



John R. Kasich, Governor

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BULLETIN 2015-02

Terrorism Risk Insurance Program Reauthorization Act of 2015

Effective April 8, 2015

On January 12, 2015, the President signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2015. This law extends the federal Terrorism Risk Insurance Program for another six years. The reauthorization may require insurers to submit a filing to the Ohio Department of Insurance (“Department”) containing disclosure notices, policy language, and applicable rates, as further explained below.

Background

In November 2002, Congress enacted, and the President signed into law, the Terrorism Risk Insurance Act of 2002 (“TRIA”). TRIA 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 Terrorism Risk Insurance Program (“Program”) has been extended again with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (“Act”).

The Act included several changes:

- Extends the Program through December 31, 2020.
- Fixes 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%.
- Requires the Secretary of the Treasury to certify acts of terrorism in consultation with the Secretary of Homeland Security.
- Amends 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.
- Increases the mandatory recoupment of the federal share through policyholder surcharges from 133% to 140%.
- Changes the insurance marketplace aggregate retention amount to be 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, the insurance marketplace aggregate retention amount will 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.

- Requires 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.
- Requires 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.
- Requires 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.
- Requires 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.
- Requires 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.
- Changes 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.

As a result of the Act, there are essentially two distinct types of losses resulting from terrorism that a business might face. First, there are those losses resulting from certified acts of terrorism ("certified losses"). These losses are defined within and covered by the provisions of the Act. Second, there are those losses resulting from acts of terrorism that are not certified ("non-certified losses"). These losses do not fit within the definition of insured loss as described in the Act.

Ohio 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 may include language containing coverage limitations for certified losses that exceed \$100 billion in the aggregate.

Permitted Limitations for Non-Certified Acts of Terrorism

The Department has allowed, and will continue to allow, some significant limitations that provide coverage for acts of terrorism under certain circumstances for commercial lines exposures. Terrorism exclusions and limitations are prohibited for personal lines exposures. For policies providing property insurance coverage, the following limitations are permitted for non-certified acts of terrorism:

- Exclusions for acts of terrorism are permitted when the act of terrorism results in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72-hour period.
- Exclusions for acts of terrorism are permitted, and are not subject to the limitation above, if:
 - The act involves the use, release, or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

For policies providing liability insurance coverage the following limitations are permitted for non-certified acts of terrorism:

- Exclusions for acts of terrorism are permitted when the act of terrorism results in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72-hour period.
- Exclusions for acts of terrorism are permitted when fifty or more persons sustain death or serious physical injury for related incidents that occur within a 72-hour period. For purposes of this provision serious physical injury means:

- Physical injury that involves a substantial risk of death;
- Protracted and obvious physical disfigurement; or
- Protracted loss of or impairment of the function of a bodily member or organ.
- Exclusions for acts of terrorism are permitted and are not subject to either limitation above, if:
 - The act involves the use, release, or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

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. Ohio 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.

Insurers subject to policy form regulation must submit the policy language that they intend to use in Ohio. 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. Forms addressing certified and non-certified acts of terrorism should include definitions that clearly distinguish between the two.

With the 2015 reauthorization, insurers are reminded that the following did not lapse and remain in effect: the requirement that insurers provide clear and conspicuous disclosure of the federal share of the compensation under the Act, the annual cap on liability, and the premium for certified acts coverage at the time of offer and renewal of the policy.

Compliant offer/disclosure notices filed effective with the Department by April 13, 2015 may be used on policies effective on or after January 1, 2015 in accordance with the February 4, 2015 Interim Guidance from the U.S. Department of the Treasury. Examples of compliant offer/disclosure notices prepared by the National Association of Insurance Commissioners are attached for reference.

The Department 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 Ohio and should be clear and not misleading to business owners in Ohio. The disclosures should comply with the requirements of the Act, and should be consistent with the policy language and rates filed by the insurer.

Admitted insurers must use the SERFF system for submitting such filings. Surplus lines insurers are not required to file rates, rules, or forms. Mutual protective associations submitting forms in compliance with Ohio Revised Code 3939.01(A) must submit the policy forms and disclosure notices via the United States Postal Service or via email at property.casualty@insurance.ohio.gov.

Effective Date

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



Mary Taylor
Lt. Governor/Director

**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: _____