

UAE government boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to this part of the EAR, irrespective of the country of origination. For example, requests containing references to “blacklisted companies,” “Israel boycott list,” “non-Israeli goods,” or other phrases or words indicating a boycott purpose would be subject to the appropriate provisions of the Department’s antiboycott regulations in this part.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

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**BILLING CODE 3510-33-P**

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 50

#### **Terrorism Risk Insurance Program; Updated Regulations in Light of the Terrorism Risk Insurance Program Reauthorization Act of 2019, and for Other Purposes**

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing this final rule to implement technical changes to the Terrorism Risk Insurance Program (TRIP or Program) rules in response to the Terrorism Risk Insurance Program Reauthorization Act of 2019. In addition, Treasury is issuing this final rule to: Clarify the manner in which Treasury will calculate “property and casualty insurance losses” for purposes of considering certification of an act of terrorism, and “insured losses” when administering the financial sharing mechanisms under the Program, including the Program Trigger and Program Cap; incorporate into the Program rules the prior guidance provided by Treasury in connection with stand-alone cyber insurance under the Program; and provide updated links to additional information found on the Program’s website relating to administration of the Program. The changes were published in proposed form for public comment by Treasury on November 10, 2020.

**DATES:** This rule is effective July 12, 2021.

#### **FOR FURTHER INFORMATION CONTACT:**

Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202-622-2922, Lindsey Baldwin, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202-622-3220, or Daniel McKnight, Policy Analyst, 202-622-7009.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Terrorism Risk Insurance Act of 2002 (as amended, the Act or TRIA)<sup>1</sup> was enacted on November 26, 2002, following the attacks of September 11, 2001, to address disruptions in the market for terrorism risk insurance, help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events.<sup>2</sup> TRIA requires insurers to “make available” terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (termed “insured losses” under TRIA), and provides for shared public and private compensation for such insured losses. The Program has been reauthorized four times, most recently by the Terrorism Risk Insurance Program Reauthorization Act of 2019 (2019 Reauthorization Act).<sup>3</sup>

The Secretary of the Treasury (Secretary) administers the Program, with the assistance of the Federal Insurance Office (FIO).<sup>4</sup> To assist insurers, policyholders, and other interested parties in understanding and complying with the requirements of the Act, Treasury has issued regulations implementing the Program (the Program Rules).<sup>5</sup> In some instances, Treasury has also issued interim guidance that may be relied upon by insurers until superseded by any regulations. Of

<sup>1</sup> Public Law 107-297, 116 Stat. 2322, codified at 15 U.S.C. 6701 note. Because the provisions of TRIA (as amended) appear in a note instead of particular sections of the U.S. Code, the provisions of TRIA are identified by the sections of the law.

<sup>2</sup> TRIA sec. 101(b).

<sup>3</sup> See Terrorism Risk Insurance Extension Act of 2005, Public Law 109-144, 119 Stat. 2660; Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110-160, 121 Stat. 1839; Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114-1, 129 Stat. 3; Terrorism Risk Insurance Program Reauthorization Act of 2019, Public Law 116-94, 133 Stat. 2534.

<sup>4</sup> 31 U.S.C. 313(c)(1)(D).

<sup>5</sup> See 31 CFR part 50. Treasury summarized the history of prior rulemakings in connection with the Program in a 2016 proposed rulemaking proposing rule changes to implement the 2015 Reauthorization Act. See 81 FR 18950, 18950-91 (Apr. 1, 2016), <https://www.federalregister.gov/documents/2016/04/01/2016-06920/terrorism-risk-insurance-program>.

relevance to this final rule, in December 2016, Treasury issued interim guidance confirming that certain stand-alone cyber coverage written in a TRIP-eligible line of insurance was within the scope of the Program, such that insurers were obligated to adhere to the “make available” and disclosure requirements under TRIA for such coverage (Cyber Guidance).<sup>6</sup>

Treasury proposed the changes in this final rule in a November 2020 notice of proposed rulemaking (the November 2020 NPRM).<sup>7</sup> In response to the reauthorization of the Program for an additional seven years under the 2019 Reauthorization Act, Treasury proposed certain technical changes to align the Program Rules to the new dates for expiration of the Program and schedule for recoupment of any payments. Treasury also proposed in the November 2020 NPRM certain definitional changes to confirm and clarify the guidance on cyber coverage in this area that Treasury provided in its December 2016 Cyber Guidance. In addition, Treasury proposed in the November 2020 NPRM several changes, in part in response to a report by the Government Accountability Office (GAO), addressing certain sources of risk and uncertainty related to the Program.<sup>8</sup> In its report, GAO indicated that, based upon its engagement with stakeholders during the preparation of the report, some uncertainty may exist about how Treasury would apply policyholder retention amounts in calculating “property and casualty insurance losses” versus “insured losses” to determine the Program certification threshold, Program Trigger, and Program Cap.<sup>9</sup> GAO recommended that Treasury provide further clarification to “prevent uncertainty in the insurance market and potential litigation following a terrorist event that that could delay insurance payments and economic recovery.”<sup>10</sup> Treasury proposed certain

<sup>6</sup> Guidance Concerning Stand-Alone Cyber Liability Insurance Policies Under the Terrorism Risk Insurance Program, 81 FR 95312 (Dec. 27, 2016), <https://www.federalregister.gov/documents/2016/12/27/2016-31244/guidance-concerning-stand-alone-cyber-liability-insurance-policies-under-the-terrorist-risk>.

<sup>7</sup> Terrorism Risk Insurance Program; Updated Regulations in Light of the Terrorism Risk Insurance Program Reauthorization Act of 2019, and for Other Purposes, 85 FR 71588 (Nov. 10, 2020), <https://www.federalregister.gov/documents/2020/11/10/2020-24522/terrorism-risk-insurance-program-updated-regulations-in-light-of-the-terrorist-risk-insurance>.

<sup>8</sup> GAO, *Terrorism Risk Insurance: Program Changes Have Reduced Federal Fiscal Exposure* (GAO-20-348) (Apr. 2020), <https://www.gao.gov/assets/710/706243.pdf>.

<sup>9</sup> *Id.* at 18-19.

<sup>10</sup> *Id.* at 19.

rule changes in the November 2020 NPRM designed to clarify how Treasury will apply these terms to effectuate the intent and goals of the Program. Finally, Treasury proposed updating certain references to the TRIP website in the Program Rules to the current website URLs.

## II. The Proposed Rule

The November 2020 NPRM proposed various technical changes to the Program Rules to account for the extension of the Program to December 31, 2027 as provided for in the 2019 Reauthorization Act.<sup>11</sup> In addition, the November 2020 NPRM proposed additional substantive changes to the Program Rules by (1) incorporating, through certain definitional changes, Treasury's prior guidance respecting the inclusion of stand-alone cyber liability within the Program; and (2) making certain revisions to definitional language concerning "property and casualty insurance losses" (for purposes of certification of an "act of terrorism") and "insured loss" under the Program, which governs various financial mechanics under the Program, including calculation of an insurer's claim for the Federal Share of Compensation, the Program Trigger and the Program Cap. In general terms, the proposed changes in the November 2020 NPRM involving "property and casualty insurance losses" and "insured loss" were intended to specify that amounts for which the policyholder is responsible (whether on account of policy exclusions or deductible or retention amounts) will be included within "property and casualty insurance losses," but excluded from "insured loss" for purposes of calculating payment amounts under the Program, as well as for determining whether the Program Trigger and Program Cap have been satisfied.<sup>12</sup> The November 2020 NPRM also updates various URL links to the Program website, which contains further explanatory information concerning the Program.

<sup>11</sup> In addition to seeking comments concerning the proposed rule, the November 2020 NPRM sought comments from the public concerning a number of other matters under the Program concerning the certification process and the participation of captive insurers in the Program. Treasury received a number of comments addressing these issues, which it is continuing to review in connection with potential future proposed rules, reports, or other actions involving the Program.

<sup>12</sup> See generally November 2020 NPRM, 85 FR at 71589–90.

## III. Summary of Comments and Final Rule

Treasury received five comments addressing the proposed rule changes identified in the November 2020 NPRM.<sup>13</sup> None of the comments received objected to the proposed technical rule changes in response to the 2019 Reauthorization Act. In addition, none of the comments objected to Treasury's proposed codification of its December 2016 Cyber Guidance or the provisions updating Treasury's website references.<sup>14</sup> Those proposed rules, accordingly, are being finalized as proposed.

Some commenters addressed Treasury's proposed rule changes regarding the interpretation of the terms "property and casualty insurance losses" for purposes of the certification process, and "insured loss" for purposes of the sharing mechanisms under the Program. Treasury's proposed rules clarified that "property and casualty

<sup>13</sup> See Comment from Centers for Better Insurance, LLC (Dec. 3, 2020) (CBI Comments); Comment from Lloyd's of London (Jan. 8, 2021) (Lloyd's Comments); Comment from National Association of Mutual Insurance Companies (Jan. 11, 2021) (NAMIC Comments); Comment from American Property Casualty Insurance Association (Jan. 11, 2021) (APCIA Comments); and Comment from the Coalition to Insure Against Terrorism and the Council of Insurance Agents and Brokers (Jan. 11, 2021) (CIAT/CIAB Comments), all available at <https://www.regulations.gov/document/TREAS-TRIP-2020-0022-0001/comment>. As noted above, Treasury solicited and received additional comments concerning certification and captive insurer issues, which Treasury will not address in this final rule.

<sup>14</sup> See Lloyd's Comments at 1 ("Lloyd's is grateful to FIO for issuing its guidance relating to cyber liability lines in 2016, and for now codifying that guidance in the proposed rule."); APCIA Comments at 3 ("The NPRM proposes to codify Treasury's previous guidance on cyber stand-alone policies. In the NPRM, Treasury confirmed APCIA's understanding of the intent of that previous guidance, *i.e.*, to make clear that any cyber risk reported on Line 17—Other Liability on insurers' annual state statutory financial statements is considered to be covered by TRIA unless the risk is statutorily excluded. Therefore, APCIA supports Treasury's proposed rulemaking in this regard."); NAMIC Comments at 2 ("The NPRM proposes to codify Treasury's previous guidance on stand-alone cyber insurance policies to make clear that any cyber risk reported on Line 17—Other Liability on insurers' annual state statutory financial reporting statements is considered covered by TRIA unless the risk is statutorily excluded. NAMIC believes this is an appropriate interpretation and has no issue in this regard."); and CIAT/CIAB Comments at 3 ("In December 2016, Treasury issued guidance relating to whether certain standalone cyber coverage written in a TRIP-eligible line of insurance was within the scope of the TRIA program, such that insurers were obligated to adhere to the 'make available' and disclosure requirements under TRIA for such coverage. 81 FR 95312. We thank FIO for codifying this previously issued guidance in the current NPRM, as greater clarity on the relationship between cyberterrorism and TRIA is always appreciated, and welcome future clarifying guidance related to cyber insurance, particularly as it relates to the certification of cyber events.").

insurance losses," for certification purposes, would include loss amounts ultimately sustained by the policyholder (on account of deductibles, retentions, or other mechanisms); however, an "insured loss" (a term used in relation to payments under the Program rather than the certification process) would not include such amounts, because payments in connection with the Program are limited to loss amounts that are actually paid (or in some cases to be paid) by insurers.<sup>15</sup> Treasury explained that the certification analysis looks to the size of the event in question, so it is appropriate to consider all amounts associated with TRIP-eligible policies in connection with that inquiry to determine whether the event is of sufficient size to warrant potential consideration for certification purposes. By contrast, since the term "insured loss" measures amounts payable under the Program, and payments under the Program are made only to insurers, Treasury observed that "insured loss" cannot include losses not paid by insurers to ensure that the financial mechanisms underlying the Program operate as intended.<sup>16</sup>

One commenter, while not expressing a preference for the elements to be included within the two terms ("property and casualty insurance losses" and "insured loss"), did suggest that these terms should have the same interpretation for reasons of administrative efficiency.<sup>17</sup> This commenter also noted that it might be difficult in some cases to determine the amount of policyholder obligations in connection with a certification inquiry. Another commenter echoed the preference for equating the meaning of the two terms and suggested that policyholder losses should be included in both calculations, as they are commonly considered to be part of

<sup>15</sup> November 2020 NPRM, 85 FR at 71589–90.

<sup>16</sup> *Id.* For example, the Program Cap of \$100 billion limits "insured losses" payable by Treasury and insurers that have met their Program deductible to no more than \$100 billion in any single annual period. See TRIA sec. 103(e)(2); 31 CFR Subpart L (Cap on Annual Liability). If amounts paid by policyholders were included within this calculation, insurers could be excused from payment by the Program on account of amounts paid or absorbed by their policyholders, as distinguished from the combined amount of their own payments and Treasury reimbursement of insurer payments. In an extreme case, if policyholders sustained \$100 billion in losses associated with certified "acts of terrorism" in a given year because of their retained obligations, insurers could be excused of any payments under their policies if those policyholder payments operated to exhaust the \$100 billion Program Cap of "insured losses." Such a result is not consistent with the statutory language of TRIA or the Congressional intent underlying the Program.

<sup>17</sup> See APCIA Comments at 1.

“insured loss” in the insurance industry.<sup>18</sup> Although Treasury values administrative efficiency in the operation of the Program, the two terms are different and address different (although related) matters. “Property and casualty insurance losses” measures the size of the event in question, which logically means any insurance-related loss associated with the event. By contrast, “insured loss” in the context of the Program must be limited to the actual losses of participating insurers, when calculating Federal Share of Compensation payments to participating insurers in the event that payments under the Program are triggered, or when determining the cap on total payments by participating insurers.

Accordingly, Treasury will not apply the same definition where Congress chose not to do so. Furthermore, and for the reasons explained above, including policyholder obligations within the meaning of “insured loss” would potentially permit recoveries by insurers for amounts not paid by such insurers, and excuse insurer payments to some extent on account of policyholder payments through operation of the Program Cap. Treasury therefore declines to interpret “insured loss” in this fashion.

A third commenter offered alternative language to clarify the terms “property and casualty insurance losses” and “insured loss.”<sup>19</sup> Specifically, the commenter suggested that the “property and casualty insurance losses” should only include losses “after the hypothetical application of any terrorism exclusions,” reasoning that such an approach would be more favorable to a policyholder that chose not to take up its insurer’s mandatory offer of terrorism risk insurance under TRIA.<sup>20</sup> Treasury declines to adopt the approach proposed by this commenter, which would result in Treasury adopting a definition that would facilitate the provision of coverage to policyholders that consciously declined to purchase it. As Treasury explained in the November 2020 NPRM, the purpose of the certification analysis is to “accurately assess the size of an event” and it therefore focuses on the total economic loss of an event involving TRIP-eligible lines of insurance. When

the Secretary is making a certification decision under the Program, it is important for Treasury to be in a position to identify the relevant size of a particular event that might be considered for certification.<sup>21</sup> In Treasury’s view, Congress did not intend to limit the Secretary’s ability to certify an event as an act of terrorism in the manner proposed by this commenter. Moreover, the concern identified by this commenter is addressed by the fact that it is within the Secretary’s discretion to consider factors, such as policyholder take-up rates, when determining whether to certify any particular event as an act of terrorism.<sup>22</sup>

Regarding the proposed modification to the “insured loss” definition, the same commenter generally approved of the concept behind Treasury’s proposed rule (*i.e.*, that amounts paid or absorbed by the policyholder are not an “insured loss” under the Program). However, this commenter suggested that the “proposed rule could be gamed” by insurers and policyholders by not going far enough in protecting against abuses intended to augment insurer recoveries to the benefit of both participating insurers and their policyholders.<sup>23</sup> However, the commenter recognized that attempting to anticipate “the full range of sophistication, complexity, and ingenuity” that might be deployed to obtain an unfair advantage under the Program may not be possible.<sup>24</sup>

As Treasury has advised from the outset of the Program, efforts to avoid the requirements of TRIA so as to artificially increase recoveries under the Program are impermissible and will have adverse consequences when Treasury evaluates claims for the Federal Share of Compensation in the event of a certified act of terrorism.<sup>25</sup>

<sup>21</sup> Treasury has also considered the additional wording issues identified by this commenter concerning the clarifications proposed to “property and casualty insurance losses” for certification purposes (CBI Comments at 3–4) and finds that they do not warrant revisions to the proposed rule. No new concepts are introduced by Treasury in connection with the Program by referencing terrorism risk insurance. Second, a first-party policyholder remains “responsible for the payment” of losses within an assumed deductible amount, even where it elects not to repair the property at all.

<sup>22</sup> See TRIA sec. 102(1); 31 CFR 50.4(b).

<sup>23</sup> See CBI Comments at 5 (“The insurer could issue a policy that simply waives collection of any deductible in the event of a certified act of terrorism.”).

<sup>24</sup> *Id.*

<sup>25</sup> See, *e.g.*, Interpretative Letter, TRIA-Only Captives/TRIA Section 102(6)(c)/31 CFR 50.5(d) (Mar. 2, 2004) (“We believe that an entity considering forming a captive insurer for stand-alone, single risk terrorism insurance should be strongly cautioned and advised against undertaking

Policy structures and arrangements providing for special treatment where an “act of terrorism” is involved, with the goal of increasing claims for the Federal Share of Compensation, will be subject to significant scrutiny by Treasury in both the claim approval process and any subsequent audit process as contemplated under TRIA.<sup>26</sup>

Accordingly, Treasury is also adopting without change in this final rule the interpretation of “property and casualty insurance losses” and “insured loss” proposed in the November 2020 NPRM.

#### IV. Procedural Requirements

*Executive Order 12866, “Regulatory Planning and Review.”* This final rule is not a significant regulatory action for purposes of Executive Order 12866, “Regulatory Planning and Review,” and thus has not been reviewed by the Office of Management and Budget (OMB).

*Regulatory Flexibility Act.* Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Treasury must consider whether this rule will have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). In this case, Treasury certifies that this final rule will not have a significant economic impact on a substantial number of small entities, because the changes it implements are largely ministerial and are not expected to impact small entities more than the existing Program regulations.

*Paperwork Reduction Act.* No collection of information is addressed in this final rule. Treasury continues to submit to OMB for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d), material changes to existing collection requirements.

#### List of Subjects in 31 CFR Part 50

Insurance, Terrorism.

For the reasons stated in the preamble, 31 CFR part 50 is amended as follows:

#### PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for part 50 continues to read as follows:

such proposed action if it is doing so in order to avoid the Act’s deductible requirements.”), <https://home.treasury.gov/system/files/311/redactedv.pdf>.

<sup>26</sup> TRIA sec. 104(a)(1); 31 CFR Subpart I (Audit and Investigative Procedures). In addition, significant civil penalty provisions apply under TRIA where a participating insurer “[s]ubmits to Treasury fraudulent claims under the Program for insured losses.” TRIA sec. 104(e)(1)(C); 31 CFR 50.82(a)(3).

<sup>18</sup> See NAMIC Comments at 1–2.

<sup>19</sup> See CBI Comments, 3, 6.

<sup>20</sup> *Id.* To the extent the Secretary does not certify an event as an act of terrorism under TRIA, policy exclusions for certified acts of terrorism that can be (and typically are) included in a policy where the policyholder fails to accept the mandatory offer under TRIA would not apply, and the policyholder would be entitled to coverage for associated losses assuming all other policy terms and conditions were met.

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107-297, 116 Stat. 2322, as amended by Pub. L. 109-144, 119 Stat. 2660, Pub. L. 110-160, 121 Stat. 1839, Pub. L. 114-1, 129 Stat. 3, Pub. L. 116-94, 133 Stat. 2534 (15 U.S.C. 6701 note), Pub. L. 114-74, 129 Stat. 601, Title VII (28 U.S.C. 2461 note).

■ 2. Amend § 50.1 by revising paragraph (a) as follows:

§ 50.1 Authority, purpose, and scope.

(a) Authority. This part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Public Law 107-297, 116 Stat. 2322, as amended by the Terrorism Risk Insurance Extension Act of 2005, Public Law 109-144, 119 Stat. 2660, the Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110-160, 121 Stat. 1839, the Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114-1, 129 Stat. 3, and the Terrorism Risk Insurance Program Reauthorization Act of 2019, Public Law 116-94, 133 Stat. 2534.

\* \* \* \* \*

■ 3. Amend § 50.4 by revising paragraphs (b)(2)(ii) and (n)(3)(iii), adding paragraph (n)(3)(iv) and revising (w)(1) and (2) to read as follows:

§ 50.4 Definitions.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000. For these purposes, property and casualty insurance losses include any amounts subject to payment under a property and casualty insurance policy, even if the policyholder declined to obtain terrorism risk insurance under the policy or is otherwise ultimately responsible for the payment.

\* \* \* \* \*

(n) \* \* \*

(3) \* \* \*

(iii) Payments by an insurer in excess of policy limits; or

(iv) Amounts paid by a policyholder as required under the terms and conditions of property and casualty insurance issued by an insurer.

\* \* \* \* \*

(w) \* \* \*

(1) Means commercial lines within only the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14): Line 1—Fire; Line 2.1—Allied Lines; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers'

Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 22—Aircraft (all perils); and Line 27—Boiler and Machinery; a stand-alone cyber liability policy falling within Line 17—Other Liability, is property and casualty insurance, so long as it is not otherwise identified for state reporting purposes as a policy that is not property and casualty insurance, such as professional liability insurance.

(2) Property and casualty insurance does not include:

\* \* \* \* \*

■ 4. Amend § 50.6 by revising paragraph (b) as follows:

§ 50.6 Special rules for Interim Guidance safe harbors.

\* \* \* \* \*

(b) For purposes of this section, any Interim Guidance will be posted by Treasury at https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program.

■ 5. Amend § 50.16 by revising paragraph (c) to read as follows:

§ 50.16 Use of model forms.

\* \* \* \* \*

(c) Definitions. For purposes of this section, references to NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 refer to such forms as revised in March 2020, or as subsequently modified by the NAIC, provided Treasury has stated that usage by insurers of the subsequently modified forms is deemed to satisfy the disclosure requirements of the Act and the insurer uses the most current forms, so approved by Treasury, that are available at the time of disclosure. These forms may be found on the Treasury website at https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program.

\* \* \* \* \*

■ 6. Amend § 50.20 by revising paragraphs (b) and (c) to read as follows:

§ 50.20 General mandatory availability requirements.

\* \* \* \* \*

(b) Compliance through 2027. Under section 108(a) of the Act, an insurer must comply with paragraphs (a)(1) and (2) of this section through calendar year 2027.

(c) Beyond 2027. Notwithstanding paragraph (a)(2) of this section and § 50.22(a), property and casualty insurance coverage for insured losses does not have to be made available

beyond December 31, 2027, even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

■ 7. Amend § 50.30 by revising paragraph (c) to read as follows:

§ 50.30 General participation requirements.

\* \* \* \* \*

(c) Identification. Treasury maintains a list of state residual market insurance entities and state workers' compensation funds at https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program. Procedures for providing comments and updates to that list are posted with the list.

■ 8. Amend § 50.74 by revising paragraph (b) as to read as follows:

§ 50.74 Payment of Federal Share of Compensation.

\* \* \* \* \*

(b) Payment process. Payment of the Federal Share of Compensation for insured losses will be made to the insurer designated on the Notice of Deductible Erosion required by § 50.72. An insurer that requests payment of the Federal Share of Compensation for insured losses must receive payment through electronic funds transfer. The insurer must establish either an account for reimbursement as described in paragraph (c) of this section (if the insurer only seeks reimbursement) or a segregated account as described in paragraph (d) of this section (if the insurer seeks advance payments or a combination of advance payments and reimbursement). Applicable procedures will be posted at https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program or otherwise will be made publicly available.

\* \* \* \* \*

■ 9. Amend § 50.83 by revising paragraph (b) to read as follows:

§ 50.83 Adjustment of civil monetary penalty amount.

\* \* \* \* \*

(b) Annual adjustment. The maximum penalty amount that may be assessed under this section will be adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. 2461 note, by January 15 of each year and the updated amount will be posted in the Federal Register and on the Treasury website at https://

*home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program.*

\* \* \* \* \*

■ 10. Amend § 50.90 by revising paragraph (c) to read as follows:

**§ 50.90 Mandatory and discretionary recoupment.**

\* \* \* \* \*

(c) If the Secretary imposes a federal terrorism policy surcharge as provided in paragraph (a) of this section, then the required amounts, based upon the extent to which payments for the Federal Share of Compensation have been made by the collection deadlines in section 103(e)(7)(E) of the Act, shall be collected in accordance with such deadlines:

(1) For any act of terrorism that occurs on or before December 31, 2022, the Secretary shall collect all required amounts by September 30, 2024;

(2) For any act of terrorism that occurs between January 1, 2023 and December 31, 2023, the Secretary shall collect 35% of any required amounts by September 30, 2024, and the remainder by September 30, 2029; and

(3) For any act of terrorism that occurs on or after January 1, 2024, the Secretary shall collect all required amounts by September 30, 2029.

■ 11. Amend § 50.103 by revising paragraph (a) as to read as follows:

**§ 50.103 Procedure for requesting approval of proposed settlements.**

(a) *Submission of notice.* Insurers must request advance approval of a proposed settlement by submitting a notice of the proposed settlement and other required information in writing to the Terrorism Risk Insurance Program Office or its designated representative. The address where notices are to be submitted will be available at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program> following any certification of an act of terrorism pursuant to section 102(1) of the Act.

\* \* \* \* \*

Dated: June 3, 2021.

**Steven E. Seitz,**

*Director, Federal Insurance Office, performing the Delegable Duties of the Assistant Secretary for Financial Institutions.*

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 9**

**RIN 2900-AR24**

**Extension of Veterans' Group Life Insurance (VGLI) Application Periods in Response to the COVID-19 Public Health Emergency**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is issuing this interim final rule to extend the deadline for former members insured under Servicemembers' Group Life Insurance (SGLI) to apply for VGLI coverage following separation from service in order to address the inability of former members directly or indirectly affected by the 2019 Novel Coronavirus (COVID-19) public health emergency to purchase VGLI. This rule will be in effect until December 11, 2021.

**DATES:** This interim final rule is effective June 9, 2021.

*Comment date:* Comments must be received on or before July 9, 2021.

**ADDRESSES:** Comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov) or mailed to Director, VA Insurance Service (29), 5000 Wissahickon Avenue, Philadelphia, PA 19144. Please note that due to circumstances associated with the COVID-19 pandemic, VA discourages the submission of comments by mail. Comments should indicate that they are submitted in response to "RIN 2900-AR24 Interim Final Rule—Extension of VGLI Application Periods in Response to the COVID-19 Public Health Emergency." Comments received will be available at [regulations.gov](http://regulations.gov) for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Paul Weaver, Department of Veterans Affairs Insurance Service (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842-2000, ext. 4263. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Section 1977 of title 38, United States Code, authorizes the VGLI program, which provides former members separating from service with the option of converting existing SGLI coverage into renewable, 5-year term group life insurance coverage in amounts ranging from \$10,000 to \$400,000 based upon the amount of SGLI coverage. See 38 U.S.C. 1967(a), 1968(b)(1)(A), 1977(a), (b). Section 9.2 of title 38, Code of Federal Regulations, provides the effective dates of VGLI coverage and

application requirements. VGLI coverage may be granted if an application, the initial premium, and evidence of insurability are received within 1 year and 120 days following termination of duty. 38 CFR 9.2(c). Evidence of insurability is not required during the initial 240 days following termination of duty. *Id.*

On October 7, 2020, VA published a final rule in the **Federal Register** (85 FR 63208) that amended 38 CFR 9.2 by adding new paragraph (f)(1) to extend by 90 days the time periods under 38 CFR 9.2(c) during which former members may apply for VGLI. Thus, former members who submit a VGLI application and the initial premium within 330 days following separation from service will not be required to submit evidence of insurability. Former members who do not apply for VGLI within 330 days following separation from service may still receive VGLI coverage if they apply for the coverage within 1 year and 210 days following separation from service and submit the initial premium and evidence of insurability. The 90-day extensions for former members to apply for VGLI are in effect from June 11, 2020, through June 11, 2021. Between June 11, 2020 and March 31, 2021, 14,855 former members utilized these 90-day extensions to purchase VGLI coverage.

The rationale for applying the rule for one year was that VA is obligated to manage VGLI according to sound and accepted actuarial principles (see 38 U.S.C. 1977(c), (f), (g)), and that VA would be able to utilize this one-year time period to gather and analyze data on VGLI claims experience to determine if it would be actuarially sound to further extend the applicability date. VGLI is funded by premiums from insured Veterans, and VA has determined that current premium amounts that insured Veterans pay for VGLI coverage are sufficient to absorb the cost of any additional VGLI claims that would be paid due to VA extending that application deadline period for an additional six months. Considering the continuing challenges involved with obtaining necessary medical records brought about by the COVID-19 pandemic, and that VA has determined that it would be actuarially sound to extend VGLI application deadlines, VA will be extending the deadline for VGLI applications received between June 12, 2021 and December 11, 2021. This interim final rulemaking will continue to provide separating service members an additional 90 days to apply for VGLI during the COVID-19 pandemic and is intended to ease some of the financial consequences of the COVID-19