

04/09/2010

Department of the Treasury
Terrorism Risk Insurance Program (TRIP)

Supporting Statement – Information Collection Requirement

OMB Control Number - 1505-0197

Terrorism Risk Insurance Program (TRIP);
Recordkeeping Requirements for Insurers Compensated Under the Program

1. Explain the circumstances that make the collection of information necessary.

This information collection is made necessary by the provisions of the Terrorism Risk Insurance Act of 2002 (the Act) and the Department of Treasury regulations for its implementation.

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Public Law 107-297, 116 Stat. 2322) (the Act). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving state insurance regulation and consumer protections. The Program provides a federal backstop for insured losses from an act of terrorism. The Program was originally set to expire on December 31, 2005. On December 22, 2005, the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109-144, 119 Stat. 2660) (the Extension Act) was signed into law and extended the Program through December 31, 2007. Subsequently, the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub. L. 110-160, 121 Stat. 1839) (the Reauthorization Act) was enacted and extended the Program through December 31, 2014.

Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program (the Program), including the issuance of regulations and procedures. Sections 103(a) and 104 of the Act authorize the Department of the Treasury to administer and implement the Program established by the Act. In 31 CFR part 50, subpart F (Sec. 50.50–50.55) Treasury established requirements and procedures for insurers that file claims for payment of the Federal share of compensation for insured losses resulting from a certified act of terrorism under the Act. Section 50.60 allows Treasury access to records of an insurer pertinent to amounts paid as the Federal share of compensation for insured losses in order to conduct investigations, confirmations and audits. Section 50.61 requires insurers to retain all records as are necessary to fully disclose all material matters pertaining to insured losses. The collection of information addressed in this request is the recordkeeping requirement in section 50.61. (The submission of TRIP claims and associated forms are addressed in separate Information Collection Requests (ICRs)).

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

This requirement is for the maintenance (recordkeeping) of an insurer's records that are pertinent to amounts requested and paid as the Federal share of compensation for insured losses. The recordkeeping is needed in order to permit Treasury to conduct investigations, confirmations and audits, as required. 31 CFR part 50, subpart G, section 50.61 requires insurers to retain all records as are necessary to fully disclose all material matters pertaining to insured losses. The information collected will not be disseminated to the public by Treasury or used to support information that will be disseminated.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Treasury has not prescribed that the records be automated, electronic or mechanical for insurers. Treasury will accept any such recordkeeping that meets the regulatory requirements as stated in 31 CFR 50 Subpart G and that enable the insurer to maintain these records. Regulations will also provide for Treasury access to all books, documents, papers and records of an insurer that are pertinent to any claims payment for the purpose of investigation, confirmation, audit and examination. Treasury would approve the use of improved information technology for the maintenance of required records.

4. Describe efforts to identify duplication.

The required records do not duplicate any existing Government records. Moreover, collection of the information and the systems for the generation of the retained data and the reporting and attendant recordkeeping are usual and customary for insurers who are routinely required to make submissions to state regulators and statistical reporting agencies.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The collection of information and recordkeeping does not involve small businesses or other small entities but is expected to impact insurers.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

This recordkeeping requirement is considered to be necessary to meet standard audit requirements and to adequately assure that the amounts paid by Treasury are proper. Without the ability to access insurer records that are the basis for their submissions to Treasury to receive federal compensation, it would be impossible to comply with the Act and for the Program to properly account for taxpayer funds. The proposed record retention requirements are consistent with insurance and reinsurance industry practice and needed to permit orderly auditing and closeout of accounts. The Program is balancing the need to respond quickly in providing the Federal share of compensation for insured losses for a certified terrorism event with subsequent auditing that may have to be scheduled for a later time. The record retention requirements of 3 years for premium information and 5 years for reinsurance and claims data are within normal industry standards for retaining such records.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

There are no special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. Moreover, the proposed implementation and record retention requirements are consistent with insurance industry and state regulatory practice and are needed to permit orderly auditing of accounts.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Public comments were solicited for the extension of the Program recordkeeping requirements. The Notice and Request for Comments, Terrorism Risk Insurance Program; Recordkeeping Requirements for Insurers Compensated Under the Program, was published at 72 FR 11086 (March 12, 2007). No comments were received.

Previously, public comments on the recordkeeping requirement were solicited as an element of the solicitation of comments with respect to the Notice of Proposed Rulemaking, TRIP, Initial Claims Procedures, 69 FR 67100 (December 1, 2003). Extensive efforts were made to obtain the views of insurers and extensive comments on the proposed rule were solicited and received from industry trade groups and others.

Three comments were received regarding the proposed sections 50.60 Audit Authority and 50.61 Recordkeeping. One commenter recommended that Section 50.60 explicitly require the retention of reinsurance and other relevant agreements and that they be available during audit. Treasury believes that the proposed language already required such information to be maintained and accessible. Thus, no change to the proposed rule was required. A second commenter requested that access to the records be provided "upon reasonable notice" to the insurer by Treasury. Treasury added this language to the final rule. This commenter also recommended that the audit authority of section 50.60 be expressly limited to the records required to be kept under section 50.61. Treasury disagreed and declined to limit the records it may need to access during investigation, audit and examination.

A third commenter was concerned with the type and form of claims records to be maintained. The commenter observed that section 50.61 of the proposed rule only required that "records" of material matters pertinent to insured losses be retained, not actual claim files containing activities relative to the handling and adjustment of claims. The commenter further suggested that any records required to be retained beyond actual claim files be permitted to be stored in a limited form such as electronic data storage. Treasury was concerned with the availability of information needed for investigation, confirmation, audit and examination for the time periods specified in section 50.61, not the medium in which information is retained. Information that is material needs to be retained in whatever form that can provide reasonable access by Treasury. Treasury believes that insurers' normal claims and other record keeping methods, technology, and systems can be used to meet this requirement and the proposed rule did not need to be changed.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

There will be no payments or gifts to respondents other than claims payments made to those insurers with losses meeting the criteria set by the Act.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

No assurances of confidentiality have been made to respondents for submissions that constitute the records to be kept by the insurers. (However, submissions would not be disclosed as they are considered to be exempt from the provisions of the Freedom of Information Act (FOIA)). Further, these records are maintained at the premises of the insurers.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Responses of a sensitive nature are not required.

12. Provide an estimate in hours of the burden of the collection of information.

This recordkeeping requirement involves usual and customary business records that insurers would be maintaining even without the Treasury requirement and, with one exception, do not create a burden on insurers. The TRIP Claims Procedures Final Rule §50.51(b)(2)(ii), requires that, "Each insurer shall inquire of each of its policyholders, insureds, and claimants whether the person receiving insurance proceeds for an insured loss has received, expects to receive, or is entitled to receive compensation from another Federal program for the insured loss, and if so, the source and the amount of the compensation received or expected."

The recordkeeping of this information is estimated to cause a marginal increase to the insurer of 5 minutes per loss per year. The number of respondents, if any, will be determined by the size and nature of the certified act of terrorism. Because of the extreme uncertainty regarding any such event a "best estimate" has been developed based on the considered judgment of staff. This estimate has 100 insurers each experiencing 100 insured losses. At 5 minutes per loss, or 500 minutes in total per insurer, this results in an annual burden per respondent of 8.33 hours and a total aggregate annual burden of 833 hours. The annual cost of this burden is based on an insurer's claims staff being paid an annual salary of \$50,000. This results in an annual cost of \$200(rounded) per respondent and a total annual cost of \$20,000.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

There are no additional recordkeeping costs beyond those cited in #12 above.

14. Provide estimates of annualized cost to the Federal government.

There is no cost to the Federal government of insurer recordkeeping. However, there will be costs of review and audit of records as that becomes necessary.

15. Explain the reasons for any program changes or adjustments to previously identified annual reporting and recordkeeping burden hours or cost burden.

There are no changes.

16. For collections whose results will be published, outline the plans for tabulation and publication.

This is a recordkeeping requirement and not a collection of information; hence, there are no results to be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

We will display the expiration date of OMB approval for this recordkeeping, as appropriate.

18. Explain each exception to the certification of compliance with 5 CFR 1320.9 statement.

There are no exceptions to the certification statement.

19. Describe the use of statistical methods such as sampling or imputation.

This collection does not employ statistical methods.