

information to their mortgage finance providers, including information on terrorism risk insurance coverage. In its comment, the association acknowledged this, but stated that these requirements are frequently ignored by borrowers and costly to enforce. In Treasury's view, the issue appears to be one of contract negotiation, monitoring and enforcement by the parties rather than of regulation under the Program.

In this regard, we also understand that ACORD, an independent, nonprofit insurance group comprised of insurance company, reinsurance company and financial service institution affiliated members that assists in the cooperative development and implementation of insurance (and related financial services) standards, has agreed to work with mortgage finance providers to revise standard insurance certificates. The goal of this market driven effort is to better facilitate access by the mortgage finance providers to the insurance coverage information concerning terrorism risk insurance and other types of insurance coverage.

Based on our review of section 103(b) and of the legislative intent of the disclosure requirements as described in the Conference Report, and our understanding of industry practice and ongoing initiatives, as indicated by the commenter and in consultations with NAIC, Treasury is not expanding the reach of the disclosure to policyholder requirements set forth in the interim final rule.

2. Clear and Conspicuous Disclosure (Section 50.12)

As stated above, section 50.10 reflects the requirement in section 103(b) of the Act that the insurer must provide "clear and conspicuous disclosure" to the policyholder of the premium charged and the federal share of payments for insured losses under the Program. Section 50.12 of the interim final rule addresses the meaning of "clear and conspicuous" disclosure for purposes of the Program. Except as noted below with respect to section 50.12(d), this final rule adopts interim section 50.12 without change.

Section 50.12(a) of the interim final rule provides that whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances. Consistent with the Program implementation goals, the interim final rule does not specify an exclusive form or means of satisfying the statutory disclosure requirements, nor does it prescribe precise language, typeface, or font for the disclosures. In interim guidance issued by Treasury soon after enactment of the Act, Treasury deemed

certain NAIC model forms to be an acceptable, nonexclusive way in which an insurer could satisfy the disclosure requirement. (These model forms are available at the Program's Web site: <http://www.treasury.gov/trip>). Treasury stated that insurers could modify the NAIC model forms to meet individual circumstances, or use other forms, as long as the modifications met the statutory standards. This interim guidance was incorporated into the interim final rule and is now in the final rule, which also provides a safe harbor (see section 50.17). Insurers may continue to use certain NAIC model forms if appropriate or they may develop other disclosure forms that meet the requirements of the Act and the regulations. Treasury received one comment on section 50.12(a) of the interim final rule, which was supportive of Treasury's approach. Section 50.12(a) of the interim final rule is adopted without change.

Section 50.12(b) of the interim final rule provides that, in describing the premium charged for insured losses covered by the Program, an insurer may refer to it as a portion or percentage of an annual premium, if consistent with normal business practice; but, may not describe this premium in a manner that would be misleading in the context of the Program, such as by characterizing it as a "surcharge." It is inappropriate and misleading to use the term "surcharge" in the disclosures because surcharge is a term used in section 103(e)(8) of the Act in connection with the statutorily required recoupment.

Treasury received two comments on this provision. One commenter, an association of insurance brokers and agents, strongly supported Treasury's position. This commenter believed the use of the term "surcharge" in disclosing the premium, "threatened both to undermine the ability of consumers to properly evaluate their coverage needs and to call into question the legitimacy of the Program." An insurance industry association commented that the group had "no objection" to this section in the interim final rule. Section 50.12(b) of the interim final rule is adopted without change.

Section 50.12(c) of the interim final rule allows insurers to make the required disclosures using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders. The comments generally supported this approach, which is adopted without change.

Section 50.12(d) of the interim final rule provides further guidance on the use of an agent to provide the required disclosures to policyholders. The interim final rule refers to an insurance broker or other intermediary acting as agent for the insurer, if the insurer normally communicates with a policyholder in this fashion. An insurance industry association commenter suggested that, in view of the diverse treatment of the legal status of insurance brokers under the laws of the various States, unnecessary confusion may result from the use of terms such as "agent" and "broker" with varying implications in different jurisdictions. The commenter suggested that the final rule instead use the term "producer." Treasury agrees with this suggestion, but emphasizes that if the insurer elects to make the required disclosure through a producer or other intermediary, regardless of on whose behalf the producer or other intermediary is acting, the insurer remains responsible for ensuring that the disclosures are provided by the producer or other intermediary to policyholders in accordance with the Act. Accordingly, Treasury is modifying section 50.12(d) consistent with this comment.

Section 50.12(e) of the interim final rule provides generally that an insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure through use of appropriate systems and normal business practices that demonstrate a practice of compliance. Although no comments explicitly addressed this provision, the comments generally supported the overall approach in section 50.12. Section 50.12(e) is adopted without change.

Section 50.12(f) of the interim final rule provides that an insurer must certify that it has complied with the requirement to provide disclosure to the policyholder on all policies that form the basis for the underlying claim(s) submitted by the insurer for federal payment under the Program. One commenter believed the language of section 50.12(f) itself was clear, but stated that the corresponding discussion in the preamble to the interim final rule was not as clear and requested further clarification in the final rule.

This final rule adopts section 50.12(f) of the interim final rule without change. Section 50.12(f) requires that, on all policies that form the basis for any claim that the insurer submits for federal payment for insured losses under the Program, an insurer must certify that it has complied with requirements to make disclosures to