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**PROFESSIONAL
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E&O Risk Management Considerations of TRIA's Expiration

The Big 'I' Government Affairs staff recently provided a white paper titled ["Implications of the Expiration of TRIA"](#) to provide members with a better understanding of what to expect in the commercial property-casualty market as January 1, 2015 quickly approaches. Dovetailing with the white paper, the Big 'I' Professional Liability Program and Swiss Re Corporate Solutions are providing members with E&O risk management considerations relating to handling TRIA's expiration. The below E&O risk management considerations may assist agencies in reducing E&O exposure while adding value to their customers.

Agency E&O Risk Management Considerations:

- **Stay Informed** – Watch for communications from your Big "I" association to keep current on the progress of legislation to reauthorize TRIA, and how it may affect your agency, customers, and carriers. Again, keep watch for updates and further news.
- **Carrier Reaction** - Contact your carriers to learn how they plan to handle the delay, and to determine what communications they will make directly with policyholders and what information they are relying on your agency to convey. Carriers may choose to do nothing, or may choose to reduce, restrict, or even exclude terrorism exposures. New and renewal policies may not be handled the same and you can expect to see wide variations on policies placed through non-admitted carriers. There may be limited availability of stand-alone coverage to replace any reductions or eliminations of coverage.
- **Communication** – Clear, consistent, written communication **is key** – not only to be sure customers are well informed, but also to provide your agency with strong E&O defenses. Be **clear with your staff** on any procedures your agency has chosen to implement on this issue, and update your agency's written procedures to reflect any of these new processes. Remember, consistency is key!
- **In-force Business** – Follow the instructions provided by the carrier. If the carrier is reducing or eliminating coverage mid-term or at renewal and is required by regulations to notify its policyholders, we recommend you not interfere with that notification. Be aware that regulations requiring notification of changes in terms and conditions vary by state, and that non-admitted carriers are not necessarily subject to regulatory restrictions. If the carrier is not required to provide its policyholder notice of a change in terms or conditions mid-term or at renewal, you may consider whether that is something that you want to undertake. Once again, consistent written communication is key – to provide the best possible E&O risk management, you should follow the same process, in writing, with every customer.
- **New Business** – Carriers may take a variety of approaches on TRIA, ranging from offering limited coverage to fully excluding the exposure. Be aware that non-admitted carriers are not restrained by regulations as to the limits, terms, and conditions of coverages offered, and that carriers providing excess coverage (including umbrella coverages) are not obligated to follow form over primary policies. It is prudent E&O risk management to provide cover letters when

delivering policies, advising your customers to read their policies and to contact you with any questions regarding coverage terms and conditions.

- **Understand the Marketplace** – Stand-alone coverage for terrorism may be limited. Carefully consider the agents' standard of care in the states in which you are doing business before making a decision to proactively solicit your customers for stand-alone coverage. If you decide to do so, the recommended E&O risk management approach is to be consistent with all customers and to document all coverage offers and rejections in writing. Remember, consistency and written documentation are the key cornerstones of agency E&O risk management. For more information on the subject of agent standard of care or general E&O risk management information, visit www.iiaba.net/eohappens.

Few things in life are certain; change is one of those few. With change comes opportunity - to add value and build deeper relationships with customers. The expiration of TRIA on December 31, 2014, presents such an opportunity. Proactively communicating with your customers on TRIA not only strengthens your client relationships, but may also strengthen your agency's E&O Risk management procedures.