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Insurers say they need feds' help on terrorism risk

By David M. Drucker
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In an era when a divided Congress can't even agree on extending popular tax breaks, supporters of the Terrorism Risk Insurance Act hope that the political cure-all "it's about jobs" can push it over the top.

Under TRIA, taxpayers subsidize what businesses have to pay to insure against financial losses from a major terrorist attack. Created after Sept. 11, 2001, the policy of having taxpayers foot the bill for big corporations' insurance costs has lately faced populist scrutiny. That's why proponents of the legislation are pitching lawmakers that the reauthorization of a program that was supposed to be temporary is vital to the nation's slow but steady economic recovery.

"TRIA is vital to creating jobs on major development projects across the country. Without terrorism risk insurance, major job-creating projects from shopping malls to office towers could be at risk," said Sen. Chuck Schumer, D-N.Y., a key negotiator in the talks to extend the program.

Insuring against terrorism wasn't an issue before the Sept. 11, 2001, terrorist attacks on New York and Washington that destroyed the World Trade Center, disrupted Wall Street and buffeted the airline industry. Much the same way insurance company underwriters don't generally assess the insurance risk for war, they did not do so for the possibility of terrorist acts.

Since Sept. 11, the threat of terrorism has placed an added and substantial cost on insuring certain businesses and projects. Major real estate developments, banks, defense contractors and well-known retailers are all deemed possible terrorist targets and forced to insure against them to obtain financing. Large public events have also been affected, which is why the National Football League supports TRIA.

Insurance is critical to financing, and large commercial projects that employ thousands of workers in construction and related sectors could have trouble getting off the ground if the program lapses.

TRIA supporters warn that insurance companies could be forced to raise rates across the board as they search for another way to absorb potential losses while maintaining the liquidity to cover claims related to their regular business. The coverage area that could take the biggest hit, and cause the most widespread pain, could be workers' compensation insurance, which would cover employees' on-the-job injuries.

Most states require employers to carry workers' compensation insurance.

Absent TRIA, large-scale employers, particularly in dense urban areas and especially those firms and industries that terrorists might target, will have to pick up the tab for workers' compensation insurance rates — which are likely to skyrocket because the insurance underwriters will tack on the cost of covering terrorism risk. Supporters of the program say doing so could depress wages as employers look to make up the cost elsewhere.

“Terrorism is unpredictable and can inflict catastrophic losses beyond the ability of a company to absorb,” said Jonathan Bergner, director of federal affairs for the National Association of Mutual Insurance Companies. “TRIA helps insurance companies cover both terrorism as well as the more traditional lines of coverage that policyholders and businesses need.”

Not everyone agrees.

Critics of the program argue that it’s simply another case of the federal government playing favorites, boosting one industry at the expense of another. Free-market advocates who oppose TRIA also say that there are plenty of ways other than taxpayer assistance to provide a backstop against the risk of huge financial losses from terrorism, although the program has never paid a claim.

Mark Calabria, director of financial regulation studies at the libertarian Cato Institute, said businesses could create investment vehicles that act as a safety valve fund to cover catastrophic losses. Or builders could choose to develop projects in areas other than high-value terrorist targets such as lower Manhattan. Calabria also said he hasn’t heard anyone make a good case for excluding acts of war from the underwriting process, but not acts of terrorism.

“TRIA fundamentally is about trophy commercial properties,” Calabria said. “If TRIA were to go away, what would be the long-run impact on the construction business? Approximately zero. Or, those properties would be built somewhere where else.”

Bipartisan negotiators were hoping to reach a deal before time runs out on the 113th Congress in mid-December. Their prospects for success could depend on whether lawmakers buy the economic argument that failing to reauthorize TRIA will depress the economy.

Schumer has been working with House Financial Services Committee Chairman Jeb Hensarling to reach an acceptable compromise. The Texas Republican is one of the higher-profile opponents of TRIA, but he has professed a willingness to sign off on an extension if the program includes certain reforms. Among them, raising the threshold at which the federal government would begin to backstop losses, and paring back the length of the extension.

It appeared late last week that Hensarling was successful in securing an increase in that trigger point, from $100 million to $200 million, although he originally asked for a new trigger of $500 million. The outline of a potential compromise would extend TRIA for six years; Schumer wanted seven years, Hensarling, five years.

“We’re making progress,” Hensarling said when asked about the prospects for an accord.