Insurance stakeholders are increasingly confronted by the federal government’s involvement in insurance issues, including several of significance to the workers compensation system.

With the election results behind us, planning and prioritization efforts by industry trade associations for and during the 113th Congress are already under way. Long awaited details on regulatory modernization, as well as the nature and direction of the Federal Insurance Office (FIO), will continue to be carefully monitored by both insurers and state regulatory authorities. Implementation of the Patient Protection and Affordable Care Act (PPACA) will likewise capture the attention of many constituencies.

But the scheduled sunset of the terrorism backstop (i.e., the Terrorism Risk Insurance Program Reauthorization Act of 2007 [TRIPRA]) at the end of 2014 will undoubtedly be the number one priority for many interest groups, including those involved in the workers compensation system.

**TRIPRA—a History**

Following the tragic events of September 11, 2001, insurers have made every effort to first obtain and then to retain the program, which provides a federal backstop for defined acts of terrorism.

Initially enacted and signed into law in November 2002, the Terrorism Risk Insurance Act (TRIA) was extended in 2005 for two years as the renamed Terrorism Risk Insurance Extension Act (TRIEA). In 2007, the program was extended once again, this time for seven years and with the TRIPRA acronym.

Scheduled to terminate at the end of 2014, TRIPRA includes these key features:

- Certified acts of terrorism no longer limited to acts of foreign persons or interests
- Federal reimbursement trigger set at $100M
- Insurer deductible set at 20% of insurer’s direct earned premium
- Federal share of compensation set at 85% of insured loss exceeding insurer deductibles
- $100B cap on federal share of costs
- Mandatory recoupment of federal share through policyholder surcharges

Changes to the terrorism backstop program between the initial 2002 TRIA program and the current TRIPRA program have increased, in several ways, the private insurance market’s share of the cost of any terrorism event.
As illustrated in the chart on page 18, the trigger for the federal backstop has been increased from the initial $5M under TRIA to $50M in the first year of TRIEA (2006) and to $100M since 2007. The insurer deductible has likewise grown from its initial 7% in 2003 to 10% in 2004, followed by 15% in 2005, 17.5% in 2006, and 20% since 2007.

Insurers’ share of the cost of a terrorism event in excess of the deductible was increased from the 10% level established under TRIA to 15% beginning in 2007. The recoupment mechanism for repaying the federal government following a terrorism event was initially set with a maximum policyholder surcharge of 3% per year. Under TRIPRA, beginning in 2008, there is no maximum annual surcharge percentage. The most notable area of expanding the scope of the backstop was the inclusion of acts of domestic terrorism under TRIPRA.

Terrorism and Workers Comp

Workers compensation has some unique features that elevate insurer stakeholders concerns about the need for the federal backstop.

Coverage for claims resulting from acts of war cannot be excluded in workers compensation as is typical for other lines of insurance. The standard policies that apply in workers compensation have no limit on the aggregate covered claims amounts other than the benefit limits contained in the applicable state laws. Further, the exposure from chemical, biological, radiological, and nuclear events (CBRN) cannot be excluded or limited in workers compensation.

There have been a number of key public policy issues raised during previous debates over the ongoing need for a terrorism backstop program.

1. The existing backstop program represents a public/private partnership that adds to the stability of the economy and mitigates the potentially devastating loss of capital that might otherwise result from an act of terrorism. Program proponents point to the economic uncertainty between September 11, 2001 and the 2002 enactment of TRIA, along with the easing of many of these market contractions following the program’s enactment.

2. Extreme events associated with low claim frequency and virtually unlimited claim severity present actuaries with unpredictable exposures. Catastrophe models have identified scenarios under which particular events in densely populated areas of the country could generate costs in excess of the entire capital of the property/casualty insurance industry.

3. Opponents of the program’s extension have characterized the mechanism as a “government bailout” of the insurance industry, while defenders of the program point to the fact that the government hasn’t yet paid for the insurance costs of any terrorism events, and the program includes a recoupment mechanism to repay the government. The alternative to the government backstop would be to force the legislature to approve emergency appropriations to deal with terrorism events.

4. The recognition of CBRN risks adds to the potential for doomsday scenarios, which underscores the uninsurable nature of terrorism.

Initially enacted and signed into law in November 2002, the Terrorism Risk Insurance Act (TRIA) was extended in 2005 for two years as the renamed Terrorism Risk Insurance Extension Act (TRIEA).

Leadership Changes

Who will champion efforts to extend a terrorism backstop as the December 31, 2014 expiration approaches?

The insurance industry lost an important ally when US Representative Judy Biggert (R-IL) lost her reelection bid. Representative Biggert was chairperson of the Subcommittee on Insurance, Housing, and Community Opportunity of the House Financial Services Committee, and she was expected to be a big player regarding insurance issues. For example, prior to the election, Representative Biggert’s Subcommittee held a hearing titled “TRIA at Ten Years: The Future of the Terrorism Risk Insurance Program.”

Who will take on the issue in the wake of Representative Biggert’s election defeat?

One possibility is the former director of the Illinois Division of Insurance and the current director of the Federal Insurance Office, Michael McRaith.

In his former position, Director McRaith testified before the Senate Committee on Banking, Housing, and Urban Affairs on behalf of the National Association of Insurance Commissioners in support of extending the terrorism program.
Excerpts from Director McRaith’s testimony in February 2007 include the following:

• “… we should not allow TRIEA to expire without an appropriate federal backstop being in place …”
• “… the availability of terrorism insurance has become crucial to a stable economy…”
• “… the private insurance market has shown little appetite to provide terrorism insurance coverage absent a federal backstop.”
• “… Congress should act to sustain a viable insurance market for terrorism insurance by supporting a federal backstop that includes domestic and foreign acts of terror … and a mechanism to address CBRN risks.”

Given the FIO’s responsibility for overseeing the terrorism program, it will be interesting to learn whether Director McRaith’s views have changed in any substantive ways and what, if any, role he will play in any discussions relating to the extension of TRIPRA.

Other Voices
What are the other major stakeholders saying now about the need for an extension of TRIPRA beyond 2014?

Joel Wood, of the Council of Insurance Agents and Brokers, said recently, “The most important action for stakeholders on terrorism coverage is to adequately persuade policy makers that the recoupment mechanism will be effective, and that the mechanism is not a net drain on the Treasury over the long haul.”

And Leigh Ann Pusey, president and CEO of the American Insurance Association (AIA), said, “TRIA is a fundamental part of this nation’s economic security.”

In their December 2012 report titled Tensions Building, global reinsurer Guy Carpenter observed, “Speculation over the future of [TRIPRA] continues to dominate the country’s terrorism (re)insurance market. Without TRIPRA, some insurers could withdraw from geographic areas that have the greatest need for coverage or they may even exit certain lines of business, such as workers compensation.”

Countering these voices of support, David C. John, senior research fellow in retirement security and financial institutions at the Heritage Foundation, expressed opposition to extending the terrorism program. “There is no need to extend [TRIPRA] beyond 2014 except for a short [two-year] phase-out period,” he said.

Next Move for TRIPRA?
Observers have long pointed to the evolving global nature of terrorism risk. The demise of key Al-Qaeda leaders does not mean that the threat of terrorism no longer exists. Indeed, new groups are emerging, and potential terroristic tactics may be changing.

Included among the potential threats are cyber terrorism, political violence, and the heightened current concern over Syria’s possible use of chemical weapons. CBRN exposures also must recognize concerns over efforts to expand nuclear weapons capabilities in North Korea and Iran.

It remains to be seen whether these issues, along with the economic security issues cited by proponents of TRIPRA, will be enough to persuade Congress to act quickly to extend the terrorism backstop program.

While December 2014 may seem like a long time away, commercial insurance contracts to be quoted in the fall of 2013 will begin to include coverage for events that might occur in 2015.

The clock is ticking on efforts to address this important issue before another fiscal cliff approaches.

Barry Llewellyn is a consulting actuary who offers legislative and regulatory compliance services. He is president of Llewellyn Consulting, LLC, and can be reached at llewellynb8@gmail.com.