Consumer Federation of America

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INSURANCE INDUSTRY IS DECEIVING CONGRESS ABOUT NEED TO EXTEND TERROR INSURANCE LAW PREMATURELY

—Rush to Renew Law Could Cost Taxpayers Billions that Industry Could Afford to Pay—

The Consumer Federation of America (CFA) today released information demonstrating that the insurance industry has deliberately misled Congress about the need to renew the nation's temporary terrorism insurance law this year — more than a year before it expires. If Congress renews the law early, it would be disregarding a comprehensive study it required the Department of the Treasury to complete by June 30th of next year on whether extension of the law is necessary. CFA has informed Congress that the unnecessary extension of the law, known as the Terrorism Risk Insurance Act (TRIA), could force taxpayers to pay for terrorism losses that the insurance industry could otherwise afford and stifle the development of a private market for terrorism insurance.[1]

Despite the fact that the insurance industry lobbied aggressively for enactment of TRIA with the study requirement, insurers now claim that Congress must ignore the Treasury study and renew the law immediately. TRIA is not due to expire until the end of 2005. Insurers claim that early renewal is necessary because some terrorism policies that will be written early next year while the law is in place would extend beyond the expiration of the law at the end of the year.[2] In order to prevent disruption in the market, they say, Congress should act immediately.

"Insurers have invented a false emergency about an issue they were well aware of when they aggressively lobbied for TRIA and that they already have a solution for," said J. Robert Hunter, CFA's Director of Insurance and a former Federal Insurance Administrator and Texas Insurance Commissioner. "What the industry hasn't told Congress is that they have already convinced most states to allow insurers to exclude terror coverage in policies that extend beyond the expiration of TRIA. If the law expires, these exclusions would be in force and no market disruption would occur."

As evidence of an established plan to allow such terrorism exclusions, CFA pointed to a "Model Bulletin" put out by the National Association of Insurance Commissioners, "Uncertainty

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[1] CFA's letter to Congressional leaders is at: http://www.consumerfed.org/TRIA_renewal_rush_letter.pdf.
[2] "TRIA has a 'hard' expiration date of December 31, 2005 … By contrast, the underlying insurance policies that rely on TRIA are written every day of the year, generally for a 12-month term…This sequential mismatch will create confusion for policyholders and uncertainty for insurers, because policies written before, but extending beyond, December 31, 2005 will have a coverage term that extends beyond the backstop. As a result, insurers will have no choice but to evaluate every policyholder considered for coverage during this period as if the backstop does not exist for at least part of the coverage period." Testimony of John Degnan, Vice Chairman of the Chubb Corporation, on behalf of the entire Property/Casualty insurance industry before the Senate Banking Committee, May 18, 2004.

Related to Expiration of the Terrorism Risk Insurance Act of 2002; Exclusions Related to Acts of Terrorism."[3] This Bulletin, now in effect in most states, allows for easy adoption of conditional exclusions of terrorism coverage in any policy that insurers feel might be at risk should TRIA terminate.

"The insurance industry knows full well that Congress has six months after the Treasury study is finished to extend the law if need be before policyholders are affected," said Hunter. "The real reason insurers are raising this bogus excuse for premature renewal of TRIA is to hoodwink Congress into extending it before the Treasury Department completes its report," he said. "The insurance industry is scared to death that the Treasury Department study will show that TRIA is no longer necessary in its current form."

Legislation to immediately extend the law for two additional years has already been introduced in the U.S. Senate and House. The existing program requires the federal government to cover 90 percent of all terrorism-related insurance losses (up to $100 billion a year) after individual insurance companies pay an initial deductible. Insurers, who are required to offer terror coverage, do not pay a premium for this reinsurance and must repay very little or no assistance. CFA identified several key questions the Treasury Department study will likely answer about TRIA's renewal, including:

- Is the law still necessary three years after the attacks of September 11th?
- Can the private market handle terrorism coverage in some parts of the country without taxpayer assistance?
- If the law is still needed in some form, how should it be altered?
- Would renewal of TRIA stymie the development of a private market for terrorism coverage?
- Should insurance companies pay a premium for reinsurance that is currently free?[4]

In April, CFA released a comprehensive review of TRIA, which concluded that the law would not be necessary after 2005 to ensure the availability of affordable terrorism coverage for most areas of the country, with the possible exception of nine cities, and should be allowed to expire.[5] CFA found that the ability of the private market to insure against terrorism is enormous and growing, insurer profits are very substantial and the financial condition of these companies overall is rock solid. Indeed, the property/casualty insurance industry reported first quarter 2004 results that were astonishingly profitable, with retained earnings, called "surplus", of $368.7 billion, up $78.1 billion from last year. To put the magnitude of these earnings in perspective, the after-tax insured cost to the industry of the September 11th attacks was about $20 billion.

CFA is a non-profit association of 300 organizations that, since 1968, has sought to advance the consumer interest through research, advocacy and education.

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[3] NAIC Model Bulletin, June 10, 2004: http://www.naic.org/pressroom/releases/rel04/7-20-04_Model_Bulletin_Final.pdf. The Bulletin reads, in part, "The intent of this bulletin is to inform you [insurance companies] of the decision in this state to approve certain conditional coverage limitations for acts of terrorism… In a recent conference call the members of the NAIC agreed that the conditional endorsement approach, while not providing a perfect solution, offers the best hope for adding some certainty to address TRIA's hard ending should Congress fail to enact an extension of TRIA."

[4] Terrorism Risk Insurance Act, Section 108, "Termination of the Program," requires the Treasury Department to examine "the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program, and the availability and affordability of such insurance for various policyholders…"

[5] The Terrorism Risk Insurance Act: Should It Be Renewed? April 2004, http://www.consumerfed.org/terrorism_insurance_report.pdf.