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Expiring terrorism insurance program alarms Md. industries

By John Fritze
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Insurance and real estate firms are scrambling to prepare for the expiration of a federal terrorism insurance program at the end of the month, warning that construction projects could be stalled and commercial loans on shopping malls, utilities and skyscrapers could be in jeopardy.

The federal program, created to encourage insurers to continue offering coverage on office buildings, sports stadiums and other potential targets after the Sept. 11 attacks, had bipartisan support in Congress but became snarled in political gridlock in the final hours of this month's lame-duck session.

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While the policies are often associated with dense cities such as New York, Maryland companies have also purchased a large share of coverage. A study by insurance giant Marsh found the state had the second-highest rate of coverage among its clients, which analysts said might be explained by the state's large federal government presence and its concentration of academic institutions.

Commercial real estate interests in Maryland and elsewhere are trying to assess what happens when the program runs out Dec. 31. The federal program would help insurers cover losses in excess of $100 million caused by a terrorist attack.

One of the biggest concerns, analysts said, is that an unknown number of loans could go into technical default when the program expires. Lenders often require developers and building owners to carry the coverage. But many of those policies are effective only if the government program is running.

"We're very worried," said Terry Katz, vice president of HMS Insurance Associates, an independent insurance agency based in Cockeysville. "We don't yet know what the industry is going to do."

Katz said her company is canvassing insurance carriers to determine what they will do about policies come January.

"It's not just a matter of buildings, it's a matter of having construction jobs for people. It has a real-world impact," said Michael Greenberger, director of the Center for Health and Homeland Security at the University of Maryland, who likened the program to the government's role in flood insurance.

"It's really just outrageous and a primary example of the dysfunction of this Congress," he said.

Supporters said the program revived commercial development after the 2001 attacks, when terrorism policies became scarce and expensive. In 2002, Congress enacted the Terrorism Risk Insurance Act, intended to be a temporary program in which the government shared the cost of large insurance losses. Lawmakers extended the program in 2005 and 2007.

Gauging the consequences of the program's expiration is difficult partly because few policyholders are willing to discuss the need to insure against terrorism. Professional sports, including the National Football League and Major League Baseball, lobbied for the reauthorization this year, but spokesmen for the Ravens and the Orioles did not respond to questions about the potential impact of the program's expiration on team operations.

The NFL denied rumors this month that it would cancel the Super Bowl over the issue.

A spokesman for the Maryland Port Administration said the agency isn't sure whether the port of Baltimore would be affected. Several experts said ports and related businesses often carry the coverage.

Utility companies also frequently carry the policies. A spokesperson for Constellation Energy, a subsidiary of Chicago-based Exelon, said the company is taking steps to purchase "alternative coverage that will be in place Jan. 1 so that there will be no impact."

But backers of the government program said they fear that alternative policies might be hard to come by, at least at reasonable prices.

"It's all going to come down to the individual circumstances of what the insurance contract looks like right now," said Ed Walter, president and CEO of Host Hotels & Resorts, one of the nation's largest owners of luxury hotels.

Walter stressed that he was speaking about the industry and not specifically about Host, which is headquartered in Bethesda.

"For anybody that's trying to get a transaction done right now — whether it's a new development or buying an existing building — the fact that this doesn't exist now creates complexity," he said. "At a minimum, it should cause delay."

Legislation that would have reauthorized the program for six years while lowering the government's exposure enjoyed broad bipartisan support in Congress. The measure passed the Republican-controlled House 417-7 this month, but momentum collapsed in the Senate after lawmakers failed to reach an agreement to overcome objections from a single senator.

Republican Sen. Tom Coburn of Oklahoma raised concerns about a provision in the bill that would have made it easier for insurance agents and brokers to sell policies across state lines.

Coburn has since retired, and so the incoming GOP majority in the Senate might have an easier time advancing the bill next year. House Speaker John A. Boehner, an Ohio Republican, has indicated that his chamber will "act very quickly" to reauthorize the program when it reconvenes in early January.

However, Coburn is not the only one who has expressed concerns. Robert J. Rhee, a University of Florida law professor, contends that the risk of terrorism isn't all that different from the risk of natural disasters.

"A federal backstop stakes public money to protect the insurance industry, and subsidize the terrorism risk insurance premiums for commercial policy holders," Rhee, a former University of Maryland professor, wrote in a paper for the libertarian Cato Institute last year. "The private market is capable of underwriting this risk."

Some Democrats, meanwhile, have objected to changes included in the bill that would roll back provisions of the 2010 Wall Street overhaul. House Republicans included language to exempt certain nonfinancial companies from requirements under that law.

Democrats are under fire for altering provisions of the financial oversight law as part of the $1 trillion government spending measure approved this month.

Supporters of the terrorism insurance program said that not passing an extension could have an impact on economic recovery.

"The end result would be a spiral effect," said Janice Kirkner, president of the Maryland Association of Realtors.

"Construction could slow and employers certainly wouldn't be looking to start any new buildings because they couldn't afford to take the coverage on themselves," she said. "The economy is still fragile. And while on the commercial end we're making great strides, we need to have this insurance to keep us going."