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Is the sun setting on the Terrorism Risk Insurance Act? Bill was blocked in the senate

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In public policy, a sunset provision is a measure within a statute, regulation or other law that provides that the law shall cease to have effect after a specific date, unless further legislative action is taken to extend the law.

On Tuesday, December 16, 2014, in a stunning blow to the insurance industry and consumers of terrorism insurance policies, the United States senate adjourned without reauthorizing the Terrorism Risk Insurance Act (TRIA). The bill was blocked in the senate over concerns with add-on provisions related to the Dodd-Frank Act and the creation of a National Association of Registered Agents and Brokers. While these provisions were unrelated to the TRIA program itself, the objections were enough to derail the entire legislation. The Senate's failure to reauthorize TRIA was a clear setback with major market implications. Focus is now shifting to how congress can most quickly get the program reauthorized in the 114th session, which will usher in a new republican majority. It is generally anticipated that congress will quickly reauthorize the program but this is not a foregone conclusion.

Beginning on January 1, 2015, the United States government will no longer reinsure the private insurance market for terrorism coverage. This means that carriers may stop underwriting such coverage, particularly in high-risk areas such as NYC, Chicago, Los Angeles, among other large cities. If insurers reduce their exposures, then insureds may struggle to obtain adequate terrorism coverage at prices they can afford. Since 9/11 most lenders have required commercial borrowers to obtain and maintain terrorism coverage for major construction and development projects. If insureds cannot find such coverage, then current and future lending agreements will certainly be at risk. This could cause delays or cancellation of projects.

Why is TRIA important? Proponents of renewing TRIA will argue that the federal backstop is necessary to assure a smoothly functioning insurance marketplace that includes terrorism coverage. Property and Workers' Compensation insurers will argue without the backstop there is insufficient capacity to handle a catastrophic exposure imposed by a terrorism event, especially in heavily populated areas.

Many insurers had already inserted sunset clauses into their contracts during the 2014 renewal cycle, enabling them to alter or revoke terrorism cover in the event of a TRIA non-renewal. It is estimated 70% to 80% of the commercial property insurance market would discontinue terrorism coverage if TRIA were allowed to expire. Many carriers are taking a wait and see approach pending the potential for the next Congress to re-authorize the backstop. Some insurance companies are offering stand-alone policies after TRIA expires, however with high deductibles and premiums that are non-refundable.

Large commercial property owners are not the only ones that would suffer the negative effects of

expiration. Without TRIA, workers compensation insurers will be less willing to offer policies in high risk areas. Employers with a high concentration of employees in major urban areas are already seeing workers compensation rates 5% to 10% higher in 2015 due to uncertainty over TRIA's future.

Guarding against uncertainty as the industry heads towards TRIA sunset is a clear focus, alongside the creation of imaginative and innovative new ways of developing insurance capacity. There are several alternative structures available to address the uncertainty surrounding the end of TRIA. Interest in possible solutions will continue to build as we enter the New Year and for many organizations just waiting to see what will happen is not an option.

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