

DEPARTMENT OF THE TREASURY

Departmental Offices

Interim Guidance Concerning Certain Conditions for Federal Payment, Non-U.S. Insurers, and Scope of Insurance Coverage in the Terrorism Risk Insurance Act of 2002

AGENCY: Departmental Offices, Treasury.
ACTION: Notice.

SUMMARY: This notice provides additional interim guidance concerning certain conditions for Federal payment in title I of the Terrorism Risk Insurance Act of 2002 as implemented in Department of Treasury's Terrorism Risk Insurance Program.

DATES: This notice is effective immediately and will remain in effect until superceded by regulations or by subsequent notice.

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SUPPLEMENTARY INFORMATION: This notice provides additional interim guidance to assist insurers in ascertaining how they may comply with certain immediately applicable provisions of title I of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297) (the Act) prior to the issuance of regulations by the Department of the Treasury (Treasury). This notice provides interim guidance concerning the timing and certification of disclosures that Treasury expects to require from an insurer that is making a claim for federal payment under the Terrorism Risk Insurance Program. In addition, this interim guidance addresses the "separate line item" disclosure requirement in section 103(b)(2)(C), non-U.S. insurer participation in the Program, and the scope of "insured loss." The interim guidance contained in this notice, along with interim guidance issued previously by Treasury, may be relied upon by insurers in complying with these statutory requirements prior to the issuance of regulations on these issues. This interim guidance remains in effect until superceded by regulations or subsequent notice.

I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002. The Act became effective immediately. It establishes a temporary Federal program of shared

public and private compensation for insured commercial property and casualty losses resulting from an "act of terrorism," as defined in the Act. The Terrorism Risk Insurance Program is administered and implemented by Treasury and will sunset on December 31, 2005.

II. Interim Guidance

Treasury will be issuing regulations to administer and implement certain elements of the Terrorism Risk Insurance Program (Program). To assist insurers in complying with certain statutory requirements prior to the issuance of regulations, Treasury has previously issued interim guidance, located at 67 FR 76206 (December 11, 2002) and at 67 FR 78864 (December 26, 2002) (also located on Treasury's Terrorism Risk Insurance Program Web site at <http://www.treasury.gov/trip>). This notice contains additional interim guidance concerning disclosures as conditions for Federal payment in section 103(b)(2) of the Act, non-U.S. insurer participation in the Program, and the scope of "insured loss."

How May an Insurer Comply With the Section 103(b)(2) Requirements for Disclosure "at the Time of Offer, Purchase and Renewal of the Policy?"

As conditions for Federal payment under the Program, section 103(b)(2) requires that an insurer provide clear and conspicuous disclosure to the policyholder, for existing policies and for new policies, of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program. For policies issued after the date of enactment (November 26, 2002), sections 103(b)(2)(B) and (C) require these disclosures to be made to the policyholder "at the time of offer, purchase and renewal of the policy." For purposes of interim guidance, Treasury deems an insurer to be in compliance with these disclosure requirements "at the time of offer, purchase and renewal" if the insurer makes the required clear and conspicuous disclosures to the policyholder or applicant no later than at the time that the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder, and makes clear and conspicuous reference back to that disclosure as well as the final terms of terrorism insurance coverage at the time the transaction is completed. The required disclosures can be communicated by the use of channels, methods and forms of communication normally used to communicate similar

policyholder information. This interim guidance is provided as a safe harbor to assist insurers in complying with conditions for Federal payment prior to the issuance of regulations. It is not the exclusive means by which an insurer may comply with the section 103(b)(2) (B) and (C) requirements.

How May an Insurer Comply With the "Separate Line Item" Requirement for Policies Issued More Than 90 days After Date of Enactment?

Section 103(b)(2)(C) requires that an insurer make the required clear and conspicuous disclosures on a "separate line item" in the policy for any policy issued more than 90 days after the date of enactment of the Act (November 26, 2002). In previous interim guidance, published at 67 FR 76206 (December 11, 2002), Treasury indicated that additional interim guidance, as appropriate, as well as regulations would be issued on the "separate line item" requirement. For purposes of interim guidance, Treasury deems an insurer to be in compliance with the separate line item requirement of section 103(b)(2)(C) if it makes the required "clear and conspicuous" disclosure: (i) On the declarations page of the policy; (ii) elsewhere within the policy itself; or (iii) in any rider or endorsement that is made a part of the policy, as long as the disclosure is clear and conspicuous and otherwise meets the requirements of section 103(b)(2) and previous interim guidance. This interim guidance is provided as a safe harbor to assist insurers in complying with conditions for Federal payment prior to the issuance of regulations; however, it is not the exclusive means by which an insurer may comply with the section 103(b)(2)(C) "separate line item" requirement.

How May an Insurer Certify Its Compliance With Required Disclosures as a Condition for Payment in Section 103(b) of the Act?

Section 103(b) of the Act sets forth conditions for Federal payments for an insured loss that is covered by an insurer, including provision of clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program. The Act also requires as a condition for payment that an insurer process a claim for an insured loss and submit a claim to Treasury for payment of the Federal share of compensation for the insured loss, along with certain written certifications, including certification of the insurer's compliance