



**STATE OF NEW YORK  
INSURANCE DEPARTMENT**  
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NEW YORK, NEW YORK 10004

**Eliot Spitzer  
Governor**

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Superintendent**

**Circular Letter No. 4 (2008)  
February 22, 2008**

**TO: All Property/Casualty Insurers and Rate Service Organizations Doing Business in New York State, New York Property Insurance Underwriting Association, State Insurance Fund, New York Automobile Insurance Plan, and Excess Line Association of New York**

**RE: Guidelines and Procedures for the Implementation of the Provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007**

**STATUTORY REFERENCE: Articles 21, 23, 34, 54 and 63 of the Insurance Law; Terrorism Risk Insurance Program Reauthorization Act of 2007**

Circular Letter No. 25, which the Department issued on December 23, 2002, and Supplement No. 1, which the Department issued on February 19, 2003, set forth an explanation of the Terrorism Risk Insurance Act of 2002 (the Act), and provide instructions and guidance to insurers to assist them in meeting their dual responsibilities under both federal and New York law. Circular Letter No. 1 (2006), issued January 18, 2006, set forth guidelines and procedures for the implementation of the provisions of the Terrorism Risk Insurance Extension Act of 2005. The purpose of this Circular Letter is to provide information and guidance about the Act and its 2005 extension that Congress enacted with the recent passage of the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Reauthorization Act).

By its terms, the Terrorism Risk Insurance Extension Act of 2005 was scheduled to expire on December 31, 2007. On December 26, 2007, the President signed the Reauthorization Act into law, thereby extending the TRIA framework through December 31, 2014. Several provisions of the initial Act have changed under the 2007 extension. Those changes include:

- Revision of the definition of a “certified act of terrorism” to eliminate the requirement that the individuals are acting on behalf of any foreign person or foreign interest. In other words, domestic acts of terrorism are now covered.
- Extension of the program through December 31, 2014.
- Requiring clear and conspicuous notice to policyholders of the existence of the \$100,000,000,000 cap.

- Fixing the insurer deductible at 20% of an insurer's direct earned premium, and the federal share of compensation at 85% of insured losses that exceed insurer deductibles.
- Fixing the program trigger at \$100,000,000 for all additional program years.
- Requiring the United States Department of the Treasury to promulgate regulations, determining pro-rata shares of insured losses under the program when insured losses exceed \$100,000,000,000.

Other provisions of the Act, as amended by the Terrorism Risk Insurance Extension Act of 2005, remain unchanged.

In view of the changes to the law, and in recognition of the limited definition of "insured loss" under the Act and the requirement that insurers must make available such coverage, the Superintendent will consider for approval, on an expedited basis, policy provisions that exclude coverage, or limit the amount thereof, for an "insured loss", provided that: the insurer has first satisfied the "make available" requirements of the Act; the exclusion or limitation applies solely to "insured loss" under the Act; the language of the exclusion or limitation mirrors the definition of "insured loss"; and the policy language is otherwise clear and not misleading. Such exclusions and limitation provisions remain subject to the applicable prior approval and all other statutory and regulatory requirements of the Insurance Law.

### **Definition of Act of Terrorism**

One of the most significant changes made to TRIA with the enactment of the Reauthorization Act was redefining a covered act of terrorism and eliminating the requirement that an individual or individuals that carry out an act of terrorism be acting on behalf of a foreign person or foreign interest. In short, this means that acts formerly referred to as "domestic" terrorism may now be certified as an act of terrorism under TRIA.

Section 102(1) defines an "act of terrorism" for purposes of the Act. The revised Section 102(1)(A) states:

The term "act of terrorism" means any act that is certified by the Secretary [of the Treasury], in concurrence with the Secretary of State, 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) further provides: "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.” In addition, Section 102(1)(C) and (D) 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.

The Terrorism Risk Insurance Act, as amended, contains in Section 103(1)(B) a program trigger of \$100 million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is triggered.

### **Submission of Rates, Policy Form Language and Disclosure Notices**

Certain provisions of the Reauthorization Act may have an impact on an insurer’s terrorism forms and the associated rates and rules requiring insurers to submit filings

The rate filing should provide sufficient information for the Department to determine the price charged to a business seeking to cover *certified losses*. The supporting documentation should be sufficient for the reviewer to determine if the rates comply with the standard set forth in Article 23 of the New York Insurance Law.

Insurers may conclude that their current filings are in compliance with the Act, as amended, and the state law. However, if policy forms currently in effect make a distinction between acts of a foreign person or interest and a domestic person or interest, it is likely that a filing is required.

Another change introduced in the Reauthorization Act is a new disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to other disclosure requirements previously included in TRIA, insurers must, at the time of offer, purchase and renewal of the policy, now also provide clear and conspicuous disclosure to the policyholder of the existence of the \$100,000,000,000 cap under Section 103(e)(2).

Disclosure notices should be filed for informational purposes, along with the policy forms, rates and rating systems, since they are an integral part of the process for notifying policyholders in this state. Such notices should be clear and not misleading to New York’s business owners. 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. Take note that in Circular Letter No. 25 (2002), the Department deemed acceptable the model disclosure notice forms adopted by the NAIC, which the U.S. Department of Treasury deemed to be in compliance with the Act. The most recently revised NAIC model notice forms may continue to be used, pending further guidance from Treasury.

The Department encourages filers to take advantage of the SERFF system for submitting filings. Insurers may also take advantage of the expedited Speed-to-Market filing option as described in [Circular Letter No. 11 \(1998\)](#). Instructions for SERFF and Speed-to-Market submissions are available at the Department’s website [www.ins.state.ny.us](http://www.ins.state.ny.us).

### **In-Force Policies**

An opt-out election currently in effect for policies issued prior to the effective date of the Reauthorization Act applies to certified foreign acts of terrorism only. Any exclusion for domestic acts of terrorism cannot take effect until the policy is renewed in accordance with New York law, at which time the insured may make a new election to opt out of certified acts of terrorism, which, pursuant to the

Reauthorization Act, would then apply to both foreign and domestic acts of terrorism.

Please note that, except as addressed specifically and modified by the Reauthorization Act as described above, the advice and guidelines contained in the aforementioned previous circular letters and supplements remain in effect and are applicable to terrorism coverage in New York. In particular, as noted in [Circular Letter No. 25 \(2002\)](#), no terrorism exclusion or limitation is permitted to the extent that coverage is otherwise required under the Insurance Law. Accordingly, no such exclusion or limitation is permissible for coverage with respect to the peril of fire that is subject to Insurance Law Section 3404 or workers' compensation insurance. An insured cannot voluntarily waive this statutorily mandated coverage. It is the position of this Department that any such exclusion or limitation would be unenforceable under Insurance Law Section 3103.

Questions regarding this Circular Letter should be addressed to Gerald Scattaglia, Assistant Bureau Chief, Property Bureau at (212) 480-5583 or [gscattag@ins.state.ny.us](mailto:gscattag@ins.state.ny.us).

Very truly yours,

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