Order Code RS21211
Updated June 10, 2002

CRS Report for Congress

Received through the CRS Web

Terrorism Insurance – Comparison of H.R. 3210 and S. 2600

S. Roy Woodall, Jr.
Insurance Consultant
Government and Finance Division

Summary

The terrorist attacks of September 11 resulted in the largest insured catastrophic loss in history, estimated to total as much as $70 billion. Even though the insurance industry committed to pay losses resulting from the attacks, industry spokesmen asserted that in view of the impending difficulty in obtaining reinsurance for the risk of future terrorist attacks, primary insurers would not be able to cover future terrorism losses without a federal backstop.

On November 29, 2001, the House of Representatives passed H.R. 3210, the Terrorism Risk Protection Act, providing for a temporary federal backstop. In the Senate, four similar measures were introduced in 2001(S. 1743, S. 1744, S. 1748, and S. 1751), but no action was taken during the first session of the 107th Congress. Senate Majority Leader Tom Daschle indicated that backstop legislation would be considered again in 2002, but efforts to reach a unanimous consent (UC) agreement to bring H.R. 3210 to the floor of the Senate and amend it by substituting the language of a compromise proposal, the Terrorism Risk Insurance Act, were not successful. On June 7, 2002, Senators Dodd, Sarbanes, Schumer, and Reid introduced the compromise proposal as a separate bill (S. 2600).

This report discusses and compares H.R. 3210 and S. 2600, and will be updated as events warrant.

Background

The terrorist attacks of September 11 resulted in the largest insured catastrophic loss in history, estimated to total as much as $70 billion. At the time, the insurance industry committed to pay losses resulting from the attacks and not invoke “act of war” clauses, despite considerable discussion that such an invocation might be appropriate. Despite the magnitude of the projected losses, the solvency of the insurance industry and most insurance firms has not apparently been threatened, in part because of the spreading of losses among many secondary insurers through the industry practice of “reinsurance.”

In light of the huge "9/11" losses and because of the lack of any actuarial basis for determining loss exposures, however, many reinsurers have indicated an unwillingness to accept the risk of loss from terrorism in the future. In turn, industry spokesmen have asserted that in view of the impending difficulty in obtaining reinsurance for the risk of future terrorist attacks, primary insurers would not be able to cover future terrorism losses without some form of federal backstop. There have been anecdotal accounts of dramatically increased premiums or outright inability of some businesses and major real estate landmarks to get insurance that includes coverage for acts of terrorism. Several proposals for a federal backstop were introduced in Congress in 2001, and one – H.R. 3210 – passed the House on November 29, 2001. On April 24, 2002, a unanimous consent (UC) agreement was proposed to bring H.R. 3210 to the Senate floor and amend it by substituting the language of the compromise agreed to by Banking Committee members, Senators Dodd, Sarbanes, and Gramm. Efforts to reach a UC were not successful, and on June 7, 2002, Senators Dodd, Sarbanes, Schumer and Reid introduced the compromise proposal as a separate bill (S. 2600).

Advocates of backstop proposals say that the program is needed because the lack of such terrorism coverage in the short term could in turn impede the ability of financial services providers to finance commercial property acquisitions and new construction projects. On May 23, 2002, the Joint Economic Committee issued a report (available at [http://www.house.gov/jec]),which found that the market for terrorism insurance remains limited, and that the problems associated with terrorism insurance pose a significant threat to sustained economic growth. A discussion of the state of the market for terrorism insurance can also be found in CRS Report RS21106, *Terrorism Insurance - The 2002 Marketplace.*

Comparison of H.R. 3210 and the S. 2600

S. 2600 is similar to the House-passed legislation in several aspects, such as establishing a temporary program, providing for oversight by the U.S. Treasury, setting triggers (losses sufficient to bring the federal backstop into play), setting definitions of what constitutes a terrorism event, and preempting state laws. The two bills differ with respect to whether or not assistance must be repaid, the nature of legal modifications and limitations, and other specific details.

Key provisions, similarities, and differences are set out in the following chart.

Provision	**H.R. 3210**	**S. 2600**
Name	Terrorism Risk Protection Act	Terrorism Risk Insurance Act
Purpose	Provide a temporary government loan program	Provide a temporary government/industry program for sharing losses
Governance	Oversight by Secretary of Treasury – may issue regulations	Secretary of Treasury – may establish "reasonable procedures" and rules

Provision	H.R. 3210	S. 2600
Length of Program	One year, but may be extended two additional years	One year, but may be extended for one additional year
Trigger (Industry-wide)	Losses exceed $1 billion	Losses exceed $5 million, then two levels of shared losses: up to $10 billion, and over $10 billion (increases to $15 billion if extended to second year)
Trigger (Individual Insurer)	Industry-wide losses exceed $100 million and individual insurer's losses exceed 10% of capital surplus and 10% of net premiums	Trigger is a retention amount referred to as "deductible" at first level based on insurer's market share times $10 billion ($15 billion in second year)
Post Trigger Federal Assistance	90% loan, but if trigger is industry-wide, then subject to a $5 million deductible per insurer	80% cost sharing for amounts over individual insurers' market share "deductible" (net of reinsurance) up to $10 billion, then 90% over $10 billion
Cap on Assistance	$100 billion	$100 billion per year (applies to industry liability also, capping industry share at $19 billion)
Covered Lines	Commercial	Commercial – mandatory Personal – optional
Mandatory Terrorism Coverage	No, but appears as though insurer not writing terrorism policies still subject to assessments	Yes, participating insurers must offer terrorism insurance in all commercial policies (assumes opt-out by policyholder)
Pay-back	Yes, through assessments on insurers for first $20 billion, and surcharges on policyholders for amounts from $20-$100 billion, with civil monetary penalties for failure to pay	No
Application to Self-insureds and Offshore Insurers	Yes. If Secretary of Treasury, in consultation with NAIC, so determines	Yes. Secretary of Treasury, in consultation with NAIC may establish procedures for municipalities and other entities in existence on 9/11

Provision	H.R. 3210	S. 2600
Definition of Terrorism	Yes. To be developed by Secretary of Treasury and NAIC consistent with the requirements of the Act	Yes. As certified by Secretary of Treasury, in concurrence with Secretary of State and Attorney General – based on requirements in the Act (losses exceed $5 million)
Cost Disclosure of Terrorism Coverage	Yes. Sense of Congress that states require separate disclosure of cost of terrorism coverage	Yes, as a condition for federal payment
Consultation with State Insurance Regulators and NAIC	Yes. As to assessments, surcharges, claims investigation, and covered perils	Yes. As to life insurance study and non-insurer entities to be covered
State Regulation Uniformity	Yes. As to "terrorism" definitions and underwriting standards	No
Civil Actions and Litigation	Federal cause of action in district court(s) designated by Judicial Panel on Multidistrict Litigation	General Federal cause of action (no designation by Judicial Panel on Multidistrict Litigation)
Legal Modifications and Limitations	Punitive damages prohibited. Non-economic damages proportional as to fault. U.S. right of subrogation. 20% cap on attorneys' fees	Punitive damages do not constitute "insured losses" and thus no federal participation. U.S. right of subrogation
Studies	Life insurance, railroad and trucking insurance, and reinsurance pool system for future acts of terrorism	Life insurance and other lines of insurance
Reports from Insurers	None required, except for data not available to NAIC	Only as to claims (premium rates reported to NAIC)
State Preemption	Yes. Of impediments to increasing premiums to recover assessments, but not as to filings or subsequent review of rates	Yes. As to "terrorism" definition and state prior approval rating statutes. Access to books/records by Secretary of Treasury guaranteed

Provision	H.R. 3210	S. 2600
Civil Monetary Penalties	Yes. $1 million against insurers for failing to pay assessments or surcharges, erroneous data, or violation of regulations	Yes. To be assessed by Secretary of Treasury for violations of Act or of any rule, regulation or order
Report to Congress	Yes. If Secretary extends the term of the program, must state reasons	Yes. Not later than nine months after the date of enactment, covering required items, plus joint report 12 months later with Comptroller General as to NAIC, FTC, and GAO reports

.