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MARKETS

Insurance Firms Plan to Fight Federal Pandemic Liability Proposal

A public-private program is opposed by two trade groups representing most of the nation's property insurers

Legislation for a new pandemic-insurance program is in the hands of Rep. Carolyn Maloney (D., N.Y.), seen at a March hearing.

PHOTO: TOM WILLIAMS/ZUMA PRESS

By Leslie Scism and Brody Mullins
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A legislative proposal in Washington, D.C., for a public-private program to insure against future pandemic-related business losses is facing growing opposition, as insurers begin a push to put responsibility for claims on the government.

For weeks, U.S. House lawmakers, insurance brokerage Marsh & McLennan Cos MMC -1.02% ▼ . and others have been pursuing a possible government financial-backstop arrangement that would help insurance carriers provide coverage for businesses during pandemics in years to come.

The legislation wouldn't apply to existing claims from Covid-19, but seeks to make insurance available for future pandemics so that businesses wouldn't get into the coverage disputes they

are now fighting with their insurers. Insurers maintain that most of their policies exclude pandemic-related business-interruption losses, and litigation is mounting in courts nationwide as they reject claims.

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>
> *— David Sampson, American Property Casualty Insurance Association*

The legislative effort builds on the framework of a federal program established after terrorist attacks in 2001 roiled the insurance market. Adopted with broad industry and political support, the terrorism backstop program puts responsibility on insurers for a slice of claim payments, and U.S. taxpayers then step in for additional payouts.

But history isn't repeating itself.

Two leading trade groups, which represent most of the nation's property insurers, are opposing any legislation that requires them to bear the risk of business-interruption losses from pandemics.

The two groups—the American Property Casualty Insurance Association and the National Association of Mutual Insurance Companies—maintain that a public-private insurance program isn't the best way to help small businesses recover from government-ordered shutdowns and that the risk is fundamentally different from what insurers face with terrorism. It is unclear whether some insurers will break ranks with the trade groups.

"Rather than forcing the industry into a role that it is ill-suited to play, Congress should be focused on a federal approach that provides simplicity, certainty and immediate relief to impacted businesses," David Sampson, chief executive of the American Property Casualty group, said in an interview.

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While insurers' exposure to business-interruption claims would be capped under the new program, some industry executives are concerned about the size of the slice they would be required to hold and their ability to diversify it. Covid-19 shutdowns have created business losses on virtually every block in every town across the country, they note.

They note that insurance works on the theory that, if many entities pay into a pool, only a relatively few will make claims in any given year. With terrorism, certain high-profile buildings and locations pose higher risk, but insurers can offset those risks with lower-profile properties in other locations.

Jimi Grande, an executive with the other trade group, said, "In the future, the federal government needs to be there for any business it causes harm through mandatory shutdowns.... Torturing the current [terrorism-risk] model to work for insurers shouldn't be the goal."

Mr. Grande lobbied on behalf of the Terrorism Risk Insurance Act in 2001-02, and recalls that "the contours of TRIA didn't come together for about a year, and the insurance industry was at the table working on it the whole time."

> **'The stakes for businesses, their employees and the economy are simply too high to defer action in addressing pandemic risk exposure.'**
>
> *— John Q. Doyle, Marsh & McLennan*

The two groups are promoting some type of federal pandemic-loss program under which businesses would pay the U.S. government for protection to maintain continuity during shutdowns. Smaller enterprises could get subsidies. Payouts could be automatically triggered by federal emergency declarations and shutdown directives.

In Washington, legislation for the new public-private terrorism-risk-type program is in the hands of Rep. Carolyn Maloney (D., N.Y.). Senators in both parties are weighing separate plans based on a different model.

Under the existing terrorism-risk program's formulas, insurers would pay roughly $45 billion, and taxpayers would pay as much as $55 billion, bringing total payouts to $100 billion. The program hasn't been triggered since its passage in 2002.

Marsh's lobbying effort was launched March 30 with a letter from John Q. Doyle, president of its brokerage unit, to Congress and the Treasury. The letter said "the stakes for businesses, their employees and the economy are simply too high to defer action in addressing pandemic risk exposure" going forward.

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The letter advocated for a program, like the terrorism one, in which policyholders, insurers and the government would share risks. Policyholders would have deductibles, carriers would pay claims up to a specified level, and the government would backstop the program up to a higher level.

Some organizations representing buyers of insurance have spoken publicly in favor of such a public-private program.

Mr. Doyle said in an email Wednesday that Marsh is in regular contact with policyholders, trade groups, insurers and government officials to try to come to a consensus on a prospective program. A number of public-private mechanisms could be used as models, he said.

“I’m hopeful that the industry can come together on this,” he said.

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