

BULLETIN 24-IB-003-05/28

TO: ALL PROPERTY AND CASUALTY INSURERS WRITING COMMERCIAL LINES
INSURANCE PRODUCTS AND ALL INSURERS ON THE NAIC QUARTERLY LISTING OF
ALIEN INSURERS

RE: FILING PROCEDURES FOR COMPLIANCE WITH THE PROVISIONS OF THE
TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2019

FROM: Karima Woods, Commissioner

DATE: May 28, 2024

The purpose of this Bulletin is to provide advice regarding certain provisions of the Terrorism Risk Insurance

Program Reauthorization Act of 2019 that amend and extend the Terrorism Risk Insurance Act of 2002 (the Act)

and which may require insurers to submit revised disclosure notices, policy language, and applicable rates due to reauthorization of the ACT to the Department of Insurance, Securities and Banking.

Bulletin 15-IP-01-2/20 is superseded to the extent it is inconsistent with this Bulletin xx-xx-xx-xx/xx. For additional information related to the 2019 Act, previous Acts, and the historical background please consult the 2019 Reauthorization Act itself at congress.gov/bill/116th-congress/house-bill/1865/text.

With the enactment of the Act, the Terrorism Risk Insurance Program (TRIP) was extended through December 31, 2027. The reauthorized 2019 Act, as amended and extended, contains minimal changes, to include:

Changing the timing of the mandatory recoupment by moving the date of each referenced year back five years.

Requiring the Secretary of the Treasury to include in the Secretary's annual report an evaluation of the availability and affordability of terrorism risk insurance, including specifically for places of worship.

Requiring the Comptroller General of the United States to conduct a study on: overall vulnerabilities and potential costs of cyber-attacks on the U.S.; whether state-defined cyber liability under a property/casualty (P/C) line of insurance is adequate coverage for an act of cyber terrorism; whether such risks can be adequately priced by the private market; and whether the current risk-share systems under TRIA are appropriate for a cyber terrorism event.

Eliminating outdated language relating to past United States Government reimbursement levels. The reimbursement level of covered terrorism losses exceeding the statutorily established deductible is now (as of January 1, 2020) a fixed 80%.

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.

Submission of Rates, Policy Form Language and Disclosure Notices

Submission of Rates

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 premium to provide coverage for certified losses. Insurers may also choose to use rating plans that consider 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.

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

Submission of Policy Form Language

Insurers subject to policy form prior approval regulation must submit the policy language that they intend to use. 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 follow the Act, as amended, District of Columbia law and the requirements of this bulletin.

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.

Disclosure Notices

The Commissioner requests that the disclosure notices be filed as a policy form, along with, 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.

Previously Filed Disclosure Notices

Insurers are not required to re-file previously filed Disclosure Notices if they are amended solely to eliminate outdated language related to past U.S. Government reimbursement levels. Specifically, if the only amendment to the previously filed Disclosure Notice is to delete references to reimbursement levels in 2015-2019, a filing is not required. Similarly, any other immaterial or no substantive change to the previously filed Disclosure Statement does not require a filing.

SERFF Filings

Any SERFF filings responsive to the Act or this Bulletin must use the term "TRIA2019" in the product name field.

Filings must be submitted by line of insurance and may not combine multiple lines into a single filing. All programs

within a line of insurance must be included in the filing for that line.

Note that form filings must continue to be submitted separately from rate and rule filings; however, rates and rules may be submitted together in one filing. Commercial rate & rule filings are file and use and form submissions require prior approval.

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 and the District of Columbia. 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.

Cyber Liability Coverage

Effective April 1, 2017, and consistent with TRIA and the Program regulations, an insurer must provide disclosures and offers that comply with TRIA and the Program regulations on any new or renewal policies reported under the Cyber Liability sub-line on Line 17—Other Liability of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14

Effective Date

This bulletin shall take immediate effect and shall expire on December 31, 2027, unless Congress extends the duration of the Act.

Disclosure No. 1

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 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 U.S. 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

Disclosure No. 2

POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

Coverage for acts of terrorism is included in your policy. You are hereby notified that the Terrorism Risk Insurance Act, as amended in 2019, defines an act of terrorism 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 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:

DRAFTING NOTE: An insurer may choose not to use the acknowledgement section for workers' compensation.