

CREF Congressional Staff Brief Bios

Jon Skarin

Jon joined the staff of Congressman Michael E. Capuano (MA-08) in 1999 as Senior Legislative Assistant covering the House Banking Committee. Since October 2003, he has served as Legislative Director for the Congressman, handling all House Financial Services Committee issues, including banking, housing, securities, and insurance. He also covers telecommunications, election and voting issues, and science and technology.

Over the last six years, Jon has worked on all major financial services and housing legislation, including the Gramm-Leach-Bliley law, Sarbanes-Oxley accounting reform, and the Terrorism Risk Insurance Act (TRIA).

Prior to joining Congressman Capuano's office, Jon worked on the staff of Senator Edward M. Kennedy for four years. In Senator Kennedy's office, he worked on economic development, small business, and telecommunications issues. Jon is originally from Needham, Massachusetts (Go Pats!).

Brendon Weiss

Brendon serves as the Legislative Director for Congressman Vito Fossella, after being promoted from Legislative Assistant. He is responsible for legislative issues covering Telecommunications, Banking, Securities, Insurance, Trade and Local Appropriations. Prior to working for Congressman Fossella, Brendon spent more than a year working for Congressman Paul Ryan of Wisconsin.

Before coming to Capitol Hill, Brendon attended Northern Michigan University, where he attained a B.S. in Public Administration with minors in Business Administration and Finance.

Brendon grew up in Glenbeulah, WI, a small town roughly one hour north of Milwaukee. (For golfers, this is about 10 minutes from Whistling Straights where the PGA Championship was held in 2004).

MBA AND REMIC MODERNIZATION

- The financing of pools of mortgage loans through capital markets is a vast and growing industry. At September 30, 2004, there were over \$2.2 trillion of commercial and multifamily mortgages outstanding, of which over \$525 billion have been securitized.
- The tax vehicles used to issue mortgage-backed securities are primarily real estate mortgage investment conduits (REMICs), created by Congress in 1986, and grantor trusts. Congress believed that the REMIC vehicle should be flexible enough to accommodate most legitimate business concerns.
- Experience with the commercial mortgage-backed securities market in the last 10 years has highlighted a significant impediment to the use of the REMIC vehicle. Congress intended that REMICs accommodate borrowers' ongoing business operations, including leasing, managing, maintaining and improving the real property collateral. However, the current REMIC rules often prevent property owners from undertaking many common real estate management activities, including renovations, tenant expansions, building additions, sale of excess land, or loan collateral additions or substitutions. Changes to the rules are needed to make the REMIC vehicle more useful to borrowers, while continuing to safeguard the repayment of CMBS investors.
- During 2004, MBA and its REMIC Task Force spearheaded a real estate industry coalition to develop a REMIC modernization proposal that would make REMICs more useful to borrowers. Examples of recommended changes include releases, additions and substitutions of collateral; the alteration of guarantees, reserves, or other credit enhancements; demolition of part of the property incidental to renovation or expansion; or prepayment of the loan and recasting of principal payments. None of these changes involve new loan origination activity and are, thus, consistent with the pass-through nature of a REMIC or grantor trust. Materially extending a final maturity date for a non-defaulted loan or increasing the principal balance of a loan would generally not be allowed.
- The industry's proposal does not change the way in which REMICs or grantor trusts are taxed. Although "scored" by the Joint Committee on Taxation at \$11 million over 10 years, it is believed that the proposal will not actually represent a revenue loss but, on the contrary, will have a stimulative effect on several revenue-generating segments of the economy, including real estate, construction, architectural, engineering and design services, environmental consulting and property sales.
- The industry proposal led to the 2004 introduction of federal legislation, S. 2422, introduced by Senators Gordon Smith and Kent Conrad, and H.R. 4113, introduced by Congressmen Mark Foley and Earl Pomeroy, to modernize the REMIC rules. While the legislation did not pass Congress in 2004, it attracted bipartisan support and was praised as "sound public policy" by Chairman Bill Thomas of the House Ways and Means Committee. The legislation will be reintroduced in early 2005.
- MBA and its industry partners will continue to work with the 109th Congress to advocate modernization of the REMIC laws. MBA and its partners will also work with the Treasury Department to advocate regulatory reforms that would make REMICs more useful to borrowers.

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ISSUE PAPER

Subject: Availability of Terrorism Coverage for Commercial Real Estate

Issue: The terrorist acts of September 11, 2001 resulted in pervasive uncertainty in the insurance markets regarding insurance providers' potential liability associated with future terrorist attacks. To address this uncertainty, legislation authorizing a Federal terrorism reinsurance program was signed into law on November 26, 2002. However, the federal program will expire on December 31, 2005, unless it is reauthorized by Congress, thereby threatening market stability once again.

Background: In response to the need for terrorism insurance (which MBA demonstrated in a July 2002 survey) and recognizing real estate's contribution to the health of our nation's economy, the Administration promoted a federal terrorism reinsurance program. Accordingly, the U.S. Congress passed and President Bush signed into law, on November 26, 2002 P.L. 107-297, the Terrorism Risk Insurance Act of 2002 (TRIA). Key provisions of TRIA include the following:

Terrorism is defined as terrorist acts "committed on behalf of any **foreign person or foreign interest** where the damage from the event, **in aggregate**, is **in excess of \$5 million**". (Emphasis added.) Acts committed in the course of a war declared by the Congress of the United States cannot be certified as events of terrorism, except with respect to workers compensation claims. Acts of terrorism must be certified by the Secretary of the Treasury "in concurrence with the Secretary of State and the Attorney General of the United States".

- All terrorism exclusions from policies for property and casualty (P&C) insurance, workers compensation insurance, excess insurance and surety insurance are voided as of November 26, 2002.
- All P&C insurers who wish to write policies on commercial or multifamily real estate must, as of November 26, 2002, "make available" terrorism insurance on terms that "may not differ materially from the terms, amounts and other coverage limitations applicable to losses arising from events other than acts of terrorism".
- TRIA establishes a new terrorism insurance program, under which the federal government will pay for 90% of terrorism losses in excess of the insurer's deductible. The insurer will pay the remaining 10%. Total losses under the program are capped at \$100 billion.

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- P&C carriers were required to notify all existing insureds by February 24, 2003 of the coverage available to them under TRIA, the additional premium due for the terrorism coverage, and the date on which the terrorism exclusion will be reinstated if the premium increase is not paid. Insureds have received at least 30 days from the date of notice to pay the premium increase or to reinstate the terrorism exclusion either by (a) affirmative notice to the carrier or (b) failure to pay the premium increase.

MBA has taken the lead and partnered with the key commercial real estate organizations in expressing real estate finance industry concerns about TRIA to the Treasury Department and other key actors in the policymaking process. In February 2002, MBA's Commercial Real Estate/Multifamily Finance Board of Governors (COMBOG) formed a TRIA Working Group under the auspices of its Insurance Task Force to address TRIA implementation. The Working Group took a leadership position in supporting TRIA's enactment in November 2002, has since closely monitored TRIA implementation efforts, and has provided ongoing comments to the federal government on the program's effectiveness. Since 2004, the activities of the TRIA Working Group have been taking place under the auspices of the COMBOG Legislative Committee, as the action arena shifted to reauthorization of the program.

Throughout this period, MBA members and staff have undertaken ongoing discussions with the Treasury Department and others to press for final TRIA program regulations that reflect the needs of the commercial and multifamily real estate finance industry. MBA also has documented in a series of comment letters and member surveys the importance of TRIA to commercial and multifamily real estate lenders and servicers, MBA's achievements on the TRIA front include the following:

- MBA has been successful in its effort to persuade the Treasury Department to clarify the TRIA rules concerning claims for losses of less than \$5 million. On July 7, 2003 Treasury issued a final rule, clarifying the \$5 million *de minimis* requirement, thereby ensuring that losses of under \$5 million suffered by individual policyholders due to a certified act of terrorism will be eligible for TRIA coverage, as long as aggregate insured losses from the event exceed \$5 million.
- In a December 2003 comment letter on the TRIA claims administration process, MBA and its members advocated expedited claims handling procedures. MBA recommended that the proposed rules contain provisions to expedite the Treasury's certification of an event as an act of foreign or domestic terrorism. MBA also called for the development of procedures for the resolution of TRIA coverage disputes (1) between the insurer and Treasury and (2) between the insurer and the insured. In calling for these regulatory enhancements, MBA emphasized that property owners look to insurance proceeds to pay for property restoration, debt service and other expenses following an event of foreign terrorism. Delays in the disbursement of insurance proceeds due to lack of a coverage dispute process would impair the timely receipt of insurance

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proceeds and put property owners, tenants, lenders, investors and bondholders at greater risk.

- MBA has provided the U.S. Congress and its investigative arm, the U.S. General Accountability Office (GAO), with ongoing information on TRIA's effectiveness for the real estate finance industry. On March 26, 2003 Insurance Task Force members and MBA staff participated in a conference call with investigators from the GAO on TRIA's effectiveness for the real estate finance industry. In April and May 2004, MBA submitted testimony to the Senate Banking Committee and to the House Financial Services Committee on the need for a continuing TRIA program. MBA and its members continue to provide members of Congress and GAO with information about the effectiveness of the program, and to urge its extension beyond 2005.
- To improve insurance industry reporting to lenders and servicers on insurance coverages held by borrowers, including terrorism insurance, MBA launched a Certificate of Insurance Working Group to work with the insurance industry to develop more comprehensive insurance certificates. The initial effort, which was endorsed by the National Association of Insurance Commissioners (NAIC), led to the revision of the widely-used ACORD form to provide more detailed coverage information for terrorism and other perils. MBA and the form's publisher, the Association for Cooperative Operations Research and Development (ACORD) completed the rollout of the new form in November 2003. MBA expects to expand the certificate revision effort to other widely-used insurance forms for the real estate industry.
- MBA's June 2004 comment letter on the need to extend TRIA's "make available" provision provided new survey data on the importance of the program to mortgage lenders and servicers, and summarized industry evidence for an extension of the requirement.

MBA Position: MBA strongly supports the extension of the TRIA program beyond its 2005 sunset date or, if that is not possible, the development of another comprehensive federal approach to address the problem of terrorism insurance for commercial and multifamily real estate. MBA supports the extension of TRIA because the program has been effective in stabilizing the market for commercial and multifamily terrorism insurance and has become widely accepted by the real estate industry.

Re-enactment of TRIA is crucial to continuing American economic recovery because of the importance of adequate terrorism insurance to commercial and multifamily property owners and to the businesses and families who occupy commercial and multifamily real estate. The rebuilding of American businesses and rental housing in the wake of a terrorist attack demands adequate terrorism insurance. Another critical economic issue is the cost and availability of commercial real estate loans. An inadequate supply of terrorism insurance would potentially trigger bond downgrades and sharply reduce the availability of loan capital for commercial real estate, increase borrowing expense and

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undermine economic growth, including employment in the construction and real estate sectors. In fact, very recent conversations with rating agencies indicate that without such a federal backstop, bond downgrades will likely occur and they would approach ratings in the same fashion as pre-TRIA passage.

MBA urges the Bush Administration to implement the Terrorism Risk Insurance Act of 2002 in a manner that recognizes the security interests of the commercial and multifamily real estate finance industry, and to collect data from the lending and servicing sectors to help to determine TRIA's effectiveness. Data from the real estate finance industry is a critical source of information on the availability and pricing of terrorism insurance and its procurement by borrowers. MBA also encourages the insurance industry to work with lenders, agents and borrowers to develop more comprehensive reporting systems on insurance coverages purchased by borrowers, both with respect to terrorism insurance and coverages for other perils.

Status: The terrorism insurance program mandated by TRIA expires on December 31, 2005, unless extended by Congress. A Treasury Department study is required to be submitted to Congress by June 30, 2005. The study will assess the effectiveness of the program and the likely availability and affordability of terrorism insurance after its termination. The Treasury Department is required to consult with the National Association of Insurance Commissioners (NAIC), policyholders, other insurance industry experts and "other experts as needed" in conducting the study.

On June 18, 2004, Treasury Secretary Snow extended the "make available" provisions of the Terrorism Risk Insurance Act (TRIA). This action was an important victory for MBA's commercial real estate advocacy agenda because the "make available" provisions have allowed TRIA to provide customers with terrorism insurance, that otherwise would have been unavailable. MBA worked hard with its industry allies to deliver the message of the need for make available extension.

On September 29, 2004, the House Financial Services Committee reported out H.R. 4634, which would have extended the Terrorism Risk Insurance Act (TRIA) through 2007. The markup came after Committee Chairman Mike Oxley (R-OH) and Ranking Member Barney Frank (D-MA) reached an agreement to add group life insurance to the bill. H.R. 4634 was not considered by the full House of Representatives before adjournment from a "lame duck" session in November. Companion legislation in the Senate, S. 2764, was not acted upon by the Senate Committee on Banking, Housing, and Urban Affairs.

On February 18, 2005, Senators Christopher Dodd (D-CT) and Robert Bennett (R-UT) introduced S. 467, the "Terrorism Risk Insurance Extension Act of 2005." It would reauthorize the Terrorism Risk Insurance Act (TRIA) for two years beyond the current expiration date of December 31, 2005. It would also establish a commission to recommend a long-term solution to the terrorism risk problem.

