TRIA Renewed … at Long Last

By Eric Nordman, Director of Regulatory Services and CIPR

As I began to write this article in early January, I was not sure what to make of the unbelievable politics getting in the way of implementing a practical and cost-effective solution to address a major risk. I am talking about the failure to reauthorize the Terrorism Risk Insurance Program. As the ball dropped in Times Square, many businesses in the Eastern Time Zone experienced a significant change in insurance coverage for the risks they face. At the stroke of midnight the Terrorism Risk Insurance Program went away leaving many unsuspecting businesses with a gap in their risk-management toolkit.

Luckily, the dawn came without a major terrorist attack so everything on the surface seemed bright. However, people quickly came to realize Congress was playing with fire by failing to renew the program. When the World Trade Center buildings collapsed on Sept. 11, 2001, the insurance industry's perspective about the risk of loss from acts of terrorism changed dramatically. It became apparent a determined terrorist could cause substantial damage under the right circumstances. The definition of substantial damage shifted from millions of dollars to billions of dollars.

After the Twin Towers fell, the reaction of the insurance industry was predictable. They moved to limit their exposure to losses caused by terrorists. The nation's airlines received notices of cancellation within a week. Other business owners were soon to follow as the insurance industry tried to figure out what to do.

State insurance regulators reacted to the looming coverage crisis by meeting to discuss a common solution. As a result of the conversations, an uneasy truce was reached. In December 2001, the NAIC published a model bulletin for states to use to provide at least some level of terrorism coverage in light of Congressional failure to act at the time.

The solution outlined in the model bulletin provided for insurers to cover acts of terrorism as long as they did not reach a catastrophic level. For property insurance, the exclusion for acts of terrorism would only apply if the acts of terrorism resulted in industry-wide insurance losses in excess of $25 million for related incidents occurring within a 72 hour period. Also allowed were exclusions for nuclear, biological, chemical or radiological events (NBCR). The allowed exclusion for commercial liability insurance was a bit more complicated. It kept the $25 million and 72 hour thresholds, but added an alternative of 50 or more people sustaining death or serious physical injury.

In 2002, Congress reacted to the lack of a robust market for insuring acts of terrorism by creating the Terrorism Risk Insurance Program. The successful common sense program was renewed twice (2005 and 2007). While the program reauthorizations occurred late in the year, neither time did the program authorization expire as they did when 2014 drew to a close.

On Dec. 30 2014, a Treasury spokesperson had this to say about the Terrorism Risk Insurance Program, "The Terrorism Risk Insurance Act is important to our national security and essential for continued economic growth. When Congress returns next year, we hope it acts swiftly to pass a long-term reauthorization consistent with the bipartisan, bicameral TRIA (Terrorism Risk Insurance Act) compromise to maintain a functioning and affordable insurance market for terrorism risk. While we hope for a speedy renewal, until Congress acts, Treasury will wind down the program consistent with its expiration."

It seems incredible one departing Senator (Tom Coburn (R-OK)) was able to prevent the enactment of a bill with such broad bipartisan consensus. However, his parting shot was to block the passage of the bill, not because he was opposed to the Terrorism Risk Insurance Program, but rather he was opposed to Title Two dealing with the National Association of Registered Agents and Brokers (NARAB).

When the new Congress convened, passage of the TRIA was top of the list for bipartisan consideration. H.R. 26—The Terrorism Risk Insurance Program Reauthorization Act of 2015—passed the House of Representatives by a vote of 416-5 on Jan. 7, 2015. The next day, the Senate voted 94-4 to adopt the bill. It went to President Obama's desk where he signed it into law on Jan. 12, 2015. With the signing one would think everything was once again right with the world. However, there were some loose ends needing attention.

The revised Terrorism Risk Insurance Program does contain some changes. The following list identifies several of the more important changes to the program:

- The program was extended through Dec. 31, 2020.
- The Insurer Deductible was set at 20% of an insurer's direct earned premium of the preceding calendar year and the federal share of compensation was set at 85% of insured losses that exceed insurer deductibles until Jan. 1, 2016. Then the federal share is decreased by one percentage point per calendar year until it reaches 80%.
- The certification process was changed to requiring the Secretary of the Treasury to certify acts of terrorism in consultation with the Secretary of Homeland Security instead of the Secretary of State.
- The program trigger was amended to apply to certified acts with insured losses exceeding $100 million for calendar year 2015, $120 million for calendar year 2016, $140 million for calendar year 2017, $160 million for

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calendar year 2018, $180 million for calendar year 2019, and $200 million for calendar year 2020 and any calendar year thereafter.

- The mandatory recoupment of the federal share through policyholder surcharges increased to 140 percent from 133 percent.
- The insurance marketplace aggregate retention amount was established at the lesser of $27.5 billion, increasing annually by $2 billion until it equals $37.5 billion, and the aggregate amount of insured losses for the calendar year for all insurers. In the calendar year following the calendar year in which the marketplace retention amount equals $37.5 billion, and beginning in calendar year 2020 it is revised to be the lesser of the annual average of the sum of insurer deductibles for all insurers participating in the program for the prior three calendar years as such sum is determined by the Secretary of the Treasury by regulation.
- The Secretary of the Treasury is required, not later than nine months after the date of enactment of the Act, to conduct and complete a study on the certification process, including the establishment of a reasonable timetable by which the Secretary must make an accurate determination on whether to certify an act as an act of terrorism.
- Insurers participating in the program are required to submit to the Secretary of the Treasury for a Congressional report to be submitted June 30, 2016 and every June 30 thereafter, information regarding insurance coverage for terrorism losses in order to evaluate the effectiveness of the program. The information to be provided includes: lines of insurance with exposure to terrorism losses, premiums earned on coverage, geographical location of exposures, pricing of coverage, the take-up rate for coverage, the amount of private reinsurance for acts of terrorism purchased and such other matters as the Secretary considers appropriate. This information may be collected by a statistical aggregator and in coordination with State insurance regulatory authorities.
- The Comptroller General of the United States is required to complete a study on the viability and effects of the federal government assessing and collecting upfront premiums and creating a capital reserve fund.
- The Secretary of the Treasury is required to conduct a study not later than June 30, 2017 and every June 30 thereafter to identify competitive challenges small insurers face in the terrorism risk insurance marketplace.
- The Secretary of the Treasury is required to appoint an Advisory Committee on Risk-Sharing Mechanisms to provide advice, recommendations and encouragement with respect to the creation and development of nongovernmental risk-sharing mechanisms. The Advisory Committee will be composed of nine members who are directors, officers, or other employees of insurers, reinsurers or capital market participants.
- The terms "program year" and "transition period" are changed to "calendar year" throughout the law.

Insurance regulators tracked the progress of H.R. 26 as it was being considered and issued a model bulletin for regulators to communicate a consistent message to insurers about changes to the program and steps needed for insurers to comply with disclosure notices and changes to policy forms.

On Feb. 4, 2015, the Treasury published interim guidance concerning the Act. The interim guidance helped calm frayed nerves. It provided an extension of the deadline for providing disclosures and offers of coverage to Apr. 13, 2015. This allowed insurers some breathing room to comply with the requirements in the Act. The Treasury also advised the model disclosures in the NAIC Model Bulletin are consistent with the disclosure requirements of the Terrorism Risk Insurance Program. The Treasury provided additional guidance to assist insurers with understanding the changes made to eliminate the required disclosure at time of purchase and what to do under various coverage and offer scenarios.

With the legislation on the books, insurers are working through the backlog of pending disclosures, offers and explanations to policyholders. Next on the horizon is working with various federal agencies on studies of several topics. Included on the list are: the study of the certification process by the Treasury; the collection of data to evaluate the effectiveness of the program; conducting a study on the viability of collecting upfront premiums and creating a capital reserve fund; and conducting a study on competitive challenges small insurers face in the terrorism risk insurance marketplace. As you can see, there is much work before us.

About the Director

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