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Federal Backstop for Terrorism Insurance Set to Expire

By Jenni Bergal
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When a large hotel near the World Trade Center was destroyed in the 9/11 attacks and a second one severely damaged, the company that owned them — like many other businesses — was relieved they were covered by insurance.

But after 9/11, the insurance industry, which ended up sustaining an estimated $32.5 billion in total losses, grew skittish and began excluding terrorism from commercial policies nationwide. That resulted in businesses having less terrorism coverage or none at all. States and cities worried lenders wouldn't approve loans to businesses that didn't have terrorism coverage, potentially stunting economic development and harming real estate markets.

In 2002 Congress stepped in and passed the Terrorism Risk Insurance Act (TRIA), a public-private partnership that provides a federal backstop against losses from a terrorist attack. But the law is scheduled to expire at the end of this year, and the two competing bills that would renew it lay out different visions of how much federal help private insurers should get. Some groups argue it shouldn't be renewed at all.

When insurance companies cut back on terrorism coverage in the wake of 9/11, Host Hotels & Resorts, which owned the two New York City hotels, went from having a billion dollars of terrorism coverage for its 118 properties to $300 million. For CEO Edward Walter, whose company now owns 140 hotels, reauthorization of TRIA is a must.

"Anybody that's operating in business, big or small, is at risk. The smaller ones are probably more at risk," he said. "If I lose one hotel, I'd still have 139 left. But a florist operating in that hotel might not have another location. It might matter more to them than to me."

States at Risk

Reauthorizing the terrorism program isn't just significant to the business sector. The National Association of Insurance Commissioners has urged that it be renewed, as has the National Governors Association.

Officials in Nevada, for example, say the program is especially important to their state, where the economy relies heavily on the hotel and casino industry, which makes it a potential terrorism target. Nearly 40 million people visited Las Vegas last year, and the tourism trade supports more than 380,000 jobs.

"The threat of terrorism is very real in Nevada," Republican Gov. Brian Sandoval said in an email to *Stateline*. "The reauthorization of the Terrorism Risk Insurance Act will provide a level of certainty in the face of terrorist threats and allow Nevada businesses to continue focusing on growing our economy."

In Illinois, the Department of Insurance said in a statement that if adequate terrorism insurance isn't available, it could impact "a multitude of high-value commercial properties" such as Chicago's mega-high rise Willis Tower and Trump International Hotel & Tower, as well as "many thousands of hotels and restaurants, numerous large upscale shopping malls and other retail stores."

The National League of Cities also supports reauthorization, warning that if Congress doesn't extend the program, many cities could experience "increased premiums and increased assumption of risk that they cannot afford."

"For larger cities, it's more of a concern, but terrorist activity can occur almost anywhere," said Yucel Ors, the league's program director for public safety and crime prevention. "Without TRIA, we understand that insurers would no longer be providing terrorism risk insurance, so the rates would be very high for local government. Eventually, that filters down to taxpayers."

How TRIA Works

Under TRIA, insurers that choose to sell property insurance to commercial policyholders are required to offer terrorism coverage, but policyholders aren't obligated to buy it. A report by Marsh, a large insurance broker, found that 62 percent of businesses purchased terrorism insurance in 2013 – up from about 27 percent in 2003.

The program is meant to protect insurers in the event of a catastrophic attack. If a terrorist act causes less than $100 million in insurance industry losses overall, there would be no federal assistance. But if the losses are between $100 million and $100 billion, insurers would pay a deductible and then the federal government would step in and pick up an 85 percent share of the remaining losses. When insurers' losses are under $27.5 billion, the government would recoup taxpayers' money through surcharges on all property and casualty policies.

Losses of more than $100 billion wouldn't be covered by insurers or the federal government, so affected policyholders would be on the hook.

So far, there have no TRIA payouts because there have been no large-scale terrorist attacks since the law went into effect.

TRIA Politics

A Senate reauthorization bill, sponsored by a bipartisan group and passed unanimously by the Banking Committee last month, would extend TRIA for seven years and make minor modifications.

The House version, passed by Republicans in the Financial Services Committee without Democratic support, would extend the program for five years, and significantly, would hike the threshold that triggers the government assistance from $100 million to $500 million — a change the business community opposes.

Committee chairman Rep. Jeb Hensarling, a Texas Republican, believes that the TRIA program needs reform and that the insurance industry should cover far greater portions of the risk.

“By the industry’s own admission, taxpayers are currently forced to bear incalculable amounts of risk with only a fleeting promise that they might someday get a portion of their investment back,” Hensarling said in support of the House bill at a June committee meeting.

But TRIA defenders argue that the current program is budget neutral and taxpayers would be on the hook only in the event of a large-scale attack. And they say that insurers would be unwilling to cover terrorism without TRIA.

One of the major groups stumping for TRIA’s reauthorization is the Coalition to Insure Against Terrorism, a business coalition representing industries ranging from transportation to real estate to entertainment. Among its members: the National Football League, the American Gaming Association and the Association of Art Museum Directors.

“There’s such widespread interest because no one can reasonably predict where and when the next terrorist attack will be,” said Martin DePoy, a lobbyist who is the coalition’s coordinator. “We’ve seen that since 9/11 there have been dozens of attacks thwarted. Some have been in major metropolitan areas; others haven’t. Everyone now needs terrorism risk coverage. The next attack could be in Paducah, Kentucky.”

Impact on Workers Comp

TRIA doesn’t just focus on property insurance; it also covers workers compensation.

Almost every state requires businesses to provide coverage that gives benefits to workers who are injured. Insurers can’t exclude terrorism coverage from those policies.

“If there are on-the-job casualties because of terrorism, insurance companies have no say. They have to pay out,” said Michael Dworsky, an associate economist at the RAND Corporation who has studied TRIA.

Dworsky said that the major fear is that if TRIA goes away, insurance companies that sell workers compensation could become insolvent if there’s a catastrophic attack. That means insurers might end up reducing the amount of workers compensation that they sell in markets where there’s a high perceived terrorism risk.

If insurers pull back, Dworsky said, workers compensation coverage would become more scarce and expensive, and businesses might have to go to a “market of last resort,” where premiums could be much more costly. In some cases, that means state taxpayers could be forced to pick up the tab.

Dworsky cites the case of New York, where businesses that get shut out of the private insurance market could end up turning to a state fund to get workers compensation coverage. Ultimately, New York taxpayers could be liable if there’s a large terrorist attack, he said.

“The governors should be worried because workers comp is a state responsibility and there’s more potential for the whole market to get disrupted,” Dworsky said.

Skeptical About TRIA

Not everyone is a fan of the TRIA program. The Heritage Foundation, a conservative think tank, calls it corporate welfare for insurance companies. And the Cato Institute, a libertarian think tank, says TRIA shifts the cost from insurers and property owners to taxpayers and argues that a risk of terrorism is no more severe than that of a natural disaster.

Besides conservative groups, the Consumer Federation of America, a nonprofit consumer advocacy group, has been one of TRIA’s most vocal critics over the past 12 years. It disputes the business community’s argument about terrorism insurance drying up after 9/11, and says that its own analysis shows that coverage rates would have gone up significantly in only a handful of cities if there were no TRIA.

“This is a program that really just benefits a few fat cats in five cities, sort of a giveaway program,” said Robert Hunter, the organization’s director of insurance.

While the consumer group has lukewarm support for some modifications to TRIA, such as hiking the government trigger to $500 million, Hunter says it would prefer that the federal terrorism insurance program didn’t exist at all.

He argues that the insurance industry is “grossly overcapitalized” and can easily afford to cover any losses from most acts of terrorism.

“It was all hype when TRIA started, and it still is,” he said.