



## Department of Business Regulation

1511 Pontiac Avenue  
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# Insurance Bulletin Number 2015-2

## Filing Procedures for Compliance with the Provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015

The purpose of this bulletin is to advise industry of provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015 amending and extending the Terrorism Risk Insurance Act of 2002 (“TRIA”). This reauthorization may require insurers to submit a filing with changes to disclosure notices, policy language, and rates as a result of the Act. This Bulletin supersedes [Insurance Bulletin 2008-3](#).

### **Background**

TRIA, originally signed into law in November 2002, provided a federal backstop for defined acts of terrorism and imposed certain obligations on insurers. TRIA was extended for a two-year period covering Program Years 2006 and 2007, and for an additional seven years through December 31, 2014. It has now been extended through December 31, 2020 with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015.

The reauthorization of TRIA provides 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.
- Amending the program trigger to 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.
- The mandatory recoupment of the federal share through policyholder surcharges increasing to 140 percent (from 133 percent).
- The insurance marketplace aggregate retention amount being the lesser of \$27.5 billion, increasing annually by \$2 billion until it equals \$37.5 billion and the

aggregate amount of insured losses for the calendar year for all insurers. In the calendar year following the calendar year in which the marketplace retention amount equals \$37.5 billion, and beginning in calendar year 2020 it is revised to be the lesser of 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 date of enactment of the Act, 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 State 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.

### **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 the 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*. This state will accept filings that contain a specified percentage of premium 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. No filings are required if the Commercial Special Risks exemption in [R.I. Gen. Laws § 27-65-1 et seq.](#) is applicable.

The policy forms should define *acts of terrorism* in ways that are consistent with TRIA, state 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 and, therefore, choose not to make an amended filing.

Since 2007 insurers 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 in addition to other disclosure requirements previously contained in TRIA. The Department requests that the disclosure notices required by TRIA be filed for informational purposes, along with the policy forms, rates and rating systems as they are an integral part of the process for notification of policyholders in this state and should be clear and not misleading to business owners in this state. The disclosures should comply with the requirements of TRIA and should be consistent with the policy language and rates filed by the insurer.

Given that the provisions of the TRIA reauthorization are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the revised provisions of TRIA. Rhode Island will permit insurers and advisory organizations to place new rates, policy forms and disclosure notices into immediate use without waiting for the tolling of the statutory waiting period.

If an insurer wants to take advantage of this voluntary speed to market initiative for revised terrorism products, it should complete the 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 Rhode Island. 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 [SERFF Expedited Filing Transmittal and Model NAIC disclosures](#) as adopted by the NAIC Terrorism Insurance Implementation Working Group on January 26, 2015 can be found [here](#).

Insurers are required to 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. **The Department encourages insurers to utilize Interline filings (TOI 35.0) and related TOI’s as well as “Clone Filing” feature when multiple filings are submitted.** The SERFF system alleviates the need to

provide additional information in support of a request for expedited review, although some states may have additional requirements.

This voluntary expedited filing system shall remain in place until May 1, 2015. If an insurer does not want to take advantage of the expedited filing system (or cannot file prior to May 1, 2015) than it must submit a normal filing, subject to regular filing requirements, including any prior approval or waiting period.

**Optional Provision for Standard Fire Policy States**

In Rhode Island the requirements for fire coverage must meet or exceed the provisions of the Standard Fire Policy under [R.I. Gen. Laws § 27-5-3](#). These legal requirements cannot be waived. Thus, a business cannot voluntarily waive this statutorily mandated coverage unless the risk qualifies for an exemption under [R.I. Gen. Laws § 27-65-1 et seq.](#)

**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.

**Effective Date**

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

Joseph Torti III  
Superintendent of Insurance  
February 11, 2015