

Government of the District of Columbia
Muriel Bowser, Mayor
Department of Insurance, Securities and Banking



Chester A. McPherson
Acting Commissioner

BULLETIN
15-IP-01-2/20

**This bulletin replaces and supersedes bulletins
06-IP-02-07/20 and 08-IP-01-1/31**

**TO: ALL PROPERTY AND CASUALTY INSURERS WRITING
COMMERCIAL LINES INSURANCE PRODUCTS**

**ALL INSURERS ON THE NAIC QUARTERLY LISTING OF ALIEN
INSURERS**

FROM: CHESTER A. MCPHERSON, ACTING COMMISSIONER

**SUBJECT: FILING PROCEDURES FOR COMPLIANCE WITH THE PROVISIONS
OF THE TERRORISM RISK INSURANCE EXTENSION ACT OF 2015**

DATE: MARCH 2, 2015

The purpose of this bulletin is to advise you of certain provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015 amending and extending the Terrorism Risk Insurance Act of 2002 (the Act) by reauthorization, which may require insurers to submit a filing in the District of Columbia of disclosure notices, policy language, and applicable rates as a result of the Act. For further details related to the Act, please consult the Act itself.

Background

Uncertainty in the markets for commercial lines property and casualty insurance coverage arose following the substantial loss of lives and property experienced on September 11, 2001. Soon after these tragic events, many reinsurers announced that they would no longer provide coverage for acts of terrorism in future reinsurance contracts. This led to a concerted effort on behalf of all interested parties to seek a federal backstop to facilitate the ability of the insurance industry to continue to provide coverage for these unpredictable and potentially catastrophic events. As a result, Congress enacted and the President signed into law, in November 2002, the Terrorism Risk Insurance Act of 2002. This federal law provided a federal backstop for defined acts of terrorism and imposed certain obligations on insurers. The Act was extended for a two-year

period covering Program Years 2006 and 2007, and for an additional seven years through December 31, 2014 with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007. The Act has now been extended again with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015.

The reauthorized Act, as amended and extended, included several changes including:

- Extending the program through December 31, 2020.
- Fixing the Insurer Deductible at 20% of an insurer's direct earned premium of the preceding calendar year and the federal share of compensation at 85% of insured losses that exceed insurer deductibles until January 1, 2016, at which time the federal share shall decrease by 1 percentage point per calendar year until equal to 80%.
- Requiring the Secretary of the Treasury certify acts of terrorism in consultation with the Secretary of Homeland Security.
- Increasing policyholder surcharges to 140 percent (from 133 percent) for the mandatory recoupment of the federal share.
- Changing the insurance marketplace aggregate retention amount so that, initially, it will be the lesser of either \$27.5 billion (increasing annually by \$2 billion until it equals \$37.5 billion) or the aggregate amount of insured losses for the calendar year for all insurers. Beginning in 2020, the marketplace aggregate retention amount will be the lesser of either \$37.5 billion or 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).
- Requiring the Secretary of the Treasury, not later than nine months after the Act's enactment, 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.
- Requiring insurers participating in the Program to submit to the Secretary of the Treasury (for a Congressional report to be submitted on 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 District of Columbia insurance regulatory authorities.
- Requiring the Comptroller General of the United States to complete a study on the viability and effects of the Federal Government assessing and collecting upfront premiums and creating a capital reserve fund.
- Requiring the Secretary of the Treasury 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.
- Requiring the Secretary of the Treasury 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.
- Changing the terms "program year" and "transition period" to "calendar year" throughout.

Definition of Act of Terrorism

Section 102(1) defines an *act of terrorism* for purposes of the Act. Please note that the unmodified reference to “the Secretary” refers to the Secretary of the Treasury. The revised Section 102(1)(A) states, “The term ‘act of terrorism’ means any act that is certified by the Secretary, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—(i) to be an act of terrorism; (ii) to be a violent act or an act that is dangerous to—(I) human life; (II) property; or (III) infrastructure; (iii) to have resulted in damage within the United States, or outside the United States in the case of—(I) an air carrier or vessel described in paragraph (5)(B); or (II) the premises of a United States mission; and (iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.” Section 102(1)(B) states, “No act shall be certified by the Secretary as an act of terrorism if—(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers’ compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.” Section 102(1)(C) and (E) specify that the determinations are final and not subject to judicial review and that the Secretary of the Treasury cannot delegate the determination to anyone.

For purpose of this Bulletin, *certified losses* are losses from a certified act of terrorism as defined by the Act.

Submission of Rates, Policy Form Language and Disclosure Notices

If an insurer relies on an advisory organization to file loss costs and related rating systems on its behalf, no rate filing is required unless an insurer plans to use a different loss cost multiplier than is currently on file for coverage for *certified losses*. Insurers that develop and file rates independently may choose to maintain their currently filed rates or submit a new filing. The rate filing should provide sufficient information for the reviewer to determine what price would be charged to a business seeking to cover *certified losses*. The District of Columbia will accept filings that contain a specified percentage of premiums to provide for coverage for *certified losses*. Insurers may also choose to use rating plans that take into account other factors such as geography, building profile, proximity to target risks, and other reasonable rating factors. The insurer should state in the filing the basis that it has for selection of the rates and rating systems that it chooses to apply. The supporting documentation should be sufficient for the reviewer to determine whether the rates are excessive, inadequate or unfairly discriminatory.

Insurers subject to policy form regulation must submit the policy language that they intend to use in the District of Columbia. The policy should define *acts of terrorism* in ways that are consistent with the Act, as amended, District of Columbia law and the guidance provided in this bulletin. The definitions, terms and conditions should be complete and accurately describe the coverage that will be provided in the policy. Insurers may conclude that current filings are in compliance with the Act, as amended, District of Columbia law and the requirements of this bulletin. However, if policy forms make a distinction between acts of a foreign person or foreign interest and a domestic person or domestic interest, it is likely that a filing is required.

A change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 was a disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to other disclosure requirements previously contained in TRIA, insurers since 2007 have had to provide clear and conspicuous disclosure to the policyholder of the existence of the \$100 billion cap under Section 103(e)(2), at the time of offer, purchase, and renewal of the policy.

The Commissioner requests that the disclosure notices be filed along with the policy forms, rates and rating systems as they are an integral part of the process for notification of policyholders in the District of Columbia and should be clear and not misleading to business owners in the District of Columbia. The disclosures should comply with the requirements of the Act, as amended, and should be consistent with the policy language and rates filed by the insurer.

Program Triggers and the \$5,000,000 Threshold

The 2015 Reauthorization Act contains triggers that 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 calendar year 2018, \$180 million for calendar year 2019, and \$200 million for calendar year 2020 and any calendar year thereafter.

As it pertains to aggregate losses that fall below the \$5,000,000 threshold, the District of Columbia will not allow exclusions of coverage on any policy that provides coverage for acts of terrorism that fail to be certified losses solely because they fall below the \$5,000,000 aggregate loss threshold as cited in Section 102(1)(B) of the Act. Insurers required to file policy forms may submit language containing coverage limitations for certified losses that exceed \$100 billion industry aggregate.

Fire Coverage

The District of Columbia will allow insurers to exclude *fire* following a terrorism event where the insured has elected **not** to pay the additional premium for terrorism coverage, and, the premium charged for the policy reflects a savings projected for the exclusion of the peril. The Department's stance applies to any commercial property insurance policy, not specifically excluded, and where coverage is not typically provided.

Expedited Filing Procedures for Forms and Rates

Given that the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015 are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the revised provisions of TRIA, the District of Columbia will permit insurers and advisory organizations to file and use policy forms and disclosure notices thereby waiving prior approval from the Commissioner

With respect to *form* filings, if an insurer wants to take advantage of this voluntary speed to market initiative for revised terrorism products, it should complete the attached Expedited SERFF Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing, and certify on the form that it is in compliance with the terms of the Terrorism Risk Insurance Program Reauthorization Act of 2015 and the laws of the District of Columbia. Completion of the Expedited SERFF Filing Transmittal will also relieve an insurer from having to complete any

other filing form or supplementary exhibit that is normally required to accompany filings. The Expedited Filing Transmittal Document should accompany your “File and Use” forms.

With respect to *rate* filings, there will be no change in filing procedure; however, expedited review will be given to terrorism *rate* filings.

Mandated use of System for Electronic Rate and Form Filing (SERFF)

The District of Columbia mandates the use of SERFF to submit *rate* and *form* filings. Filers should use the SERFF system for submitting such filings. Filers should use the term “**TRIA2015**” in the product name field in SERFF to indicate a filing related to terrorism made in connection with the Terrorism Risk Insurance Program Reauthorization Act of 2015.

Provision for Workers’ Compensation Policies

Workers’ compensation insurance coverage is statutorily mandated for nearly all U.S. employers and exemptions are barred in all states. Thus, a business cannot voluntarily waive workers’ compensation insurance (or terrorism coverage provided by a workers’ compensation insurance policy), nor can an insurer exempt terrorism risk from a workers’ compensation policy.

Exclusions for Commercial Lines Not Defined as “Property and Casualty Insurance” under the Act

Section 102 of the Act provides that the term “**property and casualty insurance**” (A) means commercial lines of property and casualty insurance, including excess insurance, workers’ compensation insurance, and directors and officers liability insurance; but (B) does **not** include:

- Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. § 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;
- Private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S. C. § 4901));
- Title Insurance;
- Financial Guaranty Insurance;
- Medical Malpractice Insurance;
- Health Insurance;
- Life Insurance;
- Flood Insurance under the National Flood Insurance Act of 1968 (42 U.S.C. § 4001 et seq.);
- Reinsurance or Retrocessional Reinsurance;
- Commercial Automobile Insurance;
- Burglary and Theft Insurance;
- Surety Insurance;
- Professional Liability (other than Directors and Officers) Insurance; or
- Farm Owners Multiple Peril Insurance.

Effective Date

This bulletin shall take immediate effect and shall expire on **December 31, 2020**, unless Congress extends the duration of the Act.

Copies of the Policyholder Disclosure forms have been attached for your reference. The Expedited Filing Transmittal Document(s) is located under the supporting documentation tab in the SERFF program. If you have questions or concerns please contact the Policy Examiner at (202) 727-8000.

**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE**

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, you have a right to purchase insurance coverage for losses resulting from acts of terrorism. *As defined in Section 102(1) of the Act:* The term “act of terrorism” means any act or acts that are certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

You should know that where coverage is provided by this policy for losses resulting from certified acts of terrorism, such losses may be partially reimbursed by the United States government under a formula established by federal law. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The premium charged for this coverage is provided below and does not include any charges for the portion of loss that may be covered by the federal government under the act.

You should also know that the terrorism risk insurance act, as amended, contains a \$100 billion cap that limits United States government reimbursement as well as insurers’ liability for losses resulting from certified acts of terrorism when the amount of such losses in any one calendar year exceeds \$100 billion. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

Acceptance or Rejection of Terrorism Insurance Coverage

	I hereby elect to purchase terrorism coverage for a prospective premium of \$_____.
	I hereby decline to purchase terrorism coverage for certified acts of terrorism. I understand that I will have no coverage for losses resulting from certified acts of terrorism.

Policyholder/Applicant’s Signature

Insurance Company

Print Name

Policy Number

Date

**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE**

Coverage for acts of terrorism is included in your policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is _____, and does not include any charges for the portion of losses covered by the United States government under the Act.

I acknowledge that I have been notified that under the terrorism risk insurance act, as amended, any losses resulting from certified acts of terrorism under my policy coverage may be partially reimbursed by the United States government and may be subject to a \$100 billion cap that may reduce my coverage, and I have been notified of the portion of my premium attributable to such coverage.

Policyholder/Applicant's Signature

Print Name

Date

Name of Insurer: _____

Policy Number: _____