

February 6, 2015

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Terrorism Risk Insurance Program Reauthorization Act of 2015  
Policyholder Disclosure Notices

Circular C-15-4 announced the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015. The North Carolina Department of Insurance issued bulletin 15-B-01 (attached) which specifies filing procedures for compliance with the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015.

**The North Carolina Department of Insurance requires that separate disclosure forms be furnished to policyholders in this state.** The disclosure forms must be furnished in addition to the endorsements. To assist member companies in meeting the disclosure requirements, the North Carolina Rate Bureau has filed two versions (attached) of the NAIC developed Disclosure Notices applicable to workers compensation. Carriers may elect to use either form.

- Policyholder Disclosure Notice of Terrorism Insurance Coverage (with policyholder acknowledgement)
- Policyholder Disclosure Notice of Terrorism Insurance Coverage (without policyholder acknowledgement)

A copy of the notice to the employer does not need to be submitted to the Bureau. Neither a specimen copy of the disclosure notice nor a copy of the notice prepared for delivery to individual policyholders needs be filed with the Bureau.

Sincerely,

Sue Taylor

Chief Operating Officer

ST:dms

Attachment

C-15-5

**BULLETIN**

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**Number 15-B-01**

**DATE: January 29, 2015**

**TO: ALL PROPERTY & CASUALTY INSURERS WRITING  
COMMERCIAL LINES INSURANCE PRODUCTS  
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 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 this state 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 (The Act). 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.

Several provisions of the Act have changed in the 2015 extension. Those changes include:

- Extending the program through December 31, 2020.
- Fixing the Insurer Deductible as 20% of an insurer's direct earned premium of the preceding calendar year and the federal share of the 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 \$100,000,000 for calendar year 2015, \$120,000,000 for calendar year 2016, \$140,000,000 for calendar year 2017, \$160,000,000 for calendar year 2018, \$180,000,000 for calendar year 2019, and \$200,000,000 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 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 3 calendar years as such sum is determined by the Secretary of Treasury by regulation.
- Requiring the Secretary of the Treasury, not later than 9 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 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 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 9 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 acting on behalf of any foreign person or foreign interest, 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**

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*. 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. For the convenience of insurers, this state will waive its requirements for supporting documentation for rates for certified losses for filings that apply an increased premium charge of between 0% and 3% and do not vary by application of other rating factors.

This state 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.

Insurers subject to policy form regulation must submit the policy language that they intend to use in this state. The policy should define *acts of terrorism* in ways that are consistent with the Act, 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 with the Act, state law and the requirements of this bulletin.

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 \$100,000,000,000 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 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 the Act, as amended, and should be consistent with the policy language and rates filed by the insurer.

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, this state will permit insurers and advisory

organizations to place new rates, policy forms and disclosure notices into immediate use without receiving prior approval from the Commissioner. [NOTE: if state law requires a waiting period for filings, that can also be waived by using the following phrase: "...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 attached Expedited 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 this state. Completion of the Expedited 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.

We encourage filers to take advantage of the SERFF system for submitting such filings. Filers should only 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. Please do not add any additional verbiage to "TRIA2015" in the product name field. 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.

### **Optional Provision for Standard Fire Policy States**

In this state, the requirements for fire coverage are established by law and where applicable, must meet or exceed the provisions of the Standard Fire Policy. These legal requirements cannot be waived. Thus, a business cannot voluntarily waive this statutorily mandated coverage.

### **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.

Any questions can be addressed to Tim Johnson, Operations Manager, Property and Casualty Division at [timothy.johnson@ncdoi.gov](mailto:timothy.johnson@ncdoi.gov) and (919) 807-6084.

**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 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

**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: \_\_\_\_\_