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DEPARTMENT OF THE TREASURY

RIN 1505-AC62

IMARA Calculation for Calendar Year 2023 Under the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury (Treasury) is providing notice to the public of the insurance marketplace aggregate retention amount (IMARA) for calendar year 2023 for purposes of the Terrorism Risk Insurance Program (TRIP or the Program) under the Terrorism Risk Insurance Act, as amended (TRIA or the Act). As explained below, Treasury has determined that the IMARA for calendar year 2023 is $44,979,144,932.

DATES: The IMARA for calendar year 2023 is applicable January 1, 2023 through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202-622-2922 or Jeremiah Pam, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202-622-7009.

SUPPLEMENTARY INFORMATION:

I. Background

TRIA—which established TRIP—was signed into law 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.[1] TRIA requires insurers to "make available" terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism, and provides for shared public and private compensation for such insured losses. The Program has been reauthorized four times, most recently by the Terrorism Risk Insurance Program Reauthorization Act of 2019.[2] The Secretary of the Treasury (Secretary) administers the Program, with assistance from the Federal Insurance Office (FIO).[3]

TRIA provides for an "industry marketplace aggregate retention amount" or "IMARA" to be used for determining whether Treasury must recoup any payments it makes under the Program. Under the Act, if total annual payments by all participating insurers are below the IMARA, then Treasury must recoup all amounts expended by it up to the IMARA threshold. If total annual payments by all participating insurers are above the IMARA, then Treasury has the discretionary authority (but not the obligation) to recoup all of the expended amounts that are above the IMARA threshold.[4]

TRIA provides for a schedule of defined IMARA values from calendar year 2015 through calendar year 2019.[5] For calendar year 2020 and beyond, TRIA states that the IMARA "shall be revised to be the amount equal to the annual average of the sum of insurer deductibles

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[1] Public Law 107-297, sec. 101(b), 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] 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 (2015 Reauthorization Act); Terrorism Risk Insurance Program Reauthorization Act of 2019, Public Law 116-94, 133 Stat. 2534.
[3] 31 U.S.C. 313(c)(1)(D).
[4] *See* TRIA, sec. 103(e)(7); see also 31 CFR part 50 subpart J (Recoupment and Surcharge Procedures).
[5] 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).

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.[6]

On November 15, 2019, Treasury issued a final rule for calculation of the IMARA.[7] This rule, which is codified at 31 CFR 50.4(m)(2), provides that the IMARA will be calculated by averaging the annual industry aggregate deductibles over the prior three calendar years, based upon the direct earned premiums (DEP) reported to Treasury by insurers in Treasury's annual data calls. Insurer deductibles under the Program are based upon the DEP of individual insurers reported to Treasury in the prior year (e.g., 2021 DEP for 2022 calendar year program deductibles).

Accordingly, for purposes of determining the IMARA for calendar 2023, Treasury has averaged the aggregate insurer deductibles for calendar years 2022, 2021, and 2020 (as reported to Treasury in each of these years), which are based on the reported DEP for calendar years 2021, 2020, and 2019, respectively.

For purposes of the 2023 IMARA calculation, those figures are as follows:

TRIP-Eligible DEP by Insurer Category[8]

	2020 TRIP Data Call		2021 TRIP Data Call		2022 TRIP Data Call	
	2019 DEP in TRIP-Eligible Lines	% of Total	2020 DEP in TRIP-Eligible Lines	% of Total	2021 DEP in TRIP-Eligible Lines	% of Total
Alien Surplus Lines Ins.	$ 11,149,972,542	5%	$11,043,111,847	5%	$ 12,107,214,064	5%
Captive Insurers	9,083,384,310	4%	10,534,614,720	5%	14,359,289,661	6%
Non-Small Insurers	172,970,757,331	80%	175,272,463,804	80%	186,901,545,992	78%
Small Insurers	22,882,139,290	11%	22,156,599,520	10%	26,226,080,899	11%
Total	**$ 216,086,253,473**	**100%**	**$219,006,789,891**	**100%**	**$239,594,130,617**	**100%**

Source: 2020-2022 TRIP Data Calls

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[6] 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 2022 Program deductible is 20 percent of its calendar year 2021 direct earned premium.

[7] *See* 84 FR 62450 (November 15, 2019) (Final Rule).

[8] The figures from the 2021 and 2020 TRIP data calls were previously reported in the IMARA calculation for calendar year 2022. *See* 86 FR 73100 (December 23, 2021). The figures from the 2022 TRIP data call were previously reported in FIO's June 2022 Report on the Effectiveness of the Terrorism Risk Insurance Program (June 2022), 11 (Figure 1), https://home.treasury.gov/system/files/311/2022%20Program%20Effectiveness%20Report%20%28FINAL%29.pdf and have been updated to include data received by FIO after the reporting deadline. Some figures may not add up on account of rounding.

Treasury has used these reported premiums to calculate the IMARA for calendar year 2023. The average annual DEP figure for the combined period of 2019, 2020, and 2021 is $224,895,724,660 [($216,086,253,473 + $219,006,789,891 + $239,594,130,617) / 3 = $224,895,724,660]. The average aggregate deductible for the prior three years is 20 percent of $224,895,724,660, which equals $44,979,144,932.[9] Accordingly, the IMARA for purposes of calendar year 2023 is $44,979,144,932.

Dated: December 15, 2022.

Steven E. Seitz,
Director, Federal Insurance Office.

[FR Doc. 2022-27669 Filed: 12/20/2022 8:45 am; Publication Date: 12/21/2022]

[9] *See* note 7.