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DEPARTMENT OF THE TREASURY

RIN 1505-AC62

IMARA Calculation for Calendar Year 2020 Under the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury (Treasury) is issuing this notice to advise the public of the calculation of the Terrorism Risk Insurance Program's (TRIP or Program) insurance marketplace aggregate retention amount (IMARA) under the Terrorism Risk Insurance Act, as amended, for purposes of calendar year 2020. The IMARA has been determined by Treasury to be $40,878,630,900.

DATES: The IMARA for purposes of calendar year 2020 is effective from January 1, 2020, until December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202-622-2922, or Lindsey Baldwin, Senior Policy Analyst, Federal Insurance Office, 202-622-3220.

SUPPLEMENTARY INFORMATION:

I. Background

The Terrorism Risk Insurance Act of 2002 (as amended, the Act or TRIA)[1] was enacted on November 26, 2002, following the attacks of September 11, 2001, to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events.[2] TRIA requires insurers to "make available" terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (insured losses), and provides for shared public and private compensation for such insured losses. The Program has been reauthorized three times, most recently by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act).[3] The Secretary of the Treasury (Secretary) administers the Program. The Federal Insurance Office (FIO) assists the Secretary in administering the Program.[4]

The Act established an industry marketplace aggregate retention amount (IMARA) as a threshold figure to determine whether any Treasury payments under the Program are subject to mandatory recoupment. Under the Act, if total annual payments by participating insurers are below the IMARA, Treasury must recoup all amounts expended by it up to the IMARA threshold (mandatory recoupment). If total annual payments by participating insurers are above

[1] Public Law 107-297, 116 Stat. 2322, codified at 15 U.S.C. 6701 note. Because the provisions of TRIA (as amended) appear in a note instead of particular sections of the U.S. Code, the provisions of TRIA are identified by the sections of the law.
[2] TRIA, sec. 101(b).
[3] *See* Terrorism Risk Insurance Extension Act of 2005, Pub. L. 109-144, 119 Stat. 2660; Terrorism Risk Insurance Program Reauthorization Act of 2007, Pub. L. 110-160, 121 Stat. 1839; Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114-1, 129 Stat. 3.
[4] 31 U.S.C. § 313(c)(1)(D).

the IMARA, Treasury has the discretion to recoup all expended amounts above the IMARA threshold (discretionary recoupment).[5]

The 2015 Reauthorization Act provided for a schedule of defined IMARA values from calendar year 2015 through calendar year 2019.[6] The 2015 Reauthorization Act also provided that for calendar year 2020 and future years the IMARA "shall be revised to be the amount equal to the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior 3 calendar years," as such sum is determined pursuant to final rules issued by the Secretary.[7] These final rules, which were issued by Treasury in 2016 and revised in 2019, added Program regulation 31 CFR 50.4(m).[8]

Under 31 CFR 50.4(m)(2), the IMARA for calendar year 2020 is calculated by reference to the average annual industry aggregate deductibles over the prior three calendar years for purposes of the Program, based upon the direct earned premium (DEP) reported to Treasury by insurers in Treasury's annual data calls. For purposes of 2020, Treasury will make the calculation based upon aggregate insurer deductibles for the previous three calendar years (2019, 2018, and 2017). Insurer deductibles under the Program are based upon the DEP of individual insurers in the year prior to the year in question. As a result, deductibles used in the 2020 IMARA are based on DEP for calendar years 2018, 2017, and 2016, as reported to Treasury in 2019, 2018, and 2017.

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[5] *See* TRIA, sec. 103(e)(7); *see also* 31 CFR part 50 subpart J (Recoupment and Surcharge Procedures).
[6] In 2015, the IMARA was $29.5 billion; it increased to $31.5 billion in 2016, $33.5 billion in 2017, $35.5 billion in 2018, and $37.5 billion in 2019. *See* TRIA, sec. 103(e)(6)(B).
[7] TRIA, sec. 103(e)(6)(B)(ii) and (e)(6)(C). An insurer's deductible under the Program for any particular year is 20 percent of its direct earned premium subject to the Program during the preceding year. TRIA, sec. 102(7). For example, an insurer's calendar year 2019 Program deductible is 20 percent of its calendar year 2018 direct earned premium.
[8] *See* 81 FR 93756 (December 21, 2016), which added 31 CFR 50.4(m) and other Program regulations, and 84 FR 62450 (November 15, 2019), which implemented technical changes to 31 CFR 50.4(m).

In the June 2019 Study of Small Insurer Competitiveness in the Terrorism Risk Insurance Marketplace (2019 Small Insurer Study),[9] Treasury identified DEP in the TRIP-eligible lines of insurance reported to Treasury in its 2017, 2018, and 2019 data calls as follows:

Figure 1: TRIP-Eligible DEP by Insurer Category[10]

	2017 TRIP Data Call		2018 TRIP Data Call		2019 TRIP Data Call	
	2016 DEP in TRIP-Eligible Lines	% of Total	2017 DEP in TRIP-Eligible Lines	% of Total	2018 DEP in TRIP-Eligible Lines	% of Total
Alien Surplus Lines Ins.	$ 7,421,060,583	4%	$ 9,492,933,571	5%	$ 7,618,548,358	4%
Captive Insurers	7,930,646,027	4%	9,052,630,571	4%	8,937,119,082	4%
Non-Small Insurers	168,238,219,882	83%	163,891,791,592	80%	166,188,192,378	81%
Small Insurers	20,085,947,637	10%	21,806,195,201	11%	22,516,178,612	11%
Total	**$ 203,675,874,129**	**100%**	**$ 204,243,550,936**	**100%**	**$ 205,260,038,430**	**100%**

Source: 2017-2019 TRIP Data Calls

The reported premiums in Figure 1 are the operative figures for purposes of calculating the IMARA for calendar year 2020 in accordance with 31 CFR 50.4(m)(2). The average annual DEP figure for the combined period of 2016, 2017, and 2018 is $204,393,154,498 ($203,675,874,129 + $204,243,550,936 + $205,260,038,430 = $613,179,463,495/3 = $204,393,154,498). The annual average of the sum of insurer deductibles for all insurers for the prior three years is 20 percent of $204,393,154,498, or $40,878,630,900.[11] Accordingly, the IMARA for purposes of calendar year 2020 is $40,878,630,900.

Steven E. Seitz,
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[9] https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/2019_TRIP_SmallInsurer_Report.pdf.

[10] Some figures may not add to 100 percent due to rounding. *See* 2019 Small Insurer Study at 16.

[11] *See* note 7 above.

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