



November 4, 2005

The Honorable Michael Oxley  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
2129 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Barney Frank  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
B-301C Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Oxley and Ranking Member Frank:

The Mortgage Bankers Association (MBA) applauds your leadership in conducting oversight of the Terrorism Risk Insurance Act of 2002 (TRIA). As the Committee further considers this issue with an eye toward a legislative solution to TRIA's imminent expiration, we respectfully urge you to craft a bill that can achieve broad bipartisan support and move quickly through the House. Our membership<sup>1</sup> can appreciate the interest of many House Members to make certain reforms to the program, however, we wish to reiterate that it is most important that terrorism insurance remains available and affordable beyond December 31, 2005.

TRIA currently provides certainty in the commercial real estate debt markets, by capping the maximum loss exposure to investors and allowing primary insurers to quantify their risk. Because lenders typically finance 80% of the value of a property, the

---

<sup>1</sup> The Mortgage Bankers Association's (MBA) commercial/multifamily real estate finance division represents over 640 companies operating across the U.S. and internationally. As the premier organization, representing more than \$1 trillion in mortgage debt outstanding and \$175 billion in annual originations, we represent the entire commercial/multifamily mortgage market including: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the commercial/multifamily mortgage lending field. MBA's commercial/multifamily division promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees. It provides industry research, advocacy outreach, networking opportunities to help its members speak to peers, a variety of publications, professional development and education, and overall assistance to its members to help them run their business more effectively and strategically. For additional information, visit the commercial/multifamily real estate finance page on MBA's Web site: [www.mortgagebankers.org/cref](http://www.mortgagebankers.org/cref).

expiration of TRIA would result in a shift in liability to the lenders who finance these properties, who would then hold 80% of the risk.

A study performed by MBA in the spring of 2004 underscores the importance of preserving TRIA. The study demonstrated that terrorism coverage is both widely required and, because of TRIA, widely available. MBA surveyed loan administrators who serviced over \$656 billion of the then approximately \$2 trillion (\$2.4 trillion now) in commercial real estate debt outstanding. The major findings of this survey revealed:

- 94 percent of that \$656 billion required terrorism insurance and 84 percent had terrorism insurance in place.<sup>2</sup> For the burgeoning (\$395 billion in the study) commercial mortgage-backed securities (CMBS) market, 100 percent of loans covered in the survey were required to have terrorism insurance.
- There did not appear to be a relationship between the average loan size of the servicer and the percentage of that servicer's portfolio with terrorism insurance coverage. This counters the popular belief that terrorism coverage is only necessary for "trophy properties".
- Servicers estimated that if insurance companies were not mandated to provide terrorism insurance (make available), approximately 80 percent of that \$656 billion in debt would not have terrorism coverage.

Given the terrorism insurance requirement of lenders, the lack of availability of terrorism insurance in a post-TRIA environment would catch a wide range of borrowers, servicers, rating agencies and others between obligations to have terrorism insurance in place and a lack of available and affordable coverage. If a federal terrorism insurance program is not in place for 2006, borrowers no longer able to obtain terrorism insurance will be in technical default of their loans and loan servicing firms are expected to experience severe operational difficulties. Insurance policies are written on an annual basis but with varying renewal dates. Consequently, if TRIA is allowed to expire, borrowers would have immediate difficulty in procuring terrorism coverage.

When commercial insurance carriers excluded terrorism insurance coverage prior to TRIA's enactment, the risk of a catastrophic terrorism loss shifted from the commercial insurance industry to the commercial real estate finance industry. For this reason, lenders and loan servicers who bear a fiduciary responsibility, as described in transaction legal documents, to investors and funding sources, have the greatest "standing" among all industries in assuring broad availability and affordability of terrorism insurance. Commercial real estate lenders and their servicing firms are likely to experience operational difficulties with regard to their existing portfolios if TRIA is allowed to expire.

---

<sup>2</sup> The 10 percent of commercial/multifamily debt for which terrorism insurance is required, but was not in place, included properties for which the servicer and borrower were working to place coverage, properties for which the requirements have been waived and some properties that may have "all-risk" coverage that have been deemed to include terrorism coverage, but for which an explicit statement of terrorism coverage does not exist.

The Honorable Michael Oxley  
The Honorable Barney Frank  
November 4, 2005  
Page 3

As the Treasury report remarks, TRIA was effective in enhancing financial capacity to write terrorism risk insurance coverage, making it widely available and affordable. We concur with the Treasury report's statement that challenges remain in predicting terrorism risk and the corresponding loss probability. Given these continuing uncertainties, the expiration of TRIA in the short term will result in the commercial real estate investment markets becoming more dysfunctional.

The failure to have a federal terrorism insurance program in place on January 1, 2006 could result in significant breakdowns in the commercial real estate finance industry and other markets. MBA stands ready to provide any assistance necessary to you and the Congress to seek a bipartisan solution on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kurt Pfothauer".

Kurt Pfothauer  
Senior Vice President  
Government Affairs