite large, as

much as $81 billion for U.S. workers compensation insurance and in the hundreds of billions per month if virus-related exclusions in various policies are not upheld in the courts. The U.S. insurance industry total policyholder surplus was approximately $847.8 billion at the end of 2019, comparatively larger than in 2001. However, since pandemic losses are worldwide, there are, effectively, no safe havens from which billions of dollars of capital can flow to help pay for losses. In addition, catastrophe losses from hurricanes and wildfires seem likely to stress the insurance industry's finances in 2020.

- **Insurer response.** Prior to the 2001 attacks, insurers generally did not exclude terrorism from policies despite, for example, previous attacks on the World Trade Center in New York. Thus, insurers generally paid out claims from the attacks, resulting in billions of dollars flowing to quickly provide relief. In the case of pandemics, insurers introduced exclusionary language following the 2002-2004 SARS outbreak. Thus, relatively fewer claims have been paid out to this point, as court cases to adjudicate insurer responsibility for COVID-19 claims are ongoing.
- **Outlook for future losses.** The 2001 attacks were generally expected to presage further terrorist attacks, inducing lenders, for example, to require terrorism insurance for large projects. Without this insurance, broader damage to the economy was feared. This concern has not appeared to subside, as Congress has renewed TRIA four times since its initial passage. COVID-19 appears likely to disrupt financial markets until more effective treatments or vaccines are developed. It is unclear, however, if this pandemic presages future pandemics, thus requiring a longer term response, or whether it might be a once in a century event that recedes in market importance once it subsides.

The Terrorism Risk Insurance Act

TRIA created a government backstop for commercial terrorism insurance. Although amended over the years, TRIA is still in place and requires *all insurers* offering most property/casualty insurance to participate in the program and to offer coverage for terrorist attacks. Businesses purchasing insurance, however, are not required to purchase terrorism coverage. After a terrorist attack, insurers would pay claims to policyholders up front, and then the TRIA program would step in and reimburse insurers for some of the insured losses due to the attack. Depending on the exact extent and distribution of losses, the government would then recoup the assistance after the fact through surcharges placed on property/casualty insurance policies. (For more detail on TRIA, see CRS Report R45707, *Terrorism Risk Insurance: Overview and Issue Analysis for the 116th Congress*, by Baird Webel.)

Pandemic Risk Insurance Legislation

Absent policy intervention, businesses wanting to insure against pandemic losses are likely to find such insurance exceedingly expensive, if it is available at all. With TRIA generally perceived as a success, it was viewed as a possible model for addressing the insurance market disruptions from COVID-19. H.R. 7011 would create a similar structure to TRIA for pandemic business interruption insurance with insurers paying claims up front and the government reimbursing some portion of the losses after the fact. Two notable differences, however, are (1) the PRIA program would be *voluntary*, insurers would not be required to participate and offer coverage for pandemic-related losses, and (2) there would be no after-the-fact recoupment mechanisms to reimburse the government for coverage.

Table 1. Comparison of Selected TRIA and PRIA provisions

	Terrorism Risk Insurance Act (15 U.S.C. 6701 Note, as amended)	Pandemic Risk Reinsurance Act (H.R. 7011, as introduced)
Insurer Participation	Mandatory	Voluntary
Policyholder Participation	Voluntary	Voluntary
Program trigger	$200 million aggregate annual insured losses	$250 million aggregate annual insured losses
Individual Insurer Deductible[a]	20% of premiums	5% of premiums
Government Share	80%	95%
Overall Limit[b]	$100 billion in insured losses	$750 billion in insured losses
Recoupment of Government Payments?	Would occur in some cases, depending on insured loss amount and distribution	No recoupment provisions

Source: Congressional Research Service from http://www.congress.gov.

a. Deductibles based on direct earned premiums for property/casualty insurance lines eligible for coverage under the respective programs.

b. If losses approach the limit, the U.S. Treasury would determine a process for pro rata payments.

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