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DEPARTMENT OF THE TREASURY

31 CFR Part 50

Interim Guidance Concerning the Terrorism Risk Insurance Program Reauthorization Act of 2015

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice of interim guidance.

SUMMARY: This notice provides interim guidance concerning the Terrorism Risk Insurance Program (Program) under the Terrorism Risk Insurance Act of 2002, as amended (TRIA). In this notice, the Department of the Treasury (Treasury) addresses issues that have arisen under Treasury's regulations for the Program (Program regulations) due to the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act).

DATES: February 4, 2015.

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SUPPLEMENTARY INFORMATION: This notice provides interim guidance addressing the application of certain provisions of TRIA¹ and the Program regulations² following enactment of the 2015 Reauthorization Act.³

¹ 15 USC 6701, note.

² 31 CFR part 50.

³ Pub. L. 114-1, 129 Stat. 3.

Treasury expects to issue a proposal to amend the Program regulations; this interim guidance may be relied upon by members of the public until superseded by the Program regulations, as amended, or by subsequent guidance.⁴

⁴ 31 CFR 50.7.

I. Background

TRIA was enacted following the attacks on September 11, 2001, to address disruptions in the market for terrorism risk insurance, to help ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events. Title I of TRIA creates the Program, requires insurers to “make available” terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (insured losses), and provides for shared public and private compensation for such insured losses. Pursuant to TRIA, the Secretary of the Treasury administers the Program. The Federal Insurance Office assists the Secretary of the Treasury in administering the Program.

The Program was originally scheduled to terminate on December 31, 2005; however, the Terrorism Risk Insurance Extension Act of 2005⁵ extended the Program through December 31, 2007, and the Terrorism Risk Insurance Program Reauthorization Act of 2007⁶ further extended the Program through December 31, 2014. On January 12, 2015, the President signed into law the 2015 Reauthorization Act; Section 101 of that Act amends the Program’s termination date to December 31, 2020.

II. Interim Guidance

Treasury considers the Program regulations to be in effect, except to the extent that any provision of the Program regulations is inconsistent with TRIA, as amended by the 2015 Reauthorization Act. In the case of an inconsistency, the provision(s) of TRIA, as amended by the 2015 Reauthorization Act, shall apply. Furthermore, Treasury recognizes that the 2015 Reauthorization Act introduces ambiguities regarding application of certain sections of the

⁵ Pub. L. 109–144, 119 Stat. 2660.

⁶ Pub. L. 110–160, 121 Stat. 1839.

Program regulations. This interim guidance is designed to address certain requirements under the Program regulations and TRIA, as amended by the 2015 Reauthorization Act.

Interim Guidance One (Documentation)

Due to requirements under state law regulating rates and forms, an insurer may need additional time to provide disclosures and offers of coverage for insured losses in compliance with the Program regulations and TRIA, as amended by the 2015 Reauthorization Act. An insurer should provide disclosures and offers that comply with the Program regulations and TRIA, as amended by the 2015 Reauthorization Act, as soon as possible and not later than April 13, 2015.

Interim Guidance Two (Form of Disclosure)

Section 50.17(c) of the Program regulations provides that an insurer may use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2, or other disclosures that meet the requirements of the Program regulations. NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2, as amended in 2015, are consistent with the disclosure requirements of the Program regulations and TRIA, as amended by the 2015 Reauthorization Act.

Interim Guidance Three (Timing of Disclosure)

As amended by the 2015 Reauthorization Act, TRIA no longer requires an insurer to provide to a policyholder certain disclosures at the time of a policy's "purchase," but still requires the insurer to provide such disclosures at the time of "offer" and "renewal." The timing of an insurer's disclosures may conform with either subpart B of the Program regulations or Section 103(b)(2) of TRIA, as amended by the 2015 Reauthorization Act.

Interim Guidance Four (Content of Disclosure)

An insurer that offered coverage for insured losses prior to January 12, 2015, using the then-current NAIC Model Disclosure Form No. 1, NAIC Model Disclosure Form No. 2, or other disclosures consistent with the Program regulations, is not required to provide a revised disclosure to the policyholder. Subject to Interim Guidance One, disclosures on or after January 12, 2015 provided in connection with a new or mid-term offer of coverage for insured losses should be based on the requirements of the Program regulations and TRIA, as amended by the 2015 Reauthorization Act.

Interim Guidance Five (New Offers of Coverage)

(a) Except as described herein, Treasury expects that an insurer will make a new offer of coverage for insured losses with respect to any in-force policy that does not provide coverage for insured losses.

(b) An insurer is not expected to make a new offer of coverage for insured losses if—

- (i) the policy incorporates a conditional exclusion or change of terms and conditions relating to coverage for insured losses and, because the Program is in effect, the insurer forbears effective January 1, 2015 (or as of the effective date of the policy, if later) on the exercise of the conditional exclusion or change in terms and conditions. Not later than April 13, 2015, an insurer should provide to the policyholder written notice of the insurer's forbearance or written notice of the insurer's withdrawal of any previous exercise of the conditional exclusion or change in terms and conditions. In the written notice, the insurer should state that the insurer's forbearance or withdrawal, as applicable, is effective January 1, 2015 (or as of the effective date of the policy, if later); or

(ii) the policyholder declined coverage for insured losses, so long as the insurer's offer did not materially differ in price from that which the insurer would have offered following enactment of the 2015 Reauthorization Act.

(c) If a policyholder declined coverage for insured losses but the insurer's offer did materially differ in price from that which the insurer would have offered following enactment of the 2015 Reauthorization Act, then the insurer should consider making a new offer to that policyholder.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act,⁷ the information collections contained in this document have been approved by the Office of Management and Budget (OMB) under control number 1505/0197. Any agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

Dated: February 4, 2015

Michael T. McRaith
Director, Federal Insurance Office

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⁷ 44 U.S.C. 3501 et seq.